

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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| IN RE CONAGRA FOODS, INC. | Case No. CV 11-05379-CJC (AGR _x) MDL No. 2291 <u>CLASS ACTION</u> |
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**JOINT DECLARATION OF HENRY J. KELSTON AND ADAM J. LEVITT IN SUPPORT OF
UNOPPOSED MOTION FOR ORDER DIRECTING NOTICE TO THE CLASSES**

We, HENRY J. KELSTON and ADAM J. LEVITT, declare as follows pursuant to 28 U.S.C. §1746:

1. Henry J. Kelston is a partner at the law firm of Milberg Tadler Phillips Grossman LLP (“MTPG”) and Adam J. Levitt is a partner of the law firm of DiCello Levitt Gutzler LLC (“DLG”).

2. The attorneys of MTPG and DLG, now seeking formal appointment as Class Counsel, were appointed Interim Class Counsel on November 1, 2011 (ECF No. 48) and have provided excellent representation to the Classes for over seven years.¹ We have been actively involved in the prosecution and settlement of the Action, are familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon our supervision and participation in all material aspects of the Action.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, we submit this declaration in support of the Unopposed Motion for Order Directing Notice to the Classes.

¹ In their Amended Motion for Class Certification, Plaintiffs requested that the Court “designate Plaintiffs as class representatives of the separate statewide classes they respectively seek to represent, appoint Plaintiffs’ Interim Co-Lead Counsel as Class Counsel.” Judge Morrow explicitly ruled that “named plaintiffs and class counsel satisfy Rule 23(a)’s adequacy requirement” (ECF No. 245 at 57), but did not expressly appoint class representatives or class counsel.

1 4. Attached as Exhibit 1² to this declaration is the Settlement Agreement entered into in
2 this Action, along with each of its exhibits (“Settlement Agreement” or “Settlement”).³

3 5. Attached as Exhibit 2 is a true and correct copy of MTPG’s firm resume, which
4 describes the firm’s experience in class actions and other complex litigation, and the biographies of
5 attorneys in the firm who were involved in this Action.

6 6. Attached as Exhibit 3 is a true and correct copy of DLG’s firm resume, which
7 describes the firm’s experience in class actions and other complex litigation, and the biographies of
8 attorneys in the firm who were involved in this Action.

9 7. Attached as Exhibit 4 is the Declaration of Colin B. Weir.

10 **I. DESCRIPTION OF THE SETTLEMENT**

11 8. After almost eight years of hard-fought litigation, in order to avoid the risks, burden,
12 and costs of ongoing litigation, Class Representatives and Conagra have reached agreement to
13 resolve this action on a class-wide basis. The Settlement was negotiated at arm’s length with the
14 assistance of Magistrate Judge Douglas F. McCormick. The Settlement provides for both injunctive
15 relief and monetary damages to all Class Members.

16 9. In July 2017, six years into this litigation, Conagra removed the “100% Natural”
17 claim from all Wesson labels, and stopped advertising the products as “natural.” Plaintiffs contend
18 that this litigation was a significant factor leading to Conagra’s decision to institute labeling and
19 marketing changes.

20 10. The injunctive relief agreed to by the Parties in November 2018 provided that
21 Conagra would not label, advertise, or market Wesson Oils as “natural,” absent future legislation
22 or regulation permitting such a claim, thus guaranteeing that Conagra would not reverse the
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25 ² Citations to “Exhibit” or “Ex. ____” herein refer to exhibits to this Joint Declaration. For clarity,
26 citations to exhibits that have attached exhibits will be referenced as “Ex. ____-____.” The first numerical
reference refers to the designation of the entire exhibit attached hereto and the second alphabetical
reference refers to the exhibit designation within the exhibit itself.

27 ³ All capitalized terms used in this declaration that are not otherwise defined shall have the meanings
28 provided in the Settlement Agreement.

1 significant labeling and marketing changes that it adopted in 2017. The Parties, with the assistance
2 of Magistrate Judge McCormick as mediator, agreed that the value of the injunctive relief was \$27
3 million. Approximately one month later, Conagra announced that it had agreed to sell the Wesson
4 brand to Richardson International, a Canadian company. The sale was consummated on February
5 25, 2019. As a result of that sale, the Parties have revised the terms of the injunctive relief to clarify
6 that it will apply to Conagra in the event it reacquires the Wesson brand.

7 11. Thus, Wesson Oil purchasers have benefitted from the removal of the “100% Natural”
8 claim since July 2017.

9 12. Plaintiffs’ damages expert Colin Weir has calculated that Wesson purchasers in the
10 eleven class states paid approximately \$11,540,000 more *per year* for the products due to the
11 presence of the “100% Natural” claim on the labels. *See* Weir Decl. ¶ 24. Thus, according to Weir’s
12 calculations, the value of the labeling change from July 1, 2017 to February 25, 2019, is
13 approximately \$19,080,000.⁴

14 13. There is no reason to believe that legislation or regulation permitting the use of a
15 “natural” claim on Wesson Oils is imminent.⁵ It is, therefore, reasonable to assume that, should
16 Conagra reacquire the Wesson Oil brand, Class Members would accrue benefits of the label change
17 for at least two more years, raising the total value of the labeling and marketing changes to more
18 than \$42,000,000.

19 14. In the absence of a reacquisition of the Wesson brand by Conagra, it is highly unlikely
20 that Richardson International will resume labeling the products as “natural” without affirmative
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22 ⁴ It should also be noted that the “100% Natural” label has benefitted Wesson Oil purchasers
23 throughout the United States, not just in the eleven Class States (which represent approximately 44%
24 of the national population).

25 ⁵ In another case involving a claim that a product containing GMOs was deceptively marketed as
26 “natural,” a court recently lifted a stay previously granted on the ground of “primary jurisdiction,”
27 observing that, while the FDA has stated that it “plans to publicly communicate next steps regarding
28 Agency policies related to ‘natural.’” in 2019, “this hardly suggests that rulemaking is imminent.”
The court further noted that “such agency action typically takes between two and five years to
complete.” *Kind LLC “Healthy and All Natural” Litigation*, Case No. 1:16-cv-00959-WHP, S.D.N.Y.
(Feb. 11, 2019).

1 legislative or regulatory authorization in the U.S. First, Richardson agreed to purchase the Wesson
2 brand after the allegedly misleading “natural” claim was removed from the labels. Second,
3 Richardson is surely aware of this litigation as well as myriad other litigations concerning “natural”
4 labeling and, thus, cognizant of the likelihood that it would be embroiled in U.S. litigation should
5 it revert to labeling Wesson Oils as “natural.” Finally, the issuance of the requested injunction by
6 this Court, combined with the award of monetary compensation to Class Members, will serve to
7 further apprise Richardson of the potential liability it may face should it revert to labeling Wesson
8 Oils as “natural.”

9 15. Even allowing for the highly unlikely prospect that Richardson does consider
10 rebranding Wesson oils as “natural,” the process of market research, label redesign, production
11 change, and physical rollout would take several months, at minimum.

12 16. According to the Weir estimate, if just one additional year passes without “natural”
13 claims being restored to Wesson Oils labels – which Plaintiffs contend is a virtual certainty – the
14 value of the labeling change that Plaintiffs claim was, at least in part, the result of this litigation,
15 would reach approximately \$30,600,000.

16 17. The Settlement also provides the following monetary benefits to Class Members: (a)
17 \$0.15 for each unit of Wesson Oil Product purchased by members of each of the eleven Classes to
18 Households submitting Valid Claim Forms (for a maximum of 30 units without proof of purchase,
19 and for unlimited units with proof of purchase); (b) an additional fund of \$575,000 to be allocated
20 to members of the New York and Oregon state classes who submit Valid Claim forms, as
21 compensation for the statutory damages provided for in the consumer protection laws of those states
22 that Plaintiffs would claim at trial; and (c) an additional fund of \$10,000 to compensate those in all
23 Classes who submit valid proofs of purchase for more than thirty (30) purchases at \$0.15 for each
24 such purchase above 30; should \$10,000 be insufficient to cover such claims, Class Counsel shall
25 pay the non-funded claims from any award of attorneys’ fees in this case; should the \$10,000 fund
26 not be exhausted, the remaining funds will revert to category (b) herein for payment to claimants
27 from the New York and Oregon state Classes.

1 18. The compensation of \$0.15 per unit is significantly more than the best-case result at
2 trial, which would have yielded maximum damages of approximately \$0.102 (10.2 cents) per unit.
3 See Weir Decl. ¶ 35. This figure takes into account Judge Morrow’s ruling that the appropriate
4 measure of damages in the case was not the price premium paid by Class Members due to the
5 presence of the “100% Natural” claim, as plaintiffs has claimed, but only the portion of that
6 premium attributable to consumers’ belief that “100% Natural” meant that the products were GMO-
7 free.

8 19. To satisfy this requirement, Mr. Weir’s firm supervised the conduct of a conjoint
9 survey, the results of which indicated that approximately 27% of the value of the “natural” claim
10 on Wesson Oils was due to its “non-GMO” meaning. Weir Dec. ¶ 34. Judge Morrow’s ruling on
11 damages thus reduced the maximum per-unit compensation Class Members could seek at trial by
12 73%, to approximately \$0.102 per unit.⁶ Thus, the \$0.15 per-unit compensation available to Class
13 Members in the Settlement is approximately 36% higher than the maximum they could have
14 obtained at trial.

15 20. The Plaintiffs and Class Counsel respectfully submit that the Settlement represents
16 a favorable result for the Classes in light of the significant benefit achieved for the Classes and the
17 risks of a lesser, or no, recovery after continued prosecution of the Action.

18 21. The Settlement recovers per-unit damages approximately 36% higher than the
19 maximum they could have obtained at trial. This is an excellent result, particularly when compared
20 to the risks that continued litigation might result in a vastly smaller recovery, or no recovery at all.

21 22. In entering into the Settlement with the Defendant, the Class Representatives and
22 Class Counsel were fully informed about the strengths and weaknesses of the case. The Parties
23 reached an agreement in principle to settle the Action in November 2018—more than seven years
24 after the commencement of the Action—and only after extensive litigation before this Court, the
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28 ⁶ Plaintiffs contend that Judge Morrow’s ruling on this point was incorrect and would seek to have it reversed on appeal after any trial.

1 U.S. Court of Appeals for the Ninth Circuit, and the United States Supreme Court, and two separate
2 rounds of mediation. Class Counsel has:

- 3 • litigated numerous motions to dismiss and motions to stay;
- 4 • conducted extensive, fiercely-contested discovery;
- 5 • retained various experts to support class certification and this Motion;
- 6 • litigated two rounds of class certification motions, ultimately obtaining certification of
eleven separate state classes;
- 7 • successfully opposed Conagra's appeal of class certification to the Ninth Circuit
8 (thereby obtaining a groundbreaking decision on the hotly contested issue of
"ascertainability" in class actions);
- 9 • opposed Conagra's writ of certiorari to the United States Supreme Court for review of
the Ninth Circuit decision; and
- 10 • engaged in two separate mediations to obtain this Settlement, which ensures that
11 Conagra will not resume marketing and labeling Wesson Oils as "natural," and provides
monetary compensation to Class Members in excess of what they could obtain at trial.

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13 23. As discussed in further detail below, given the facts, the applicable law, and the risk
14 and expense of continued litigation, the Class Representatives and Class Counsel submit that the
15 proposed Settlement is fair, reasonable, and adequate, represents a very favorable result, and is in
16 the best interests of the Classes.

17 **II. THE ALLEGATIONS AND HISTORY OF THE LITIGATION**

18 **A. Plaintiffs' Allegations**

19 24. Plaintiffs in this Action, residents of eleven different states, allege that from at least
20 June 27, 2007 until July 1, 2017, Conagra deceptively and misleadingly marketed its Wesson brand
21 cooking oils, made from genetically-modified organisms ("GMO"), as "Natural." Throughout the
22 Class Period, every bottle of Wesson Oil carried a front label stating that the product was "100%
23 Natural." Plaintiffs allege that foods containing GMOs are not natural.

24 25. Plaintiffs further allege that Wesson Oils commanded a premium price due to the
25 presence of the "100% Natural" claim on the label and, consequently, every Class Member was
26 induced to pay more for Wesson Oils due to that false and deceptive claim. Accordingly, Plaintiffs
27 brought this Action on behalf of themselves and other similarly-situated consumers seeking to end
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1 Conagra's use of the "100% Natural" claim and obtain monetary compensation for the Classes, *i.e.*,
2 the price premium they allegedly paid for Wesson Oils due to presence of the "100% Natural"
3 claim.

4 26. Conagra denies plaintiffs' allegations and believes that it has a variety of meritorious
5 defenses.

6 **B. History of the Litigation**

7 **1. Creation of the MDL**

8 27. The first complaint in this action was filed by Robert Briseño on June 28, 2011 (ECF
9 No. 1). Similar cases across the country followed, including some in the Central District of
10 California. After five cases pending in the Central District were consolidated, Conagra moved the
11 JPML on August 4, 2011 to transfer six additional cases then pending in four different districts to
12 the Central District, where they were eventually consolidated before Judge Morrow (ECF Nos. 56,
13 59).

14 28. On August 24, 2011, Conagra moved to dismiss the initial complaint in the Briseño
15 case. Alternatively, Conagra moved for a stay on primary jurisdiction grounds, the first of four
16 unsuccessful bids Conagra would make to stay this litigation, all unsuccessful.

17 29. On October 13, 2011, the JPML issued a Transfer Order centralizing the pending
18 actions before Judge Morrow in the Central District of California. In November and December
19 2011, Judge Morrow issued a series of consolidation orders.⁷ On November 23, 2011, Judge
20 Morrow granted Conagra's motion to dismiss with leave to replead. (ECF No. 54). On December
21 9, 2011, Judge Morrow consolidated all pending actions and ordered the filing of a Consolidated
22 Amended Complaint. (ECF No. 59).

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26 ⁷ Order Consolidating Cases, Docket No. 56 (Nov. 28, 2011); Order Re Stipulation to Consolidate
27 Related Actions, Docket No. 59 (Dec. 9, 2011); Amended Order Granting Stipulation Re Amended
28 Consolidated Complaint, Response to Amended Consolidated Complaint, and Consolidation of
Additional Action, Docket No. 61 (Dec. 9, 2011).

1 **2. Early Proceedings and Discovery**

2 30. Plaintiffs filed the Consolidated Amended Complaint (ECF No. 80). Conagra moved
3 to dismiss on February 24, 2012. After being fully briefed, the motion was granted in part and
4 denied in part on November 15, 2012, with leave to replead certain claims. (ECF No. 138). On
5 December 19, 2012, Plaintiffs filed a Second Consolidated Class Action Complaint (ECF No. 143).
6 Conagra answered the complaint on January 16, 2013, (ECF No. 145).

7 31. On August 7, 2013, Conagra filed an *ex parte* application for an order staying the
8 action under the primary jurisdiction doctrine (ECF No. 171). Plaintiffs filed a brief in opposition
9 the following day (ECF No. 172), and Conagra's application was denied on August 12, 2012 (ECF
10 No. 173).

11 **3. Discovery**

12 32. Over the course of nearly eight years, the parties have engaged in extensive, and
13 often highly contentious, discovery, including multiple motions and hearings before Magistrate
14 Judge Rosenberg.

15 33. On July 24, 2012, prior to the cases being consolidated, Magistrate Judge Rosenberg
16 held a hearing and granted Plaintiffs' motion for a protective order related to document preservation
17 demands issued by Conagra (ECF. No. 110).

18 34. After the Second Consolidated Class Action Complaint was filed and answered, the
19 parties attempted and failed, over a period of five months, to negotiate a protective order. The order
20 was completed only after Plaintiffs filed a motion (ECF No. 160) and Magistrate Judge Alicia
21 Rosenberg held a hearing and issued a protective order on June 25, 2013 (ECF No. 163).

22 35. On July 1, 2013, two years after the first complaint was filed, Conagra made its first
23 document production – 99 documents comprising 1,410 pages. Between July 1, 2013 and May 14,
24 2015, Conagra made 25 document productions totaling approximately 36,000 pages. Plaintiffs
25 produced 3,594 pages from seventeen different plaintiffs (four of whom later withdrew from the
26 case. Fact discovery closed on May 1, 2015.

1 36. On March 10, 2014, after a hearing, Judge Rosenberg granted, in part, motions to
2 compel production of documents filed by both parties (ECF No. 208). On March 28, 2014, Judge
3 Rosenberg granted in part Plaintiffs' *Ex Parte* Application for an Order Compelling Conagra to
4 Comply with Judge Rosenberg's March 10 ruling. On May 5, 2015, Plaintiffs filed an *ex parte*
5 application for clarification of Judge Rosenberg's March 10 ruling.

6 37. On November 12, 2014, Plaintiffs filed an *Ex Parte* Application Regarding
7 Conagra's Late Production of Documents Material to Class Certification (ECF No. 412), which was
8 denied by Judge Morrow (ECF No. 441). On December 9, 2014, Plaintiffs filed a Motion to Compel
9 Document Production Relating to Conagra's Late Production of Documents (ECF No. 426), which
10 Judge Rosenberg granted, in part, after a hearing on January 13, 2015 (ECF No. 508).

11 38. On January 15, 2015, Plaintiffs filed a Motion to Compel Production of All Non-
12 Privileged Documents Responsive to Plaintiffs' Second Request for Production of Documents (ECF
13 No.), which Judge Rosenberg granted in part (ECF No.). On April 27, 2015, Judge Rosenberg
14 granted in part another motion to compel filed by Plaintiffs and ordered an additional deposition of
15 a Conagra employee (ECF No. 570).

16 39. In all, Plaintiffs took depositions of ten (10) Conagra employees or former
17 employees, including one Rule 30(b)(6) deposition. Plaintiffs also took three depositions of two
18 experts for Conagra. Conagra deposed six named plaintiffs and two of plaintiffs' experts.

19 **4. Class Certification Proceedings**

20 40. On May 5, 2014, Plaintiffs filed their initial Motion for Class Certification,
21 supported by three expert reports from a professor of agriculture, an economist, and a professor of
22 marketing. Judge Margaret Morrow denied Plaintiffs' initial class certification motion and granted
23 them leave to amend. In denying Plaintiffs' initial class certification motion, Judge Morrow ruled,
24 among other things, that Plaintiffs' proposed damages methodology did "not satisfy "Comcast"
25 because Plaintiffs' economist intended to conduct a hedonic regression to calculate "the price
26 premium attributable to use of the term '100% Natural' and all of the meanings consumers ascribe
27 to it," without isolating the price premium associated with the "no-GMO" meaning of "natural,"
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1 which Plaintiffs did, filing their Amended Motion for Class Certification with amended expert
2 reports on September 8, 2014.

3 41. Plaintiffs' amended class certification motion and amended expert reports included
4 a report from a marketing professor that described how a choice-based conjoint analysis survey
5 could isolate the value of a "no-GMO" meaning of the "natural" claim on Wesson Oils. Plaintiffs
6 also submitted various internal ConAgra marketing studies and third-party surveys regarding factors
7 that motivated purchase of Wesson Oils and consumer understandings of natural claims. In a
8 preliminary order issued on November 24, 2014 (ECF No. 424), and at a hearing held the same day,
9 the Court indicated that it was inclined to grant the bulk of Plaintiffs' amended class certification
10 motion.

11 42. On December 17, 2015, Conagra filed yet another *ex parte* application seeking to
12 stay the litigation (ECF No. 433). After opposition by Plaintiffs (ECF No. 436), Conagra's
13 application was denied (ECF No. 442).

14 43. On February 23, 2015, after reviewing Plaintiffs' amended motion, a second round
15 of briefing, amended and supplemental expert reports, a host of other evidentiary submissions
16 (including deposition transcripts, fact-witness declarations, and documentary discovery material),
17 and additional oral argument, Judge Morrow issued a 140-page opinion certifying eleven statewide
18 damages classes based on 22 separate state law claims. Judge Morrow ruled, among other things,
19 that Plaintiffs had made a sufficient showing that consumers generally understood the "natural"
20 claim to mean that Wesson Oils do not contain GMOs, and that Plaintiffs' damages methodology
21 adequately measured, on a class-wide basis, the difference between what the Classes paid for (*i.e.*,
22 Wesson Oils that were "100% Natural" as ConAgra represented them to be) and the value of what
23 they actually received (*i.e.*, Wesson Oils made from GMOs). In re ConAgra Foods, Inc., 90 F. Supp.
24 3d 919 (C.D. Cal. 2015) (ECF No. 545).

25 44. On March 13, 2015, Conagra sought to stay the case stayed while it attempted to
26 obtain permission from the Ninth Circuit under Rule 23(f) to appeal the District Court's class
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1 certification ruling. After the Ninth Circuit granted Conagra's Rule 23(f) petition, the parties
2 stipulated to have the case stayed pending the outcome of Conagra's appeal. (ECF No. 547).

3 **5. Appeals**

4 45. Conagra sought and obtained permission from the United States Court of Appeals
5 for the Ninth Circuit to bring an interlocutory appeal of Judge Morrow's class certification order.
6 Conagra appealed on five grounds, including: (i) that that Plaintiffs' proposed "hybrid" damages
7 methodology, involving a combination of hedonic regression and conjoint analysis, did not satisfy
8 Comcast; and (ii) that Rule 23 includes a requirement that classes be "ascertainable;"
9 ascertainability, in turn, requires that the identification of individual class members be
10 administratively feasible; and the identification of class members is not administratively feasible
11 where it relies on self-identification by class members rather than documentary proofs-of-purchase.

12 46. The Ninth Circuit granted review and, after briefing and oral argument, issued two
13 separate opinions affirming the decision of the District Court on each issue Conagra raised. In an
14 unpublished memorandum decision, *Briseño v. ConAgra Foods, Inc.*, 674 F. App'x 654 (9th Cir.
15 2017), the Court of Appeals affirmed the District Court on multiple issues, including that Plaintiffs'
16 proffered damages model tracked their theory of liability and was therefore sufficient to satisfy
17 Comcast).

18 47. In a separate, published opinion, *Briseño v. ConAgra Foods, Inc.*, 844 F.3d 1121
19 (9th Cir. 2017), the Ninth Circuit clarified that it has never adopted an implied "ascertainability"
20 requirement for class certification under Rule 23 and rejected the argument that argument that Rule
21 23 imposes a freestanding administrative feasibility requirement.

22 48. After Conagra's petition for *en banc* review by the Ninth Circuit was denied,
23 Conagra filed a petition for *certiorari* with the United States Supreme Court seeking review of the
24 Ninth Circuit's decision. After reviewing the parties' submissions, the Supreme Court denied
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1 Conagra's petition on October 10, 2017. On November 9, 2017, the parties then agreed to stay the
2 case pending mediation.⁸

3 **C. Ancillary Litigation**

4 49. Judge Morrow retired from the bench on January 6, 2016, necessitating reassignment
5 of this MDL case to a new judge prior the resumption of active litigation. On January 19, 2018,
6 prior to the first scheduled mediation session, Conagra filed a motion with the JPML seeking to
7 have this case transferred from the Central District of California to the Northern District of Illinois
8 (MDL 2291 ECF No. 27). On February 1, 2018, the JPML reassigned the case to Judge Carney
9 (MDL ECF No. 36). Notwithstanding the reassignment, Conagra continued to seek retransfer of the
10 case to the Northern District of Illinois. After multiple rounds of briefing, on April 4, 2018, the
11 JPML denied Conagra's motion (MDL ECF No. 45).

12 50. In the course of briefing Conagra's motion for retransfer, Plaintiffs notified the
13 JPML that Conagra had failed to notice a related action in the District of Massachusetts —*Lee v.*
14 *Conagra Brands, Inc.* (Case 1:17-11042)—as a potential tag-along action as required by Panel Rule
15 7.1(a). Conagra argued that notice was not required because the dockets in both the Central District
16 of California and the MDL were administratively closed when Lee was removed to and litigated in
17 the District of Massachusetts. The JPML found this dispute “moot because Lee is no longer a
18 pending civil action. It was dismissed and currently is on appeal. Conagra is directed to notice Lee
19 as a potential tag-along action in [this MDL] should the First Circuit overturn the dismissal of that
20 action or otherwise remand it for further proceedings in the district court, in accordance with the
21 Panel Rules.” (MDL ECF No. 45). At present, Lee remains pending in the First Circuit (No. 17-
22 2131).

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27 ⁸ Conagra removed the “100% Natural” claim from all Wesson Oil labels and ceased marketing the
28 products as “natural” in 2017.

D. Mediation and Settlement

51. On January 29, 2018, the parties held an all-day mediation session before the Honorable Edward A. Infante (Ret.), under the auspices of JAMS in San Francisco. Between January 29 and March 19, 2018, Judge Infante engaged in extensive correspondence and held numerous telephone conferences with each party but was ultimately unable to forge a settlement.

52. On June 8, 2018, this Court referred the parties to Judge McCormick for further settlement discussions. Judge McCormick met with both parties at that time and, after extensive correspondence and telephone conferences, Judge McCormick held another in-person settlement conference with the parties on August 30, 2018; no settlement was reached at that time. Judge McCormick continued conferring with the parties and, in mid-October, 2018, the Parties reached agreement in principle regarding monetary relief to Class Members and the provisions of injunctive relief to ensure that the labeling and marketing changes instituted by Conagra would continue in the future. With Judge McCormick's substantial assistance, the Parties agreed that the value of the injunctive relief was \$27,000,000.

53. Judge McCormick then assisted the parties in extended and difficult negotiations on the issues of the value of the injunctive relief, attorneys' fees for Class Counsel, plaintiffs' service awards, and the costs of settlement notice and administration. Judge McCormick ultimately offered a "mediator's proposal" on the material issues, which both parties accepted on November 12, 2018, resulting in this Settlement Agreement.

III. FACTORS IN SUPPORT OF SETTLEMENT

54. Negotiation of the Gross Settlement Proceeds, the injunction, and separate payment of the costs of notice and administration was hard fought and at arm's-length.

55. Due to the extensive discovery efforts which occurred during this litigation, we know the strengths and weaknesses of the claims in this Action. We have worked extensively with experts to best understand those claims, as well as to value those claims.

56. We believe the proposed Settlement is extremely beneficial for Class Members and is a fair, adequate, and reasonable settlement.

1 57. Importantly, each proposed Class Representative supports the Settlement reached
2 here.

3 58. We have carefully examined the facts of each proposed Class Representative to
4 ensure that none of them have any conflicts with his or her Class.

5 59. Class Counsel is requesting service awards of (a) up to \$3,000 for each of the six
6 Class Representatives who were deposed (Robert Briseño, Michele Andrade, Jill Crouch, Pauline
7 Michael, Necla Musat, and Maureen Towey) and (b) up to \$1,000 for each of the seven Class
8 Representatives who were not deposed (Julie Palmer, Cheri Shafstall, Dee Hooper-Kercheval, Kelly
9 McFadden, Erika Heins, Rona Johnston, and Anita Willman), to compensate them for their
10 commitment and time on behalf of the Classes in this litigation. These plaintiffs have been
11 supportive and involved in this litigation for more than eight years, including responding to
12 discovery requests seeking detailed information regarding their dietary habits and food purchasing
13 habits, and labels from empty food containers in their homes. Six of the plaintiffs sat for
14 depositions.

15 60. While we believe that plaintiffs had a reasonably good chance of proving that “100%
16 Natural” claim, which appeared on every bottle of Wesson Oil sold during the relevant class periods,
17 was false and misleading because consumers interpreted the claim to mean that the products did not
18 contain GMOs, that the “100% Natural” claims was material to consumers, and that and that every
19 Class member paid a premium price for Wesson Oils due to the presence of the “100% Natural”
20 claim on the label, we are also cognizant of the risks that plaintiffs faced in further litigation. Those
21 risks include (1) the possible success of Conagra’s vigorous defense to plaintiffs’ assertions that the
22 challenged claims are misleading and continued denial of all allegations of wrongdoing; (2) the
23 chance of Conagra moving to decertify the certified litigation classes; (3) the need for both Parties
24 to engage in further discovery; (4) further motion practice, including Daubert motions, motions for
25 summary judgment, and motions in limine; (5) Conagra’s likely aggressive challenges to Plaintiffs’
26 price premium damages methodology; and (6) a possible adverse outcome at trial.

1 61. Having worked on behalf of the Classes since the inception of the Action, and having
2 dedicated thousands of hours to the case, and having carefully the benefits of the proposed
3 settlement and the risk, expense, complexity and duration of further litigation, posed Class Counsel
4 endorse the Settlement without reservation as being fair, reasonable and adequate.

5 62. Plaintiffs seek the appointment of DiCello Levitt Gutzler LLC and Milberg Tadler
6 Phillips Grossman LLP as Class Counsel. This group of attorneys has substantial experience
7 litigating complex class cases of various natures, including consumer class actions.

8 63. The mediated maximum amount for attorneys' fees and unreimbursed costs in this
9 case of \$6,850,000 represents approximately 50% of Plaintiffs' counsel's actual total combined
10 lodestar and unreimbursed expenses. Where, as here, a significant component of the relief provided
11 is injunctive relief, the appropriate method to use is the lodestar method. However, it should also
12 be noted that the requested total for fees and unreimbursed costs represents approximately 23% of
13 the more *conservative* estimate of the total value of the labeling and marketing changes attributable
14 to this litigation, \$30,600,000, well within the range of reasonableness for similar cases. The motion
15 for an award of attorneys' fees and expenses will be supported with detailed lodestar information
16 and an accounting of expenses. Conagra is paying any Court-awarded attorneys' fees and expenses
17 separately from the Gross Settlement Proceeds paid directly to the Classes.

18 64. The Parties each solicited confidential bids from companies to provide notice and
19 administration services in conjunction with the proposed settlement. These companies were
20 provided the material terms of the settlement and asked to formulate a notice and media plan that
21 would provide the best notice practicable to reach the Classes.

22 65. The bids were submitted to Judge McCormick. Judge McCormick ultimately chose
23 JND Legal Administration to propose to the Court to serve as the Settlement Administrator. It is
24 our belief that JND's proposed notice and administration plan will allow for the effective
25 dissemination of notice to the Classes, efficient administration of Claim Forms, and will do so in
26 an economical matter.

1 66. Reasonable Fees and costs of the Settlement Administrator, anticipated not to exceed
2 \$623,940, will be paid by Conagra separate from and in addition to the other settlement benefits
3 provided to the Class Members. Should the Settlement Administrator anticipate an increase in costs,
4 fees, or expenses to more than \$660,000, or other significant deviation from the proposed Notice
5 Plan, the Settlement Administrator must secure the prior approval of Conagra, which will not be
6 unreasonably withheld or delayed. Should Conagra not agree with the increased cost or deviation,
7 Judge McCormick shall retain authority to resolve any such dispute. S.A., §4.4.

8 67. Both counsel for the Parties and JND have reviewed the proposed Publication Notice
9 and Posted Notice. The notices clearly explain the background of the case, the terms of the
10 settlement, the process and deadlines for submitting a Claim Form, the deadlines for objecting or
11 opting out and how to do so, and how to obtain additional information. Thus, the notices provide
12 all the information necessary for Class Members to make informed decisions with respect to
13 whether they remain in or opt-out of the Settlement, or object to the proposed Settlement.

14 68. Any Class Member may elect to opt out of the Settlement by submitting an Opt-Out
15 Request by the Opt-Out Deadline in accordance with the instructions provided in the Posted Notice.
16 S.A., §5.3, Exhibit A-2. The Parties propose that the Opt-Out Deadline be set 114 days after First
17 Publication of Class Notice. Any Class Member may object to the Settlement, Class Counsel's
18 application for attorneys' fees and expenses, and/or the request for plaintiff service awards by filing
19 a written objection by the Objection Deadline in accordance with the instructions provided in the
20 Posted Notice. The Parties propose that the Objection Deadline be set 114 days after First
21 Publication of Class Notice.

22 69. Both counsel for the Parties and JND have also reviewed the Notice Plan and believe
23 it will effectively meet and exceed the Due Process requirements for notifying Class Members. The
24 Notice Plan was developed by a provider with significant experience in designing notice plans in
25 large and national class actions similar to this one, Jennifer M. Keough.

26 70. Ms. Keough has reviewed the proposed notices and offered her input as to tailoring
27 them to clearly and effectively notify the Class Members of their rights under the Settlement.
28

1 **IV. CONCLUSION**

2 71. In view of the significant recovery to the Classes and the substantial risks of this
3 litigation, the Class Representatives and Class Counsel respectfully request that the Court grant the
4 Motion and enter the proposed order directing notice to the Classes certified under Fed. R. Civ. P.
5 23(b)(3), which would also appoint Class Representatives for each of the eleven Classes, appoint
6 DiCello Levitt Gutzler LLC and Milberg Tadler Phillips Grossman LLP as Class Counsel, and
7 appoint JND Legal Administration as the Settlement Administrator to administer the notice and
8 claims process.

9
10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on March 11, 2019

12
13 By: _____

14 Henry J. Kelston

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed on March 11, 2019

17
18 By: _____

19 Adam J. Levitt

Milberg Tadler Phillips Grossman LLP

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Class Counsel

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE CONAGRA FOODS, INC.

) Case No. CV 11-05379-CJC (AGR_x)
)
) MDL No. 2291
) CLASS ACTION
)
)

SETTLEMENT AGREEMENT AND RELEASE

TABLE OF EXHIBITS

Exhibit A: Order Directing Notice to Class Members

Exhibit A-1: Claim Form

Exhibit A-2: Publication Notice

Exhibit A-3: Posted Notice

Exhibit A-4: Notice Plan

Exhibit B: Final Approval Order

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is made and entered into as of the 12th day of March, 2019 by and among the Class Representatives, individually and as proposed representatives of all Class Members, by and through Class Counsel, and Conagra Brands, Inc. (formerly ConAgra Foods, Inc.) (“Conagra” or “Defendant”), by and through its attorneys (collectively referred to as the “Parties”). The Parties intend this Agreement to resolve, discharge, and settle the Released Claims of Class Members fully, finally, and forever in accordance with the terms and conditions set forth below.

WITNESSETH

WHEREAS, there is a multidistrict litigation pending in the United States District Court for the Central District of California, styled *In Re ConAgra Foods, Inc.* (MDL No. 2291), composed of actions seeking injunctive relief and damages relating to the marketing, advertising, and sale of Wesson Oil Products made from Genetically Modified Ingredients (“GMOs”) as “Natural”;

WHEREAS, Conagra denies any and all claims asserted against it, and has asserted various defenses that it believes are meritorious;

WHEREAS, the Parties¹ agree that this Agreement shall not be deemed or construed as an admission or as evidence of any violation of any statute or law, or of any liability or wrongdoing by any of the Released Parties, or of the merit of any of the claims or allegations alleged in the Action, or otherwise, or the merit of any of the potential or asserted defenses to those allegations, or as a waiver of any such defenses;

¹ Capitalized terms shall have the meaning ascribed to them in the Definitions in Section I below.

WHEREAS, the Parties have conducted a thorough examination and investigation of the facts and the law relating to the asserted and potential claims and defenses concerning Conagra's marketing and sale of the Wesson Oil Products and assessed the various risks of future litigation including risks from any future appeals in the Action;

WHEREAS, the Parties engaged in extensive arm's-length and adversarial settlement discussions that included two separate mediations; the first before the Honorable Edward A. Infante (Ret.), former United States Magistrate Judge, in person on January 29, 2018, and thereafter by telephone through March 19, 2018, that failed to reach a settlement; followed by a successful mediation before the Honorable Douglas F. McCormick, United States Magistrate Judge, in person and by telephone from June 8, 2018 through November 12, 2018, and ultimately reached a settlement memorialized by this Agreement (the "Settlement");

WHEREAS, Class Counsel has concluded, after extensive factual examination and investigation and after careful consideration of the circumstances, including the claims asserted in the Complaint, and the possible legal and factual defenses thereto, that it would be in the Class Members' best interests to enter into this Agreement to avoid the uncertainties, burdens, risks, and delays inherent in litigation and subsequent appeals and to assure that the substantial benefits reflected in this Agreement are obtained for Class Members in an expeditious manner; and, further, that this Agreement is fair, reasonable, adequate, and in the best interests of the Class Representatives and the Class Members;

WHEREAS, Conagra, despite its belief that it has strong defenses to the claims described in this Agreement, has agreed to enter into this Agreement to reduce and avoid the further expense, burden, risks, and inconvenience of protracted litigation and subsequent appeals and to resolve finally and completely Class Representatives' and other Class Members' claims;

NOW, THEREFORE, the Parties agree that the Action shall be settled, compromised, and/or dismissed with prejudice on the terms and conditions set forth in this Agreement, subject to the Court's approval of this Agreement as a fair, reasonable, and adequate settlement under Fed. R. Civ. P. 23(e).

1. CLASS DEFINITION

1.1 By Court's Order Granting in Part and Denying in Part Plaintiffs' Amended Motion for Class Certification [ECF No. 545], eleven statewide classes were certified under Fed. R. Civ. P. 23(b)(3) to pursue the following claims:

- California: (1) violations of the California Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.* ("UCL"), California Consumer Legal Remedies Act, California Civil Code §§ 1750, *et seq.* ("CLRA"), and California Business & Professions Code §§ 17500, *et seq.* ("FAL"); and (2) breach of express warranty (California Commercial Code § 2313)
- Colorado: (1) violation of the Colorado Consumer Protection Act, Colorado Revised Statutes §§ 6-1-101, *et seq.* ("CCPA"); (2) breach of express warranty (Colorado Revised Statutes § 4-2-313); and (3) breach of implied warranty (Colorado Revised Statutes § 4-2-314)
- Florida: (1) violation of the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes Annotated §§ 501.201, *et seq.* ("FDUTPA")
- Illinois: (1) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Illinois Compiled States §§ 505/1, *et seq.* ("ICFA") and (2) unjust enrichment

- Indiana: (1) unjust enrichment and (2) breach of implied warranty (Indiana Code § 26-1-2-314)
- Nebraska: (1) unjust enrichment and (2) breach of implied warranty (Nebraska Revised Statutes § 2-314)
- New York: (1) violation of the New York Consumer Protection Act, New York General Business Law §§ 349, *et seq.* (“GBL”); and (2) breach of express warranty (N.Y. U.C.C. Law § 2-313)
- Ohio: (1) violation of the Ohio Consumer Sales Practices Act, Ohio Revised Code §§ 1345.01, *et seq.* (“OCSA”)
- Oregon: (1) violation of the Oregon Unfair Trade Practices Act, Oregon Revised Statutes §§ 646.605, *et seq.* (“OUTPA”); and (2) unjust enrichment
- South Dakota: (1) violation of the South Dakota Deceptive Trade Practices and Consumer Protection Law, South Dakota Codified Laws §§ 37 24 1, *et seq.* (“SDDTPL”); and (2) unjust enrichment
- Texas: (1) violation of the Texas Deceptive Trade Practices - Consumer Protection Act, Texas Business & Commerce Code §§ 17.41, *et seq.* (“TDTA”).

1.2 The following Classes, which were limited by the applicable statute of limitations periods established by the laws of the eleven states, include the following persons, who will be notified of this proposed settlement and their rights under it:

- 1.2.1 California Class: all natural persons who resided in the State of California and purchased Wesson Oil Products in California, for personal, non-

commercial use, between June 28, 2007 and July 1, 2017 (“California Class Period”).

1.2.2 Colorado Class: all natural persons who resided in the State of Colorado and purchased Wesson Oil Products in Colorado, for personal, non-commercial use, between January 12, 2009 and July 1, 2017 (“Colorado Class Period”).

1.2.3 Florida Class: all natural persons who resided in the State of Florida and purchased Wesson Oil Products in Florida, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“Florida Class Period”).

1.2.4 Illinois Class: all natural persons who resided in the State of Illinois and purchased Wesson Oil Products in Illinois, for personal, non-commercial use, between January 12, 2007 and July 1, 2017 (“Illinois Class Period”).

1.2.5 Indiana Class: all natural persons who resided in the State of Indiana and purchased Wesson Oil Products in Indiana, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“Indiana Class Period”).

1.2.6 Nebraska Class: all natural persons who resided in the State of Nebraska and purchased Wesson Oil Products in Nebraska, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“Nebraska Class Period”).

1.2.7 New York Class: all natural persons who resided in the State of New York and purchased Wesson Oil Products in New York, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“New York Class Period”).

1.2.8 Ohio Class: all natural persons who resided in the State of Ohio and purchased Wesson Oil Products in Ohio, for personal, non-commercial use, between January 12, 2010 and July 1, 2017 (“Ohio Class Period”).

1.2.9 Oregon Class: all natural persons who resided in the State of Oregon and purchased Wesson Oil Products in Oregon, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“Oregon Class Period”).

1.2.10 South Dakota Class: all natural persons who resided in the State of South Dakota and purchased Wesson Oil Products in South Dakota, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“South Dakota Class Period”).

1.2.11 Texas Class: all natural persons who resided in the State of Texas and purchased Wesson Oil Products in Texas, for personal, non-commercial use, between January 12, 2010 and July 1, 2017 (“Texas Class Period”).

1.3 Excluded from the Classes are (a) governmental entities; (b) Conagra, and its affiliates, subsidiaries, employees, current and former officers, directors, agents, and representatives; (c) the members of the Court and its staff; and (d) Opt-Outs.

2. OTHER DEFINITIONS

As used in this Agreement and its exhibits, the following terms shall have the meanings set forth below. Terms used in the singular shall include the plural and vice versa.

2.1 “Action” means the multidistrict litigation pending in the United States District Court for the Central District of California, styled *In Re ConAgra Foods, Inc.* (MDL No. 2291).

2.2 “Agreement” means this Class Action Settlement Agreement, together with the exhibits attached to this Agreement, which are incorporated in this Agreement by reference.

2.3 “CAFA Notice” means the notice of this Settlement to be served by the Settlement Administrator upon state and federal regulatory authorities as required by Section 3 of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

2.4 “Claim Form” means an electronic or paper document containing the information and fields substantially in the form set forth in Exhibit A-3. The Claim Form shall be submitted under penalty of perjury, based on the Class Members’ knowledge, information, and belief, to the Settlement Administrator.

2.5 “Claims Deadline” means the final date to submit a Claim Form, which is 130 days after first publication of the Class Notice pursuant to the Notice Plan.

2.6 “Class Counsel” means DiCello Levitt Gutzler LLC and Milberg Tadler Phillips Grossman LLP.

2.7 “Class Notice” means notice to the Classes of this Agreement substantially in the form and following the procedures described in the Notice Plan and established by order of the Court and to be administered by the Settlement Administrator under the direction of the Parties and jurisdiction of the Court. “Class Notice” includes both a summary notice substantially in the form of Exhibit A-1 (“Publication Notice”) and a posted notice substantially in the form of Exhibit A-2 (“Posted Notice”).

2.8 “Class Member” means a Person who falls within the definition of one of the Classes and who has not properly executed and timely filed a request for exclusion from the Settlement.

2.9 “Class Representatives” means collectively (a) Robert Briseño and Michele Andrade for the California Class; (b) Jill Crouch for the Colorado Class; (c) Julie Palmer for the Florida Class; (d) Pauline Michael for the Illinois Class; (e) Cheri Shafstall for the Indiana Class;

(f) Dee Hooper-Kercheval for the Nebraska Class; (g) Kelly McFadden and Necla Musat for the New York Class; (h) Maureen Towey for the Ohio Class; (i) Erika Heins for the Oregon Class; (j) Rona Johnston for the South Dakota Class; and (k) Anita Willman for the Texas Class.

2.10 “Complaint” means the Second Consolidated Amended Class Action Complaint, filed as ECF No. 143 in this Action.

2.11 “Court” means the Honorable Cormac J. Carney, or if he is unavailable, another judge in the Central District of California, the transferee district, as designated by the Judicial Panel on Multidistrict Litigation to preside over the Action.

2.12 “Defendant” means Conagra Brands, Inc..

2.13 “Defendant’s Counsel” means Alston & Bird LLP.

2.14 “Escrow Account” means the escrow account to be established by orders of the Court and to be administered by the Settlement Administrator under the direction and jurisdiction of the Court to hold the Gross Settlement Proceeds. The Parties shall move the Court to establish the Escrow Account as a “Qualified Settlement Fund” within the requirements of Treas. Reg. § 1.468(B)-1(c), and the Parties shall for all purposes treat the Escrow Account as a Qualified Settlement Fund established and operated in accordance with the requirements and purposes of that regulation.

2.15 “Fairness Hearing” means the hearing conducted by the Court in connection with determining the fairness, adequacy, and reasonableness of this Agreement under Fed. R. Civ. P. 23(e).

2.16 “Fee and Expense Application” means the application by Class Counsel for the award of attorneys’ fees, costs, and expenses to Class Counsel and other counsel who performed work for the benefit of Class Members.

2.17 “Fee and Expense Award” means an order of the Court, granting, in whole or in part, the Fee and Expense Application.

2.18 “Final Effective Date” means one of the following conditions has occurred: (1) if no timely appeal of the Final Approval Order by the Court is taken, then upon expiration of the time for any appeal, rehearing, or certiorari of the Final Approval Order; or, (2) if there are any appeals of the Final Approval Order, then (i) all appellate courts with jurisdiction affirm the Final Approval Order or (ii) the appeal is dismissed or denied such that the Final Approval Order is no longer subject to further appeal, rehearing, or certiorari.

2.19 “Final Approval” means the Court’s issuance of an order and judgment granting final approval of this Agreement pursuant to Fed. R. Civ. P. 23(e), such order and judgment granting final approval of this Agreement to be termed the Court’s “Final Approval Order.” Final Approval and the Final Approval Order need not include the Fee and Expense Award. A proposed Final Approval Order substantially in the form to be entered approving the Settlement is attached as Exhibit B.

2.20 “Gross Settlement Proceeds” means: (a) the claims-made fund paying \$0.15 per unit to Households in all Classes submitting Valid Claim Forms (with a maximum Household recovery of 30 units where no proof of purchase receipts for more than 30 units is submitted); (b) an additional \$575,000 fund be allocated to members of the New York and Oregon state classes who submit Valid Claim forms, as compensation for the statutory damages provided for in the consumer protection laws of those states that Plaintiffs would claim at trial; and (c) an additional fund of \$10,000 to compensate those in all Classes that submit valid proof of purchase receipts for more than thirty (30) purchases at \$0.15 for each such purchase above 30; should \$10,000 be insufficient to cover such claims, Class Counsel shall pay the non-funded claims from fees

awarded in this case; should \$10,000 capped fund not be exhausted, the remaining funds will revert to 2.20(b) for payment to New York and Oregon state Classes. The Gross Settlement Proceeds shall be used to pay all Valid Claim Forms. Gross Settlement Proceeds excludes the value of the Injunctive Relief described more fully herein.

2.21 “Household” means all persons residing at the same physical address.

2.22 “Injunctive Relief” means the injunctive relief to which the Parties have agreed.

2.23 “Motion for Order Directing Notice” means the motion or motions filed by the Parties pursuant to Fed. R. Civ. P. 23(e) for an Order Directing notice to Class Members.

2.24 “Notice Plan” means the plan to be approved by the Court for providing Class Notice in accordance with Fed. R. Civ. P. 23(e). The Notice Plan shall be in substantially the form of the proposed Notice Plan as set forth in Exhibit A-4.

2.25 “Opt-Out” means any Person who timely and properly submits a request for exclusion from the Settlement in accordance with the procedures set forth in this Agreement and approved by the Court and did not timely and properly revoke the request.

2.26 “Opt-Out Deadline” is the last date on which a Person may properly and timely request to be excluded from the Settlement.

2.27 “Order Directing Notice” means the order entered by the Court directing notice to Class Members, approving the Notice Plan, appointing the Settlement Administrator, and setting a schedule for the Final Approval process. A proposed Order Directing Notice substantially in the form to be entered directing notice to the Classes is attached as Exhibit A.

2.28 “Posted Notice” means the part of the Notice Plan that includes a notice of the proposed Settlement directed at Class Members to be posted on the Settlement Website, subject to approval of the Court, and substantially in the form attached to this Agreement as Exhibit A-2.

2.29 “Publication Notice” means the part of the Notice Plan that includes a summary form of electronic and/or print notice of the proposed Settlement to be published in certain hard copy or electronic formats directed at Class Members, subject to approval of the Court, and substantially in the form attached to this Agreement as Exhibit A-1.

2.30 “Released Claims” means any and all claims released by this Agreement as set forth in Section 7.

2.31 “Released Parties” means Conagra Brands, Inc., along with its parent(s), and each of its predecessors, affiliates, assigns, successors, related companies, subsidiary companies, holding companies, insurers, reinsurers, current and former attorneys, and their current and former members, partners, officers, directors, agents, and employees, in their capacity as such.

2.32 “Settlement Administrator” means JND Legal Administration, a qualified third-party administrator selected by Magistrate Judge McCormick.

2.33 “Settlement Fund” means those Gross Settlement Proceeds deposited into the Escrow Account, pursuant to Section 4.7.1.1.

2.34 “Settlement Website” means the website established and maintained by the Settlement Administrator, pursuant to the Order Directing Notice.

2.35 “Valid Claims Form(s)” means timely submitted and complete claims form(s), signed by the Class Member, and verified by the Settlement Administrator to meet all the requirements set forth herein and to be free of fraud.

2.36 “Wesson Oil Products” mean Wesson brand cooking oils, including Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil, and Wesson Best Blend, all of which bore a “Natural” claim on label during the applicable Class Periods.

3. SETTLEMENT RELIEF

3.1 Monetary Relief

3.1.1 Recovery for Class Members

3.1.1.1 Payment of settlement compensation to Class Members shall be made by the Settlement Administrator on a claims-made basis and from the Settlement Fund on the basis of Valid Claim Forms.

3.1.1.2 Class Members must submit a Claim Form, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the information provided is true and correct to the best of each Class Member's knowledge, information, and belief, stating:

- (a) Name and address of Class Member's Household;
- (b) Number of units of Wesson Oil Products purchased during the applicable Class Period;
- (c) Purchases were made in one of the applicable states (California; Colorado; Florida; Illinois; Indiana; Nebraska; New York; Ohio; Oregon; South Dakota; and Texas);
- (d) State of residency at time of purchases;
- (e) Purchases were for household use and not catering or commercial purposes;

3.1.1.3 Class Members who timely submit a Valid Claim Form are entitled to receive settlement compensation of Fifteen Cents (\$0.15) per unit of Wesson Oil Products purchased during the applicable Class Period.

3.1.1.4 Class Members may receive settlement compensation for a maximum of thirty (30) units Wesson Oil Products per Household, provided however, that Class Members who submit proof of purchase receipts for more than thirty (30) units and meet all the requirements described above to the satisfaction of the Settlement Administrator may also receive Fifteen Cents (\$0.15) per unit as settlement compensation for all documented purchases of additional units over thirty (30) purchased. Payment for Class Members submitting proof of purchase receipts for more than thirty (30) units shall be funded from and consistent with the Gross Settlement Proceeds set forth in section 2.20(c) herein.

3.1.1.5 Recovery is limited to one claim per Household, which is defined as all persons residing at the same physical address.

3.1.2 Additional Recovery for New York and Oregon Class Members

3.1.2.1 Consistent with section 2.20(b) herein, Conagra will pay \$575,000 in Gross Settlement Proceeds to be allocated only to members of the New York and Oregon Classes who submit Valid Claim Forms, in proportion to the number of units purchased.

3.1.2.2 In addition to being subject to the Claim Form requirements set forth above, participation in this fund requires verification of the city or town in which the purchases were made in either New York or Oregon.

3.1.2.3 The Settlement Administrator has the authority to require additional documentation to validate residency and claims.

3.1.3 Timing of Distributions to Class Members

3.1.3.1 No distributions to Class Members shall occur until after the Final Effective Date.

3.2 Distribution of Remaining Funds

3.2.1 If after six months after distribution to the Class Members any funds shall remain in the Settlement Fund by reason of uncashed distributions or otherwise, then, after the Settlement Administrator has made reasonable and diligent efforts to have Class Members cash their distributions, any balance remaining shall be distributed by the Settlement Administrator consistent with the escheatment laws of each of the applicable Classes.

3.3 Injunctive Relief

3.3.1 Conagra divested all interest in the Wesson Oil brand to a third party purchaser, with the sale being final prior to the signing of this Agreement. Subject to the terms and conditions of this Agreement, the Parties agree that they will jointly move the Court to enter, as part of the Final Approval Order, an injunction ordering that should Conagra reacquire the Wesson Oil brand:

3.3.1.1 Conagra will not advertise, market or sell Wesson Oil Products labeled as “natural” unless the FDA issues guidance or a regulation, or federal legislation is enacted, permitting use of a “natural” claim

on a product containing oil derived from genetically engineered seed stock.

3.3.1.2 Conagra will not advertise, market or sell Wesson Oil Products as “non-GMO” unless the claim is certified by an independent third-party certification organization.

3.3.1.3 This Agreement does not preclude Conagra from making other changes to the advertising and marketing of Wesson Oil Products, provided that those changes do not conflict with the provisions of this Agreement.

4. ADDITIONAL SETTLEMENT TERMS AND ADMINISTRATION

4.1 Commitment to Support Agreement

4.1.1 The Parties agree that it is in the Classes’ and the Parties’ best interests to consummate this Agreement and to cooperate with each other and to take all actions reasonably necessary to obtain Court approval of this Agreement and entry of the orders of the Court and other courts that are required to implement its provisions. The Parties also agree to support this Agreement in accordance with and subject to the provisions of this Agreement.

4.2 Motion for Order Directing Notice

4.2.1 The Parties shall file an Unopposed Motion for Order Directing Notice to the Classes.

4.3 Notice to Putative Class Members

4.3.1 After the Court has entered the Order Directing Notice, notice to Class Members shall be disseminated in such form and manner consistent with

the Notice Plan as approved by the Court. Instructions to access the Settlement Website and electronically submit the Claim Form shall be included with the copy of the Class Notice disseminated to putative Class Members and posted on the Settlement Website. Upon request by a Class Member, a hard copy of the Claim Form shall be made sent by the Settlement Administrator.

- 4.3.2** The Parties agree that the methods of identifying and providing notice to the Classes set forth in the Notice Plan satisfies the notice requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable laws, and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto. The Parties will jointly request the Court to approve in the Order Directing Notice the dissemination of notice as set forth in the Notice Plan. The Parties, by written agreement of counsel, may revise the Class Notice and other exhibits to the Settlement Agreement in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy.

4.4 Cost of Notice and Settlement Administration

- 4.4.1** Reasonable Fees and costs of the Settlement Administrator, anticipated not to exceed \$623,940, will be paid by Conagra separate from and in addition to the other settlement benefits provided to the Class Members. Should the Settlement Administrator anticipate an increase in costs, fees, or expenses

to more than \$660,000, or other significant deviation from the proposed Notice Plan, the Settlement Administrator must secure the prior approval of Conagra, which will not be unreasonably withheld or delayed. Should Conagra not agree with the increased cost or deviation, Magistrate Judge McCormick shall retain authority to resolve any such dispute.

4.5 Agreement Not Admissible

4.5.1 Neither this Agreement nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Agreement is intended to be or may be construed as or deemed to be evidence of an admission or concession by Conagra of any (i) liability or wrongdoing or of the truth of any allegations in the Complaint against Conagra, or (ii) infirmity of, or strength of any alleged defense against, the allegations in the Complaint; and neither this Agreement nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Agreement shall be admissible in evidence for any such purpose in any proceeding.

4.6 Terms of Recovery/Consideration for Settlement

4.6.1 Escrow Account and Settlement Fund

4.6.1.1 In full and final settlement of the Released Claims of Class Members, Conagra agrees to deposit the Gross Settlement Proceeds into the Escrow Account within 20 calendar days of the Final Effective Date, assuming receipt from the Settlement Administrator of the information and paperwork reasonably necessary to make the

payment.

4.6.1.2 Conagra's payment of the Gross Settlement Proceeds into the Escrow Account shall constitute the Settlement Fund, and the Settlement Fund shall be used for purposes of meeting the monetary obligations to Class Members under this Agreement.

4.6.1.3 Conagra's payment of the Gross Settlement Proceeds shall relieve Conagra of any liability with respect to the authentication of Claim Forms, the allocation of the Gross Settlement Proceeds among the Class Members, the timing and method of Settlement Fund distributions, and the distribution of any un-cashed distribution.

4.6.1.4 No portion of the Gross Settlement Proceeds shall be distributed from the Escrow Account prior to the Final Effective Date.

4.7 Settlement Statistics

4.7.1 The Settlement Administrator shall compile and send to Class Counsel and Conagra reports containing summary statistics detailing the implementation of the Settlement including, without limitation, the Settlement Administrator's fees and expenses, the number of proper and timely Opt-Outs, the number of Claim Forms received, the number of Claim Forms accepted, the number of Claim Forms rejected and the reason for rejection, and the number of Claim Forms determined by the Settlement Administrator to be deficient and the status of processing the deficiencies.

4.8 Stay and Resumption of Proceedings

4.8.1 Contemporaneously with the filing of the Motion for Order Directing

Notice, Counsel for the Parties shall (1) request a stay of all proceedings in *In Re ConAgra Foods, Inc.* (MDL No. 2291), and (2) seek an order from the Court pursuant to the All Writs Act, 28 U.S.C. § 1651, and the Anti-Injunction Act, 28 U.S.C. § 2283, prohibiting the prosecution of any pending or subsequently filed litigation by Class Members arising out of or relating to the Released Claims. Proceedings in the Court arising out of and relating to this Agreement, and any other proceeding necessary to effectuate this Agreement in any other action shall be excepted from the stay. In the event the Court does not give Final Approval to this Agreement, the Final Effective Date does not occur, or this Agreement is otherwise terminated, this Agreement shall be of no further force or effect.

4.9 CAFA Notices

4.9.1 Within ten (10) days after submission of this Agreement to the Court, the Parties agree that the Settlement Administrator shall serve notices of the Settlement on state and federal regulatory authorities as required by Section 3 of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notices”). If a state or federal official raises concerns about the Settlement, the Parties and their counsel agree to work together in good faith to resolve those concerns.

4.10 Motion for Final Approval of the Settlement

4.10.1 The Parties shall jointly seek an order granting final approval of this Agreement pursuant to Fed. R. Civ. P. 23. Class Counsel shall file a Motion for Final Approval of the Settlement, the Fee and Expense Application, and

the application for service awards to Class Representatives at least two (2) weeks before the deadline to object to the Settlement or as otherwise ordered by the Court. The Parties shall make a Supplemental Filing in Support of Final Approval with a declaration from the Settlement Administrator (with respect to the processing of Claim Forms) within 33 days after the Claims Deadline.

5. SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator. The administration of the Settlement Fund and the Claim Forms shall be subject to the Court's supervision and remain at all times under the exclusive and continuing jurisdiction of the Court. The Settlement Administrator shall issue reports as requested by Class Counsel and Conagra regarding its activities, fees and expenses, and other procedures. Class Counsel or Conagra may raise by written objection filed with the Court any challenge to the procedures instituted by, or the fees and expenses of, the Settlement Administrator with respect to the administration of the Settlement Fund. The Settlement Administrator shall be responsible for disseminating information to Class Members concerning settlement procedures.

5.2 Notice

5.2.1 The Notice Plan shall satisfy Rule 23 of the Federal Rules of Civil Procedure and be subject to the Court's approval.

5.2.1.1 The Settlement Administrator, in accordance with the Notice Plan and the Order Directing Notice, shall provide all Class Members with the best notice practicable under the circumstances. Conagra represents that it did not sell Wesson Oil Products directly to consumers and therefore does not possess consumer contact

information.

5.2.1.2 As directed by the Order Directing Notice, the Settlement Administrator shall establish and maintain the Settlement Website, on which at least the relevant pleadings, settlement documents, any applicable deadlines, and the Posted Notice shall be posted in order to provide information to the Classes of the proposed Settlement.

5.2.1.3 The Settlement Administrator also shall cause the Publication Notice to be published as provided in the Notice Plan and as directed by the Order Directing Notice.

5.2.2 All notice contemplated under the Notice Plan shall be issued and completed by the times set forth in the Order Directing Notice, unless otherwise ordered by the Court.

5.3 Opting Out of the Settlement

5.3.1 Each Class Member may elect to opt out of the Settlement. Any Class Member who wishes to opt out of the Settlement must do so, in writing, by mailing a request for exclusion to the Settlement Administrator signed by the Class Member (the “Opt-Out Request”). Any such request must be sent to the Settlement Administrator and postmarked by the Opt-Out Deadline.

5.3.2 The Opt-Out Request must:

5.3.2.1 bear the handwritten signature of the Class Member seeking to opt out;

5.3.2.2 set out the Class Member’s full legal name, valid mailing address, and functioning telephone number;

5.3.2.3 state that the Class Member has reviewed and understood the Class Notice and chooses to be excluded from the Settlement. and

5.3.2.4 provide the name of and contact information for the Class Member's attorney, if represented.

5.3.3 No person or entity may opt out on behalf of another Class Member.

5.3.4 All requests to opt out that fail to satisfy the requirements of this Section, as well as any additional requirements that the Court may impose, shall be void. No class-wide, mass opt-outs, or opt-outs signed by attorneys are permitted under this Agreement.

5.3.5 Any Class Member who does not properly and timely submit a request to opt out as required in this Agreement shall be deemed to have waived all rights to opt out and shall be deemed a Class Member for all purposes under this Agreement.

5.4 Objecting to the Settlement

5.4.1 Any Class Member who does not timely and properly opt out of the Settlement may object to the fairness, reasonableness, or adequacy of the proposed Settlement under Federal Rule of Civil Procedure 23. Each Class Member who wishes to object to any term of this Agreement must do so, in writing, by filing a written objection with the Clerk of the Court and mailing it to Class Counsel and counsel for Conagra at the addresses set forth below:

Class Counsel:

Ariana J. Tadler
Milberg Tadler Phillips Grossman LLP
One Penn Plaza, Suite 1920
New York, NY 10119

Adam J. Levitt
DiCello Levitt Gutzler LLC
Ten North Dearborn Street
Chicago, IL 60602

Counsel for Conagra

Angela M. Spivey
Alston & Bird LLP
One Atlantic Center
1201 W Peachtree Street, NE
Atlanta, GA 30309-1404

- 5.4.2** Any such objection must be postmarked by the deadline for filing objections and under the procedures established by the Court. Any such objection must (a) attach copies in advance of any materials that the objector intends to submit to the Court or present at the Fairness Hearing; (b) be personally signed by the Class Member and, if represented by counsel, by his or her counsel; (c) include information or documents sufficient to show that the objector is a Class Member; and (d) clearly state in detail (i) the legal and factual ground(s) for the objection, (ii) the Class Member's name, mailing address, email address, and telephone number, (iii) whether it applies only to the objector, to a specific subset of the class, or to the entire class, (iv) if represented by counsel, such counsel's name, email address, mailing address, and telephone number, (v) any request to present argument to the Court at the Fairness Hearing; (vi) previous objections that the Class Member has filed in class action settlements in the past five years and the results of those objections (including any settlements that were reached concerning his or her objection); and (vii) previous objections that the

objecting Class Member's counsel has filed either in a representative capacity or on their own behalf in the past five years (including any settlements that were reached concerning those objections).

5.4.3 Any objection that fails to satisfy the requirements of this Section, or that is not properly and timely submitted, shall be deemed void and waived unless otherwise ordered by the Court. The Court shall make the final determination if any objection complies with the requirements of this Section. Any Party may respond to any objection by the date as ordered by the Court.

5.5 Requests to Appear at Final Approval Hearing

5.5.1 Any Class Member who wishes to appear and be heard in person or by counsel at the Fairness Hearing must make such request by notifying the Court and the Parties' respective counsel at the addresses set forth in Section 5.4.1 of this Agreement, subject to the discretion of the Court. Any such request must be filed with the Clerk of the Court and postmarked by the deadline for filing requests to appear and under the procedures established by the Court, and must state the name, address, and telephone number of the Class Member, as well as the name, address, and telephone number of the person that shall appear on his or her behalf. Any request for appearance that fails to satisfy the requirements of this Section, or that has otherwise not been properly or timely submitted, shall be deemed ineffective and a waiver of such Class Member's rights to appear and to comment on the Settlement at the Fairness Hearing. Only the Parties, Class Members, or

their counsel may request to appear and be heard at the Fairness Hearing.

Persons or entities that opt out may not request to appear and be heard at the Fairness Hearing.

5.6 Proposed Deadlines

5.6.1 The Parties shall request that the Court approve the following schedule in the Order Directing Notice. Unless otherwise ordered by the Court, the following deadlines shall apply. In the case of a discrepancy between the table below and the text of the Order Directing Notice approved by the Court, the dates in the Order Directing Notice control:

| ACTION | TIMING |
|--|--|
| CAFA Notice Deadline | 10 days after the Motion for Order Directing Notice Is Filed |
| Hearing on Motion Directing Notice | April 15, 2019 |
| First Publication of Class Notice | 10 days after issuance of the Order Directing Notice |
| Settlement Website Established | One day before First Publication of Class Notice |
| Opt-Out Deadline | 114 days after First Publication of Class Notice |
| Claims Deadline | 130 days after First Publication of Class Notice |
| Motion for Final Approval and Fee and Expense Application Deadline | 2 weeks before Objection Filing Deadline |
| Supplemental Filing in Support of Final Approval Deadline | 33 days after Claims Deadline |
| Objection Filing Deadline | 114 days after First Publication of Class Notice |
| Request to Appear at Hearing Filing Deadline | 114 days after First Publication of Class Notice |
| Objection Response Deadline | 2 weeks after Objection Filing Deadline |
| Final Approval Hearing | To be set by the Court, on or after 165 days after First Publication of Class Notice |

| ACTION | TIMING |
|--|------------------------------------|
| Gross Settlement Proceeds Paid into Escrow Account | 20 days after Final Effective Date |

6. EXCLUSIVE REMEDY/DISMISSAL OF CLAIMS

6.1 Limitation on Released Party Liability

6.1.1 No Released Party shall be subject to liability or expense of any kind to any Class Member or their respective counsel related to the Released Claims except as provided in this Agreement.

6.2 Dismissal of Released Claims

6.2.1 The Parties agree that upon the Final Effective Date of this Agreement, all Released Claims shall be dismissed with prejudice in accordance with the Final Approval Order entered by the Court, including by seeking dismissal with prejudice of the Complaint.

7. RELEASES AND RESERVATIONS AND COVENANTS NOT TO SUE

7.1 Released Claims and Covenants Not to Sue

7.1.1 In consideration of the benefits described and the provisions contained in this Agreement, all Class Members (regardless of whether a Class Member submits a Claim Form) promise, covenant, and agree that, upon the Final Effective Date and by operation of the Final Approval Order, the Class Members shall release and forever discharge the Released Parties from any liability for all claims of any nature whatsoever in law or in equity, past and present, and whether known or unknown, suspected or claimed, relating to or arising under any federal, state, local, or international statute, regulation, or law (including state consumer fraud, warranty, unjust enrichment laws,

codal law, adjudication, quasi-adjudication, tort claims, contract claims, actions, causes of action, declaratory judgment actions, cross-claims, counterclaims, third-party claims, demands, and claims for damages, compensatory damages, liquidated damages, punitive damages, exemplary damages, multiple damages, and other noncompensatory damages or penalties of any kind, fines, equitable relief, injunctive relief, conditional or other payments or interest of any type, debts, liens, costs, expenses and/or attorneys' fees, interest, or liabilities) that have been or could have been brought in connection with Conagra's distribution, labeling, packaging, marketing, advertising, and/or sale of the Wesson Oil Products as "Natural" during the applicable Class Period, subject only to the express exceptions listed in the Reservation of Claims and Rights in Section 7.2 below. Specifically excluded from this release is any claim for bodily injury allegedly suffered in connection with the Wesson Oil Products. Conagra agrees to provide reciprocal and mutual releases to the Class Representatives and Class Members from any liability that was or could have been asserted arising out of or relating in any way to the institution, prosecution, or settlement of the Action ("Released Defendant's Claims").

- 7.1.2** All Class Members covenant and agree that they shall not hereafter seek to sue or otherwise establish liability against any Released Parties based, in whole or in part, on any of the Released Claims. Each Class Member expressly waives and fully, finally, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent

Released Claims without regard to the subsequent discovery or existence of different or additional facts. The Parties shall cooperate and assist one another in defending against and obtaining the dismissal of any claims brought by Persons seeking to assert claims released under this Agreement. Similarly, Conagra covenants and agrees that it shall not hereafter seek to sue or otherwise establish liability against any Class Representative or Class Member regarding this litigation, or any Released Defendant's Claims that Conagra could have brought as part of this litigation or in litigation concerning distribution, sale, purchase, labeling, packaging, marketing, and/or advertising of the Wesson Oil Products.

7.1.3 IN ADDITION, EACH CLASS MEMBER HEREBY EXPRESSLY WAIVES AND RELEASES, UPON THE FINAL EFFECTIVE DATE, ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY § 1542 OF THE CALIFORNIA CIVIL CODE OR ANY OTHER STATUTE, LAW OR PRINCIPLE OF COMMON LAW, WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO § 1542 OF THE CALIFORNIA CIVIL CODE, WHICH READS:

SECTION 1542. GENERAL RELEASE; EXTENT. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY

AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

7.1.4 Each Class Member may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the Released Claims, but each Class Member hereby expressly waives and fully, finally, and forever settles and releases, upon the Final Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims with respect to the subject matter of the Released Claims whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class Member also hereby expressly waives and fully, finally, and forever settles and releases any and all Released Claims it may have against the Released Parties under § 17200, *et seq.*, of the California Business and Professions Code. Similarly, to the extent that Conagra hereafter discovers facts other than or different from those which it knows or believes to be true with respect to the Released Defendant's Claims that it could have brought in this litigation, it mutually waives and fully, finally, and forever settles and releases any Released Defendant's Claims that it could have brought in connection with this litigation.

7.2 Reservation of Claims and Rights

7.2.1 Released Claims shall not include any claim against the Released Parties for bodily injury allegedly suffered in connection with the purchase or use of the Wesson Oil Products.

7.2.2 The Parties agree that this Agreement, whether or not the Final Effective

Date occurs, and any and all negotiations, documents, and discussions associated with it, shall be without prejudice to the rights of any Party (other than those compromised in this Agreement); shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, any liability or wrongdoing by any of the Released Parties, or of the truth of any of the claims or allegations contained in any complaint or pleading, whether in the Action, any other actions, or otherwise. The Parties expressly reserve all of their rights if this Agreement fails to become Final and effective substantially in accordance with its terms.

7.2.3 If this Agreement is not approved by the Court substantially in accordance with its terms and does not become subject to a Final Approval Order following such approval, or the Final Approval Order does not become Final, then the Action, for all purposes, shall revert to its status as of the date before the execution of this Agreement. Conagra shall also be entitled to a refund of any Gross Settlement Proceeds that it has deposited into the Escrow Account, any Fee and Expense Award it has paid to Class Counsel, and/or any Service Awards to it has paid to the Class Representatives.

8. **ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

8.1 **Attorneys' Fees and Expenses and Service Awards**

8.1.1 As part of the Settlement, Class Counsel shall make a Fee and Expense Application to the Court for a Fee and Expense Award.

8.1.1.1 Class Counsel shall make a Fee and Expense Application to the Court for an award of \$6,850,000 in attorneys' fees and expenses, to be paid by Conagra.

8.1.1.2 Conagra shall take no position with respect to the Fee and Expense Application, consistent with its agreement negotiated with the assistance of Magistrate Judge McCormick as mediator. The Parties recognize that the Court shall have the final authority to award the amount of attorneys' fees and expenses. The Parties represent that the attorneys' fees and expenses were mediated after agreement on substantive terms with Magistrate Judge McCormick.

8.1.1.3 Upon a Court order providing a Fee and Expense Award, any attorneys' fees and expenses awarded to Class Counsel by the Court shall be paid by Conagra within 20 calendar days of the Final Effective Date and receipt by Conagra of all documentation reasonably necessary to make such payment. In the event the Fee and Expense Award is reversed, modified, canceled, terminated, or reduced for any reason, the relevant amount of the overpayment of attorneys' fees and costs paid by Conagra shall be returned to Conagra within thirty days of Conagra's written request to Class Counsel. Class Counsel shall be liable to Conagra for the amount of attorneys' fees and costs they received. Conagra shall be entitled to enforce this provision through a motion filed with this Court, and Class Counsel, as a condition of receiving such attorneys' fees and

costs, agrees that Class Counsel are subject to the jurisdiction of the Court for the purpose of enforcing this provision.

8.1.1.4 Conagra agrees not to take any position on an application for service awards of (a) up to \$3,000 for each of the Class Representatives who were deposed (Robert Briseño, Michele Andrade, Jill Crouch, Pauline Michael, Necla Musat, and Maureen Towey) and (b) up to \$1,000 for each of those who were not deposed (Julie Palmer, Cheri Shafstall, Dee Hooper-Kercheval, Kelly McFadden, Erika Heins, Rona Johnston, and Anita Willman). The Parties acknowledge the Court shall have the final authority to determine the amount of the awards up to these amounts in recognition of their service as Class Representatives in this Action.

8.1.1.5 Class Counsel will provide to Defendant, through Defendant's Counsel, appropriate W-9 forms for law firms and Class Representatives, and all wiring or account information necessary to enable Defendant to make the Court-awarded payment.

8.1.1.6 Any payment awarded by the Court to the Class Representatives will be paid to Class Counsel by Defendant separately from attorneys' fees and expenses. These service awards shall be paid within 20 calendar days of the Final Effective Date and deposited into Class Counsel's client trust account before disbursement to the Class Representatives or paid in the form of checks sent to Class Counsel written to each Class Representative.

8.1.1.7 Class Counsel shall allocate the attorneys' fees amongst Class Counsel and other counsel representing plaintiffs in the Action in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Action with Defendant. Defendant shall have no liability or obligation with respect to any attorneys' fees, costs or expenses other than Defendant's obligation to pay or cause to be paid the amounts awarded by the Court. Defendant shall have no liability or other responsibility for allocation of any such attorneys' fees or costs and expenses awarded.

8.1.1.8 Conagra and the Released Parties shall have no liability with respect to any disputes among plaintiffs' counsel relating to the award, allocation, or entitlement to any fees, costs, or expenses. The Court shall retain jurisdiction over any disputes among plaintiffs' counsel relating to the award, allocation, or entitlement to any fees, costs, or expenses, but any such disputes shall not affect this Settlement becoming Final.

8.2 Value of Injunctive Relief

8.2.1 Class Counsel and Conagra agree that during the pendency of this litigation Conagra removed the "natural" claim from the labels of Wesson Oil Products and stopped marketing, advertising, and selling Wesson Oil Products as "natural."

8.2.2 Plaintiffs point to this change as a result achieved in the wake of this litigation, while acknowledging that this Settlement does not constitute an admission by Conagra of liability, damages, or any other issue in the lawsuit, including but not limited to what prompted the label change. Conagra denies its decision to remove ‘natural’ from Wesson Oil labels was in any way related to this litigation.

8.2.3 As part of the Settlement, Conagra agrees to injunctive relief under which Conagra agrees that should it reacquire the Wesson Oil brand, it will not market, advertise, or sell Wesson Oil Products as “natural” unless the FDA issues guidance or regulation, or federal legislation is enacted, authorizing use of a “natural” claim on a product containing oil from genetically engineered seed stock; and will not advertise, market or sell Wesson Oil Products as “non-GMO” unless the claim is certified by an independent third-party certification organization. This Agreement does not preclude Conagra from making other changes to the advertising and marketing of Wesson Oil Products, provided that those changes do not conflict with the provisions of this Agreement.

8.2.4 The Parties agree that the value of the injunctive relief to the Classes is \$27,000,000.

9. **TERMINATION OF THIS AGREEMENT**

9.1 **Termination**

9.1.1 This Agreement shall be terminated, without notice, if the Court declines to enter the Order Directing Notice, declines to grant Final Approval, or if such

approval or other necessary orders do not become Final (as a result of reversal on appeal or otherwise).

9.1.2 If the Court declines to enter the Order Directing Notice, declines to grant Final Approval, or if such approval or other necessary orders do not become Final (as a result of reversal on appeal or otherwise), this Agreement shall be of no further force or effect.

10. MISCELLANEOUS PROVISIONS

10.1 Recitals

10.1.1 The recitals set forth prior to Section 1 of this Agreement are hereby expressly incorporated into this Agreement and made a part hereof.

10.2 No Inducement

10.2.1 The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement.

10.3 Severability

10.3.1 The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or

other tribunal and, if it cannot be so modified, then this Agreement shall be deemed amended to delete from this Agreement such provision or portion adjudicated to be invalid or unenforceable, and this Agreement shall be deemed to be in full force and effect as so modified.

10.3.2 Notwithstanding Section 10.4.1, however, the Parties agree that the monetary and injunctive relief in this settlement, and the accompanying releases and covenants not to sue, are integral and indivisible provisions without which the parties would not have entered into this Agreement.

10.4 Receipt of Advice of Counsel

10.4.1 Class Representatives acknowledge, agree, and specifically warrant and represent that they have discussed with Class Counsel (or their designees) the portions of this Agreement relevant to them, including the release of Released Claims, and received legal advice with respect to the advisability of entering into this Agreement, and the legal effect of this Agreement.

10.5 Timing

10.5.1 Class Counsel and Conagra may agree in writing to reasonable extensions of time to carry out the provisions of this Agreement.

10.6 No Tax Advice

10.6.1 No opinion regarding the tax consequences of this Agreement to any individual Class Member is being given or shall be given by Conagra or its counsel, nor is any representation or warranty in this regard made by virtue of this Agreement. Class Members must consult their own tax advisors regarding the tax consequences of the Settlement, including any payments

provided hereunder and any tax reporting obligations they may have with respect to this Agreement. Each Class Member's tax obligations, and the determination thereof, are his, her, or its sole responsibility, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member. Released Parties shall have no liability or responsibility whatsoever for any such tax consequences resulting from payments under this Agreement. To the extent required by law, the Released Parties shall report payments made under this Agreement to the appropriate authorities.

10.7 Notice of Breach

10.7.1 The waiver by any of the Parties of any provision of or breach of this Agreement, in whole or in part, by another Party shall not be deemed or construed as a waiver of any other provision of or breach of this Agreement, whether prior, subsequent, or contemporaneous, to this Agreement. In the event that one Party to this Agreement is notified in writing by the other Party of any alleged breach of this Agreement, the allegedly-breaching Party shall have fourteen (14) days from the date of receipt of such notice to cure any such alleged breach and to notify the other Party, in writing, of the cure implemented to address the alleged breach. If the Party asserting the breach is not satisfied with the cure, that Party shall have the right to petition the Court for relief within thirty days after receipt of notice of the cure.

10.8 Enforcement

10.8.1 Only if this Settlement is finally approved by the Court and becomes Final, this Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted against the Released Parties in such capacity with respect to any of the Released Claims, and may be filed, offered, received into evidence, and otherwise used for such defense. This Agreement may also be used in connection with the Parties' application for approval or enforcement of this Agreement and all proceedings incident to this Agreement, including requests for attorneys' fees, costs, disbursements and compensation to the Classes, and any disputes arising from this Agreement.

10.9 Authorization to Enter Agreement

10.9.1 The undersigned representatives of Conagra represent that they are fully authorized to enter into and execute this Agreement on behalf of Conagra. Class Counsel represent that they are fully authorized to enter into and execute this Agreement on behalf of the Class Representatives and Class Members, subject to approval by the Court pursuant to Fed. R. Civ. P. 23.

10.10 No Party Is the Drafter

10.10.1 None of the Parties to this Agreement shall be considered the drafter of this Agreement or any provision thereof for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter.

10.11 Choice of Law

10.11.1 This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of California without regard to its choice of law or conflict of laws principles. The Court shall maintain continuing jurisdiction over this matter in any proceeding to interpret, enforce, modify, or set aside the terms of this Agreement.

10.12 Computing Dates

10.12.1 For all deadlines under this Agreement, to compute deadlines (a) exclude the day of the event that triggers the period; (b) count every calendar day, including intermediate Saturdays, Sundays, and legal holidays; and (c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

10.13 Time for Compliance

10.13.1 If the date for performance of any act required by or under this Agreement is due to be performed on or by a Saturday, Sunday, or legal holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

10.14 Jurisdiction and Dispute Resolution

10.14.1 Pursuant to the Final Approval Order, the Court shall retain continuing and exclusive jurisdiction over the Parties and their counsel, the Settlement Administrator, the Settlement Fund (including any trustee or other

administrator or agent of the Settlement Fund, as applicable), and all Class Members with respect to the terms of this Agreement, the proper provision of all benefits thereunder, and the implementation and enforcement of its terms, conditions, and obligations. The terms of this Agreement shall be incorporated into the Final Approval Order of the Court, which shall allow that Final Approval Order to serve as an enforceable injunction by the Court for purposes of the Court's continuing jurisdiction related to this Agreement.

10.14.2 The Court also shall retain exclusive and continuing jurisdiction over the Fee and Expense Award.

10.15 Administrative Procedures

10.15.1 The Settlement Administrator may create administrative procedures, supplementary to (and not inconsistent with) those specified herein that provide further specific details about how the Settlement is to be administered, and/or other aspects of the Settlement, including, but not limited to, procedures regarding submission of documents or procedures regarding execution and signature of documents; provided, however, that such procedures comply, or otherwise are not in conflict, with the terms of this Agreement, and are agreed to by the Parties and approved by the Court.

10.16 Amendment or Waiver

10.16.1 This Agreement shall not be modified in any respect except by a writing executed by all Parties to this Agreement or their successors-in-interest. The waiver of any rights conferred by this Agreement shall be effective only if

made in writing by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneous with this Agreement.


10.17 Execution in Counterparts

10.17.1 This Agreement may be executed in counterparts. Facsimile or PDF signatures shall be valid signatures as of the date thereof.

10.18 Integrated Agreement

10.18.1 This Agreement, including its exhibits, contains an entire, complete, and integrated statement of the terms agreed to by and between the Parties, and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties to this Agreement, by and through their fully authorized representatives, have executed this Agreement as of March 11, 2019.


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Counsel for Conagra Brands, Inc.

§ UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

| | |
|---------------------------|---|
| IN RE CONAGRA FOODS, INC. | Case No. CV 11-05379-CJC (AGR _x) MDL No. 2291 <u>CLASS ACTION</u> |
|---------------------------|---|

ORDER DIRECTING NOTICE TO CLASS MEMBERS

In this Action,¹ Class Representatives, in their individual capacities and on behalf of all others similarly situated (the “Classes”), assert claims against Defendant Conagra Brands, Inc.. Defendant has denied each of the claims asserted against it in this Action and denies any and all liability. Class Representatives maintain that the claims have merit. The Court previously certified damages classes under Rule 23(b)(3) of the Federal Rules of Civil Procedure for California, Colorado, Florida, Illinois, Indiana, Nebraska, New York, Ohio, Oregon, South Dakota, and Texas.

This Court has now been presented with an Unopposed Motion for Order Directing Notice to Class Members filed on March 12, 2019. The Settlement Agreement was negotiated and consented to on behalf of the Parties, and it would resolve the claims against Defendant arising out of the Action. Notice of the proposed settlement has been served on the appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

Having considered the terms of the Settlement Agreement in light of the issues presented by the pleadings, the record in this case, the complexity of the proceedings, and the absence of any evidence of collusion between Class Representatives and Defendant, and being preliminarily satisfied that the Settlement Agreement is fair, reasonable, and consistent with applicable laws;

¹ Capitalized terms shall have the meaning ascribed to them in the Definitions section of the Settlement Agreement.

and being satisfied that the proposed Notice Plan is adequate and sufficiently informative as to the terms and effect of the proposed settlement, IT IS ORDERED THAT:

1. This Court has jurisdiction over the subject matter of the Action pursuant to 28 U.S.C. § 1332(d). This Court also has jurisdiction over all Parties to the Action, including all members of the Classes, as defined below.

2. This Order is justified by the Parties' showing that the Court will likely be able to approve the proposed settlement as fair, reasonable and adequate under Rule 23(e)(2), subject to further consideration at the Fairness Hearing. Class Representatives and Defendant are authorized and directed to take all actions that may be required prior to final approval by this Court of the proposed settlement and compromises set forth in the Settlement Agreement.

3. By the Court's Order Granting in Part and Denying in Part Plaintiffs' Amended Motion for Class Certification [ECF No. 545], eleven statewide classes were certified under Fed. R. Civ. P. 23(b)(3) to pursue the following claims:

(a) California: (1) violations of the California Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.* ("UCL"), California Consumer Legal Remedies Act, California Civil Code §§ 1750, *et seq.* ("CLRA"), and California Business & Professions Code §§ 17500, *et seq.* ("FAL"); and (2) breach of express warranty (California Commercial Code § 2313)

(b) Colorado: (1) violation of the Colorado Consumer Protection Act, Colorado Revised Statutes §§ 6-1-101, *et seq.* ("CCPA"); (2) breach of express warranty (Colorado Revised Statutes § 4-2-313); and (3) breach of implied warranty (Colorado Revised Statutes § 4-2-314)

(c) Florida: (1) violation of the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes Annotated §§ 501.201, *et seq.* ("FDUTPA")

(d) Illinois: (1) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Illinois Compiled States §§ 505/1, *et seq.* (“ICFA”) and (2) unjust enrichment

(e) Indiana: (1) unjust enrichment and (2) breach of implied warranty (Indiana Code § 26-1-2-314)

(f) Nebraska: (1) unjust enrichment and (2) breach of implied warranty (Nebraska Revised Statutes § 2-314)

(g) New York: (1) violation of the New York Consumer Protection Act, New York General Business Law §§ 349, *et seq.* (“GBL”); and (2) breach of express warranty (N.Y. U.C.C. Law § 2-313)

(h) Ohio: (1) violation of the Ohio Consumer Sales Practices Act, Ohio Revised Code §§ 1345.01, *et seq.* (“OCSA”)

(i) Oregon: (1) violation of the Oregon Unfair Trade Practices Act, Oregon Revised Statutes §§ 646.605, *et seq.* (“OUTPA”); and (2) unjust enrichment\

(j) South Dakota: (1) violation of the South Dakota Deceptive Trade Practices and Consumer Protection Law, South Dakota Codified Laws §§ 37 24 1, *et seq.* (“SDDTPL”); and (2) unjust enrichment

(k) Texas: (1) violation of the Texas Deceptive Trade Practices - Consumer Protection Act, Texas Business & Commerce Code §§ 17.41, *et seq.* (“TDTPA”):

4. The following Classes certified under Fed. R. Civ. P. 23(b)(3), which were limited by the applicable statute of limitations periods established by the laws of the eleven states, will be notified of this proposed settlement and their rights under it:

(a) California Class: all natural persons who resided in the State of California and purchased Wesson Oil Products in California, for personal, non-commercial use, between June 28, 2007 and July 1, 2017 (“California Class Period”);

(b) Colorado Class: all natural persons who resided in the State of Colorado and purchased Wesson Oil Products in Colorado, for personal, non-commercial use, between January 12, 2009 and July 1, 2017 (“Colorado Class Period”);

(c) Florida Class: all natural persons who resided in the State of Florida and purchased Wesson Oil Products in Florida, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“Florida Class Period”);

(d) Illinois Class: all natural persons who resided in the State of Illinois and purchased Wesson Oil Products in Illinois, for personal, non-commercial use, between January 12, 2007 and July 1, 2017 (“Illinois Class Period”);

(e) Indiana Class: all natural persons who resided in the State of Indiana and purchased Wesson Oil Products in Indiana, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“Indiana Class Period”);

(f) Nebraska Class: all natural persons who resided in the State of Nebraska and purchased Wesson Oil Products in Nebraska, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“Nebraska Class Period”);

(g) New York Class: all natural persons who resided in the State of New York and purchased Wesson Oil Products in New York, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“New York Class Period”);

(h) Ohio Class: all natural persons who resided in the State of Ohio and purchased Wesson Oil Products in Ohio, for personal, non-commercial use, between January 12, 2010 and July 1, 2017 (“Ohio Class Period”);

(i) Oregon Class: all natural persons who resided in the State of Oregon and purchased Wesson Oil Products in Oregon, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“Oregon Class Period”);

(j) South Dakota Class: all natural persons who resided in the State of South Dakota and purchased Wesson Oil Products in South Dakota, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“South Dakota Class Period”); and

(k) Texas Class: all natural persons who resided in the State of Texas and purchased Wesson Oil Products in Texas, for personal, non-commercial use, between January 12, 2010 and July 1, 2017 (“Texas Class Period”).

5. Excluded from the Classes are (a) governmental entities; (b) Conagra, and its affiliates, subsidiaries, employees, current and former officers, directors, agents, and representatives; (c) the members of the Court and its staff; and (d) Opt-Outs.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court appoints the following persons as Class Representatives:

- (a) Robert Briseño and Michele Andrade for the California Class;
- (b) Jill Crouch for the Colorado Class;
- (c) Julie Palmer for the Florida Class;
- (d) Pauline Michael for the Illinois Class;
- (e) Cheri Shafstall for the Indiana Class;
- (f) Dee Hooper-Kercheval for the Nebraska Class;

- (g) Kelly McFadden and Necla Musat for the New York Class;
- (h) Maureen Towey for the Ohio Class;
- (i) Erika Heins for the Oregon Class;
- (j) Rona Johnston for the South Dakota Class; and
- (k) Anita Willman for the Texas Class.

7. Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court appoints DiCello Levitt Gutzler LLC and Milberg Tadler Phillips Grossman LLP as Class Counsel.

8. **Schedule and Deadlines.** The Court hereby approves the following schedule:

| ACTION | TIMING |
|--|--|
| First Publication of Class Notice | 10 days after issuance of the Order Directing Notice |
| Settlement Website Established | One day before First Publication of Class Notice |
| Opt-Out Deadline | 114 days after First Publication of Class Notice |
| Claims Deadline | 130 days after First Publication of Class Notice |
| Motion for Final Approval and Fee and Expense Application Deadline | 2 weeks before Objection Filing Deadline |
| Supplemental Filing in Support of Final Approval Deadline | 33 days after Claims Deadline |
| Objection Filing Deadline | 114 days after First Publication of Class Notice |
| Request to Appear at Hearing Filing Deadline | 114 days after First Publication of Class Notice |
| Objection Response Deadline | 2 weeks after Objection Filing Deadline |
| Final Approval Hearing | To be set by the Court, on or after 165 days after First Publication of Class Notice |
| Gross Settlement Proceeds Paid into Escrow Account | 20 days after Final Effective Date |

9. A Fairness Hearing shall be held at ____:____ __.m. on _____, 2019, for the purpose of determining whether the proposed settlement and compromise set forth in the Settlement Agreement shall be approved finally by the Court and whether final judgment dismissing the Action with respect to Defendant is appropriate. This hearing will be held at the United States District Court for the Central District of California, 350 W. 1st Street, Courtroom 7C, Los Angeles, CA 90012. At the Fairness Hearing, the Court will consider and determine:

(a) whether the proposed settlement is fair, reasonable, and adequate to Class Members and should be approved by the Court;

(b) whether the Classes satisfy the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and 23(b)(3) for purposes of the proposed settlement;

(c) whether the Court should enjoin Defendant according to the specific terms in the Settlement Agreement;

(d) whether final judgment should be entered, dismissing the Action as to Defendant, on the merits and with prejudice, and to determine whether the release by Class Members of the Released Claims, as set forth in the Settlement Agreement, should be provided;

(e) whether the Court should approve Class Counsel's application for an award of attorneys' fees, expenses, and costs;

(f) whether the Court should approve any motion for service awards for the Class Representatives; and

(g) such other matters as the Court may deem appropriate.

10. JND Legal Administration is appointed as the Settlement Administrator and the Notice Plan set forth in the Declaration of Jennifer M. Keough, attached as Exhibit A-4 to the Settlement Agreement, is approved.

11. The Publication Notice attached as Exhibit A-1 to the Settlement Agreement and the Posted Notice attached as Exhibit A-2 to the Settlement Agreement are approved. Dissemination of the Class Notice as set forth in the Notice Plan satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable laws, and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto. The Publication Notice and Posted Notice will be published in accordance with the terms of the Notice Plan set forth in the Settlement Agreement. Non-substantive changes may be made to the Publication Notice and Posted Notice by agreement of Class Representatives and Defendant without further order of this Court.

12. No later than one day before First Publication of Class Notice, the Settlement Administrator shall establish and maintain a toll-free number and the Settlement Website, on which relevant pleadings, settlement documents, any applicable deadlines, and the Posted Notice shall be posted in order to provide information to the Classes of the proposed Settlement.

13. The Settlement Administrator shall cause the Publication Notice to be published as provided in the Notice Plan.

14. Fourteen (14) days in advance of the Objection Date, Class Counsel shall file their Motion for Final Approval of the Settlement, and their application for attorneys' fees and expenses, and service awards to Class Representatives. Defendant shall file any response to any motions filed under this paragraph within 14 days.

15. If the Settlement Agreement is not approved by the Court substantially in accordance with its terms, or does not become subject to a Final Approval Order following such approval, or the Final Effective Dates does not occur, then the Action, for all purposes, shall revert to its status as of the date before the execution of the Settlement Agreement.

16. In order to be entitled to participate in the Gross Settlement Proceeds, each Class Member shall take the following actions and be subject to the following conditions:

(a) A properly executed Claim Form, substantially in the form attached as Exhibit A-1 to the Settlement Agreement, must be submitted to the Settlement Administrator, postmarked on or before the Claims Deadline. Such deadline may be further extended by Court Order. Each Claim Form shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first class mail, postage prepaid) provided it is actually received by the Settlement Administrator before payment of the Gross Settlement Proceeds. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received by the Settlement Administrator.

(b) The Claim Form submitted by each Class Member must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) where required, it must be accompanied by adequate supporting documentation for residency and the transactions reported; and (iii) it must be complete and contain no material deletions or modifications and must be submitted under penalty of perjury.

(c) As part of the Claim Form, each Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted and shall (subject to effectuation of the Settlement) release all Released Claims as provided in the Settlement Agreement.

17. Any Class Member who does not submit a Claim Form in the manner stated in this Order shall be deemed to have waived his, her or its right to share in the Settlement Proceeds and shall forever be barred from sharing in the Gross Settlement Proceeds. Any such Class Member, however, in all other respects shall be subject to and bound by all of the terms of the Settlement, including the terms of the Settlement Agreement, the Final Approval Order, and the releases provided for by the Settlement Agreement and the Final Approval Order unless such Class Member has submitted a request to be excluded in the manner required by this Order.

18. Opting Out of the Settlement

(a) Each Class Member may elect to opt out of the Settlement. Any Class Member who wishes to opt out of the Settlement must do so, in writing, by mailing a request for exclusion to the Settlement Administrator signed by the Class Member (the “Opt-Out Request”). Any such request must be sent to the Settlement Administrator and postmarked by the Opt-Out Deadline.

(b) The Opt-Out Request must:

- (1) bear the handwritten signature of the Class Member seeking to opt out;
- (2) set out the Class Member’s full legal name, valid mailing address, and functioning telephone number;
- (3) state that the Class Member has reviewed and understood the Class Notice and chooses to be excluded from the Settlement; and
- (4) provide the name of and contact information for the Class Member’s attorney, if represented.

(c) No person or entity may opt out on behalf of another Class Member.

(d) All requests to opt out that fail to satisfy the requirements of this paragraph, as well as any additional requirements that the Court may impose, shall be void. No class-wide, mass opt-outs, or opt-outs signed by attorneys are permitted under this Agreement.

(e) Any Class Member who does not properly and timely submit a request to opt out as required in this Agreement shall be deemed to have waived all rights to opt out and shall be deemed a Class Member for all purposes under this Agreement.

19. Objecting to the Settlement

(a) Any Class Member who does not timely and properly opt out of the Settlement may object to the fairness, reasonableness, or adequacy of the proposed Settlement under Federal Rule of Civil Procedure 23. Each Class Member who wishes to object must do so, in writing, by filing a written objection with the Clerk of the Court and mailing it to Class Counsel and to counsel for Conagra at the addresses set forth below:

| | |
|---|--|
| Clerk of the Court: Office of the Clerk United States District Court for the Central District of California 350 W. 1st Street, Suite 4311 Los Angeles, CA 90012 | Class Counsel: Ariana J. Tadler Milberg Tadler Phillips Grossman LLP One Penn Plaza, Suite 1920 New York, NY 10119 |
| Counsel for Conagra: Angela M. Spivey Alston & Bird One Atlantic Center 1201 W Peachtree Street, NE Atlanta, GA 30309-1404 | Class Counsel: Adam J. Levitt DiCello Levitt Gutzler LLC Ten North Dearborn Street, Eleventh Floor Chicago, IL 60602 |

(b) Any such objection must be postmarked by the Objection Deadline for filing objections and under these procedures. Any such objection must (a) attach copies in advance of

any materials that the objector intends to submit to the Court or present at the Fairness Hearing;

(b) be personally signed by the Class Member and, if represented by counsel, by his or her counsel;

(c) include information or documents sufficient to show that the objector is a Class Member; and

(d) clearly state in detail (i) the legal and factual ground(s) for the objection, (ii) the Class Member's name, mailing address, email address, and telephone number, (iii) whether it applies only to the objector, to a specific subset of the class, or to the entire class, (iv) if represented by counsel, such counsel's name, email address, mailing address, and telephone number, (v) any request to present argument to the Court at the Fairness Hearing; (vi) previous objections that the Class Member has filed in class action settlements in the past five years and the results of those objections (including any settlements that were reached concerning his or her objection); and (vii) previous objections that the objecting Class Member's counsel has filed either in a representative capacity or on their own behalf in the past five years (including any settlements that were reached concerning those objections).

(c) Any objection that fails to satisfy the requirements of this paragraph, or that is not properly and timely submitted, shall be deemed void and waived unless otherwise ordered by the Court. The Court shall make the final determination if any objection complies with the requirements of this paragraph. Any Party may respond to any objection by the date as ordered by the Court.

20. The procedures and requirements for filing objections in connection with the Fairness Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with the due process rights of all Class Members.

21. **Requests to Appear at Fairness Hearing.** Any Class Member who wishes to appear and be heard in person or by counsel at the Fairness Hearing must make such request by notifying the Court and the Parties' respective counsel at the addresses set forth above, subject to the discretion of the Court. Any such request must be filed with the Clerk of the Court and postmarked by the deadline for filing requests to appear. The request must state the name, address, and telephone number of the Class Member, as well as the name, address, and telephone number of the person that shall appear on his or her behalf. Any request for appearance that fails to satisfy these requirements, or that has otherwise not been properly or timely submitted, shall be deemed ineffective and a waiver of such Class Member's rights to appear and to comment on the Settlement at the Fairness Hearing. Only the Parties, Class Members, or their counsel may request to appear and be heard at the Fairness Hearing. Persons or entities that opt out may not request to appear and be heard at the Fairness Hearing.

22. Attendance at the Fairness Hearing is not necessary. Class Members do not need to appear at the Fairness Hearing or take any other action to indicate their approval.

23. Pending the Fairness Hearing, all proceedings in the Action are stayed and, pursuant to the All Writs Act, 28 U.S.C. § 1651, and the Anti-Injunction Act, 28 U.S.C. § 2283, the prosecution of any pending or subsequently filed litigation by Class Members arising out of or relating to the Released Claims is prohibited. Proceedings in the Court arising out of and relating to the Settlement Agreement, and any other proceeding necessary to effectuate the Settlement Agreement in any other action are excepted from this stay.

24. The Court may adjourn the Fairness Hearing without any further notice other than an announcement of the adjournment at the scheduled time of the Fairness Hearing or at the scheduled time of any adjournment of the Fairness Hearing. The Court may consider modifications of the Settlement Agreement (with the consent of the Parties to the Settlement Agreement) without further notice to the Classes.

25. The Court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter its Final Approval Order approving the Settlement and dismissing the Complaint against Defendant on the merits and with prejudice regardless of whether it has approved or awarded attorneys' fees and expenses or service awards to Class Representatives.

26. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the proposed settlement.

SO ORDERED this ____ day of _____, 2019.

The Honorable Judge Cormac J. Carney
United States District Court
Central District of California

If you resided in California, Colorado, Florida, Illinois, Indiana, Nebraska, New York, Ohio, Oregon, South Dakota, or Texas and purchased Wesson Oil products in that state for your own personal, non-commercial use, you may be eligible to receive a payment from a class action settlement.

Para una notificación en español, visite www.wessonoilsettlement.com.

A Settlement has been proposed in a class action lawsuit (*In re ConAgra Foods, Inc.*, United States District Court for the Central District of California, Case No. 2:11-cv-05379-CJC-AGR, MDL No. 2291). The Court authorized this notice and will decide whether to approve the Settlement.

WHO IS AFFECTED?

You are a Class Member only if you resided in any of these eleven States and purchased Wesson brand cooking oils, including Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil, and Wesson Best Blend, in that state for your own personal, non-commercial use during these time periods:

| <u>State:</u> | <u>Class Period:</u> |
|----------------------|---------------------------------------|
| California | June 28, 2007 through July 1, 2017 |
| Colorado | January 12, 2009 through July 1, 2017 |
| Florida | January 12, 2008 through July 1, 2017 |
| Illinois | January 12, 2007 through July 1, 2017 |
| Indiana | January 12, 2006 through July 1, 2017 |
| Nebraska | January 12, 2008 through July 1, 2017 |
| New York | January 12, 2008 through July 1, 2017 |
| Ohio | January 12, 2010 through July 1, 2017 |
| Oregon | January 12, 2006 through July 1, 2017 |
| South Dakota | January 12, 2006 through July 1, 2017 |
| Texas | January 12, 2010 through July 1, 2017 |

WHAT'S THIS ABOUT?

The lawsuit alleges that Conagra violated certain laws in the marketing, advertising and sale of Wesson Oil Products made from Genetically Modified Ingredients (GMOs) as "Natural." Conagra denies any and all wrongdoing of any kind whatsoever and has asserted various defenses that it believes are meritorious.

WHAT CAN YOU GET FROM THE SETTLEMENT?

All Class Members who submit a valid claim receive \$0.15 for each unit of Wesson Oil Product purchased during the relevant Class Period. Class Members may submit a claim for up to 30 units without proof of purchase. Class Members may submit a claim for more than 30 units only with proof of purchase. There is also a \$575,000 fund to be allocated to New York and Oregon Class Members who submit valid claims as compensation for statutory damages provided for in the laws of those states. Conagra also agreed to certain injunctive relief.

HOW DO YOU GET A PAYMENT?

Go to www.wessonoilsettlement.com and file or download a Claim Form. All Claim Forms must be either submitted online or postmarked and mailed by _____, **2019**. Only one Claim Form can be submitted per Household (defined as all persons residing at the same physical address).

WHAT ARE YOUR OPTIONS?

If you are a Class Member and you do nothing or file a claim to receive monetary benefits you will be bound by the Court's judgments. If you want to opt out of the Settlement you must mail a request for exclusion postmarked by _____, 2019. Any Class Member who does not opt out of the Settlement may object to the Settlement by filing a written objection by _____, 2019. For specific details on how to opt out or object, please read the Posted Notice at www.wessonoilsettlement.com.

The Court will hold a hearing at the U.S. Courthouse, 350 W. 1st Street, Courtroom 7C, Los Angeles, CA 90012 on _____, 2019 at ____:____.m. to consider whether to approve the Settlement and applications for attorneys' fees and expenses up to \$6,850,000 and for service awards up to (a) \$3,000 each for the six Class Representatives who were deposed and (b) \$1,000 each for the seven who were not deposed. If you wish, you or your attorney may ask to appear and speak at the hearing at your own expense, but you do not have to.

This notice is only a summary. For additional information, please visit the settlement website at www.wessonoilsettlement.com; call toll-free 1-833-291-1651; or write: Wesson Oil Settlement, c/o JND Legal Administration, P.O. Box 91249, Seattle, WA 98111-9349.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

If you resided in California, Colorado, Florida, Illinois, Indiana, Nebraska, New York, Ohio, Oregon, South Dakota, or Texas and purchased Wesson Oil products in that state for your own personal, non-commercial use, you may be eligible to receive a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A proposed Settlement has been reached in a class action lawsuit involving claims that the marketing, advertising and sale of Wesson brand cooking oils, including Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil, and Wesson Best Blend (“Wesson Oil Products”) made from Genetically Modified Ingredients (“GMOs”) as “100% Natural” was unlawful. Conagra denies any and all wrongdoing of any kind whatsoever and has asserted various defenses that it believes are meritorious.
- If you resided in any of these eleven States and purchased Wesson Oil Products for your own personal, non-commercial, use in that state during these time periods, you may be eligible to participate in the proposed Settlement, if it is finally approved:

| <u>STATE:</u> | <u>CLASS PERIOD:</u> |
|---------------|---------------------------------------|
| California | June 28, 2007 through July 1, 2017 |
| Colorado | January 12, 2009 through July 1, 2017 |
| Florida | January 12, 2008 through July 1, 2017 |
| Illinois | January 12, 2007 through July 1, 2017 |
| Indiana | January 12, 2006 through July 1, 2017 |
| Nebraska | January 12, 2008 through July 1, 2017 |
| New York | January 12, 2008 through July 1, 2017 |
| Ohio | January 12, 2010 through July 1, 2017 |
| Oregon | January 12, 2006 through July 1, 2017 |
| South Dakota | January 12, 2006 through July 1, 2017 |
| Texas | January 12, 2010 through July 1, 2017 |

- If you did not reside in any of these eleven States or did not purchase Wesson brand cooking oils in these states during these time periods, then you are not a Class Member and are not affected by this Action or this Settlement.
- The Settlement will provide payments to those who qualify. You will need to file a verified Claim Form to be eligible for a payment from the Settlement.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

| <u>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</u> | | |
|--|--|-----------------------------|
| <u>ACTION</u> | <u>EXPLANATION</u> | <u>DUE DATE</u> |
| SUBMIT A CLAIM FORM | Submitting a Valid Claim Form is the only way to get a payment from the Settlement. | Month Day, 2019 |
| EXCLUDE YOURSELF | You will receive no payment from the Settlement. You will not be bound by the terms of the Settlement. This is the only option that allows you to ever be a part of any other lawsuit against the Defendant about the legal claims in this case. | Month Day, 2019 |
| OBJECT | Write to the Court about why you do not like the Settlement. | Month Day, 2019 |
| GO TO A HEARING | Ask to speak in Court about the Settlement. | Month Day, 2019 at X a/p.m. |
| FILE A NOTICE OF INTENT TO APPEAR AT THE FAIRNESS HEARING | You or your attorney may ask the Court for permission to speak at the Fairness Hearing. | Month Day, 2019 |
| DO NOTHING | Get no payment. Give up rights to ever sue the Defendant about the legal claims in this case. | |

- These rights and options—and the deadlines to exercise them—are explained in this notice. The deadlines may be moved, canceled, or otherwise modified, so please check the Settlement Website, www.wessonoilsettlement.com, regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS:

BASIC INFORMATION

1. Why is there a notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?
6. Which Products are included in the Settlement?
7. What if I am still not sure if I am included in the Settlement?

SETTLEMENT BENEFITS – WHAT CLASS MEMBERS GET

8. What does the Settlement provide?
9. What can I get from the Settlement?

HOW TO GET A PAYMENT

10. How can I get a payment?
11. When would I get my payment?
12. What am I giving up to get a payment or to stay in the Settlement?

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the Settlement?
14. If I don't exclude myself, can I sue the Defendant for the same thing later?
15. If I exclude myself, can I still get a Settlement payment?

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?
17. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT

18. How do I tell the Court if I do not like the Settlement?
19. What is the difference between objecting and excluding?

THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve the Settlement?
21. Do I have to come to the hearing?
22. May I speak at the hearing?

IF YOU DO NOTHING

23. What happens if I do nothing at all?

GETTING MORE INFORMATION

24. How do I get more information?

BASIC INFORMATION

1. Why is there a notice?

You have a right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement.

The Court in charge of this case is the United States District Court for Central District of California (the “Court”), and the case is called *In re ConAgra Foods, Inc.*, Case No. 2:11-cv-05379-CJC-AGR, MDL No. 2291. This case is assigned to United States District Judge Cormac J. Carney. The individuals who sued are called the Class Representatives, and the company they sued, Conagra Brands, Inc. (formerly ConAgra Foods, Inc.) (“Conagra”), is called the Defendant.

2. What is this lawsuit about?

The lawsuit alleges that the Defendant violated certain laws in the marketing, advertising and sale of Wesson Oil Products made from Genetically Modified Ingredients (“GMOs”) as “Natural.”

The Defendant denies any and all wrongdoing of any kind whatsoever and has asserted various defenses that it believes are meritorious.

3. Why is this a class action?

In a class action, one or more people called class representatives (in this case Robert Briseño and Michele Andrade for the California Class; Jill Crouch for the Colorado Class; Julie Palmer for the Florida Class; Pauline Michael for the Illinois Class; Cheri Shafstall for the Indiana Class; Dee Hooper-Kercheval for the Nebraska Class; Kelly McFadden and Necla Musat for the New York Class; Maureen Towey for the Ohio Class; Erika Heins for the Oregon Class; Rona Johnston for the South Dakota Class; and Anita Willman for the Texas Class), sue on behalf of people who have similar claims. All these people are a class or class members. Bringing a case, such as this one, as a class action allows adjudication of many similar claims of persons and entities that might be economically too small to bring in individual actions. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a Settlement?

The Defendant denies that it did anything wrong. Instead, both sides, with the assistance of United States Magistrate Judge Douglas F. McCormick of the United States District Court for Central District of California acting as a mediator, have agreed to the Settlement. Both sides want to avoid the cost of further litigation. The Court has not decided in favor of the Class Representatives or the Defendant. The Class Representatives and their attorneys think the Settlement is best for the Classes.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

The Classes consist of all natural persons who resided in one of the following eleven States and purchased Wesson Oil Products in that State, for their own personal, non-commercial use, during the following time periods:

| <u>STATE:</u> | <u>CLASS PERIOD:</u> |
|---------------|---------------------------------------|
| California | June 28, 2007 through July 1, 2017 |
| Colorado | January 12, 2009 through July 1, 2017 |
| Florida | January 12, 2008 through July 1, 2017 |

| <u>STATE:</u> | <u>CLASS PERIOD:</u> |
|---------------|---------------------------------------|
| Illinois | January 12, 2007 through July 1, 2017 |
| Indiana | January 12, 2006 through July 1, 2017 |
| Nebraska | January 12, 2008 through July 1, 2017 |
| New York | January 12, 2008 through July 1, 2017 |
| Ohio | January 12, 2010 through July 1, 2017 |
| Oregon | January 12, 2006 through July 1, 2017 |
| South Dakota | January 12, 2006 through July 1, 2017 |
| Texas | January 12, 2010 through July 1, 2017 |

Excluded from the Classes are: (a) governmental entities; (b) Conagra, and its affiliates, subsidiaries, employees, current and former officers, directors, agents, and representatives; (c) the members of the Court and its staff; and (d) Opt-Outs.

If you did not reside in any of these eleven States during these time periods or did not purchase Wesson brand cooking oils in these states, then you are not a Class Member and are not affected by this Action or this Settlement.

6. Which Products are included in the Settlement?

“Wesson Oil Products” means Wesson brand cooking oils, including Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil, and Wesson Best Blend, all of which were marketed, advertised, and sold as “Natural” during the applicable Class Periods.

7. What if I am still not sure if I am included in the Settlement?

If you are not sure whether you are a Class Member, or have any other questions about the Settlement, you should visit the Settlement Website, www.wessonoilsettlement.com, or call the Settlement Administrator toll-free at 1-833-291-1651.

SETTLEMENT BENEFITS – WHAT CLASS MEMBERS GET

8. What does the Settlement provide?

The settlement provides both injunctive relief and monetary damages to all Class members.

Injunctive Relief

In July 2017, approximately six years after this lawsuit began, Conagra removed the “100% Natural” claim from all Wesson labels, and stopped advertising the products as “natural.” Plaintiffs contend that this litigation was a significant factor leading to Conagra’s decision to institute labeling and marketing changes. Conagra contends its decision to change the label did not relate in any way to this litigation.

In November 2018, the Parties agreed to a settlement that included the entry of an injunction ordering that:

- Conagra will not advertise, market or sell Wesson Oil Products labeled as “natural” unless the FDA issues guidance or a regulation, or federal legislation is enacted, permitting use of a “natural” claim on a product containing oil derived from genetically engineered seed stock.
- Conagra will not advertise, market or sell Wesson Oil Products as “non-GMO” unless the claim is certified by an independent third-party certification organization.
- The Settlement does not preclude Conagra from making other changes to the advertising and marketing of

Wesson Oil Products, provided that those changes do not conflict with the provisions of the Settlement.

Approximately one month after the Parties reached this agreement, Conagra announced that it had agreed to sell the Wesson brand to Richardson International, a Canadian company. The sale was consummated on February 25, 2019. As a result of that sale, the Parties have revised the terms of the injunctive relief to clarify that it will apply to Conagra in the event it reacquires the Wesson brand.

The Parties agree that the value of this injunctive relief to the Classes is \$27,000,000.

Monetary Damages

The Settlement also provides the following monetary benefits to Class Members: (a) \$0.15 for each unit of Wesson Oils purchased by members of each of the eleven Classes to Households submitting Valid Claim Forms (with a maximum Household recovery of 30 units without proof of purchase); (b) an additional fund of \$575,000 to be allocated to members of the New York and Oregon state classes who submit Valid Claim forms, as compensation for the statutory damages provided for in the consumer protection laws of those states which Plaintiffs contend apply; and (c) an additional fund of \$10,000 to compensate members of each of the eleven Classes to Households submitting valid proof of purchase receipts for more than 30 purchases at \$0.15 for each such purchase above 30. Should \$10,000 be insufficient to cover such claims, Class Counsel shall pay the non-funded claims from any attorneys' fees awarded in this case; should the \$10,000 fund not be exhausted, the remaining funds will revert to category (b) above for payment to the New York and Oregon state Classes.

Recovery is limited to one Claim per Household, which means all persons residing at the same physical address.

9. What can I get from the Settlement?

ALL CLASS MEMBERS

Class Members who timely submit a valid approved claim are entitled to receive settlement compensation of Fifteen Cents (\$0.15) per unit of the Wesson Oil Product purchased during the relevant Class Period.

Class Members may submit a claim for up to a maximum of 30 units per Household without proof of purchase. Class Members who provide proof of purchase receipts for more than 30 units to the satisfaction of the Settlement Administrator may receive settlement compensation of Fifteen Cents (\$0.15) for all units with receipts.

Proof of Purchase means an itemized retail sales receipt showing, at a minimum, the purchase of the Product, and the date, place and amount of purchase.

Only one (1) Claim Form can be submitted per Household, which is defined as all persons residing at the same physical address.

NEW YORK AND OREGON CLASS MEMBERS

The Settlement includes a \$575,000 fund to be allocated solely among New York and Oregon Class Members who submit valid claim forms, in proportion to the number of units they purchased at retail during the relevant time period. This fund is to compensate New York and Oregon Class Members for the statutory damages provided for in the consumer protections laws of those states that Plaintiffs contend apply.

HOW TO GET A PAYMENT

10. How can I get a payment?

To be eligible to receive a payment from the Settlement, you must complete and submit a timely Claim Form. You can complete and submit your Claim Form online at the Settlement Website, www.wessonoilsettlement.com. The

Claim Form can be downloaded from the Settlement Website, as well. You can also request a Claim Form be sent to you by sending a written request to the Settlement Administrator by mail or by email:

By Mail: Wesson Oil Settlement, c/o JND Legal Administration, P.O. Box 91249, Seattle, WA 98111-9349

By Email: info@SettlementWebsite.com

Please read the instructions carefully, fill out the Claim Form, and mail it postmarked no later than _____, 2019 to the Settlement Administrator: Wesson Oil Settlement, c/o JND Legal Administration, P.O. Box 91249, Seattle, WA 98111-9349, or submit your Claim Form online at the Settlement Website, www.wessonoilsettlement.com, by _____, 2019.

If you do not submit a Valid Claim Form by the deadline, you will not receive a payment, but you will be bound by the Court's judgment in this Action.

11. When would I get my payment?

Payments will be made to Class Members who submit valid and timely Claim Forms after the Court grants "final approval" to the Settlement and after all appeals are resolved. If the Court approves the Settlement, there may be appeals. It's always uncertain whether these appeals can be resolved and resolving them can take time. Please be patient.

12. What am I giving up to get a payment or stay in the Settlement?

If you are a Class Member, unless you exclude yourself from the Settlement, you cannot sue the Defendant, continue to sue, or be part of any other lawsuit against the Defendant about the claims released in this Settlement. It also means that all the decisions by the Court will bind you. The Released Claims and Released Parties are defined in the Settlement Agreement and describe the legal claims that you give up if you stay in the Settlement. The Released Claims shall not include any claim against the Released Parties for bodily injury allegedly suffered in connection with the purchase or use of the Wesson Oil Products. The Settlement Agreement is available at the Settlement Website, www.wessonoilsettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from the Settlement or you want to keep the right to sue or continue to sue the Defendant on your own about the claims released in this Settlement, then you must take steps to get out. This is called excluding yourself—or it is sometimes referred to as "opting out" of the Settlement.

13. How do I get out of the Settlement?

To exclude yourself (or "Opt-Out") from the Settlement, you must complete and mail to the Settlement Administrator a written request. The request to opt out must:

- bear the handwritten signature of the Class Member seeking to opt out;
- set out the Class Member's full legal name, valid mailing address, and functioning telephone number;
- state that the Class Member has reviewed and understood the Class Notice and chooses to be excluded from the Settlement; and
- provide the name of and contact information for the Class Member's attorney, if represented by an attorney.

You must mail your exclusion request, postmarked no later than _____, 2019 to:

Wesson Oil Settlement
Exclusions
c/o JND Legal Administration
P.O. Box 91250
Seattle, WA 98111-9350

You cannot exclude yourself by telephone or by e-mail. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit, and you may be able to sue (or continue to sue) the Defendant and the other Released Parties about the claims in this lawsuit.

No person or entity may opt-out on behalf of another Class Member. No class-wide, mass opt-outs, or opt-outs signed by attorneys are permitted.

If you don't include the required information or timely submit your request for exclusion, you will remain a Class Member and will not be able to sue the Defendant about the claims in this lawsuit.

14. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Settlement to continue your own lawsuit. If you properly exclude yourself from the Settlement, you shall not be bound by any orders or judgments entered in the Action relating to the Settlement.

15. If I exclude myself, can I still get a Settlement payment?

No. You will not get any money from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not send in a Claim Form asking for benefits.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. The Court has appointed DiCello Levitt Gutzler LLC and Milberg Tadler Phillips Grossman LLP as Class Counsel.

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class Counsel will file a motion on or before _____, 2019 seeking an award of up to \$6,850,000 in fees and expenses, as well as service awards of up to (a) \$3,000 for each of the six Class Representatives whose depositions were taken by Conagra (Robert Briseño, Michele Andrade, Jill Crouch, Pauline Michael, Necla Musat, and Maureen Towey) and (b) \$1,000 for each of the seven whose depositions were not taken (Julie Palmer, Cheri Shafstall, Dee Hooper-Kercheval, Kelly McFadden, Erika Heins, Rona Johnston, and Anita Willman). The Court will determine the amounts of fees, expense and service awards, which will be paid by Conagra separately from the monetary relief paid to the Classes. Plaintiffs' Counsel spent considerable time and effort prosecuting this matter on a purely contingent fee basis, and advanced the expenses of the litigation, in the expectation that they would receive a fee, and have expenses reimbursed, only if there was a benefit created for the Classes. Class Counsel represents that the requested attorneys' fees are less than their billable hourly fees would have been had the case not been pursued on a contingent-fee basis.

After Class Counsel's motion for attorneys' fees and expenses is filed on or before _____, 2019, it will

be posted on the settlement website at www.wessonoilsettlement.com. You will have an opportunity to comment on this fee request.

OBJECTING TO THE SETTLEMENT

18. How do I tell the Court if I do not like the Settlement?

Any Class Member who does not timely and properly opt out of the Settlement may object to the fairness, reasonableness, or adequacy of the proposed Settlement under Federal Rule of Civil Procedure 23. Each Class Member who wishes to object to any term of this Settlement must do so, in writing, by filing a written objection with the Clerk of the Court and mailing it to Class Counsel, counsel for Conagra, and the Settlement Administrator.

The written objection must include: (a) copies of any materials that the objector intends to submit to the Court or present at the Fairness Hearing; (b) be personally signed by the objector and, if represented by counsel, by his or her counsel; (c) include information or documents sufficient to show that the objector is a Class Member; and (d) clearly state in detail (i) the legal and factual ground(s) for the objection, (ii) the objecting Class Member's name, mailing address, email address, and telephone number, (iii) whether it applies only to the objector, to a specific subset of the class, or to the entire class, (iv) if represented by counsel, such counsel's name, email address, mailing address, and telephone number, (v) any request to present argument to the Court at the Fairness Hearing; (vi) previous objections that the objecting Class Member has filed in class action settlements in the past five years and the results of those objections (including any settlements that were reached concerning his or her objection); and (vii) previous objections that the objecting Class Member's counsel has filed either in a representative capacity or on their own behalf in the past five years (including any settlements that were reached concerning those objections).

Your objection, along with any supporting material you wish to submit, must be filed with the Court, with a copy delivered to Class Counsel and Defendant's Counsel no later than _____, 2019 at the following addresses:

| | |
|--|---|
| <p><u>Clerk of the Court</u></p> <p>Office of the Clerk United States District Court for the Central District of California 350 W. 1st Street, Suite 4311 Los Angeles, CA 90012</p> | <p><u>Class Counsel</u></p> <p>Ariana J. Tadler Milberg Tadler Phillips Grossman LLP One Penn Plaza, Suite 1920 New York, NY 10119</p> |
| <p><u>Counsel for Conagra</u></p> <p>Angela M. Spivey Alston & Bird One Atlantic Center 1201 W Peachtree Street, NE Atlanta, GA 30309-1404</p> | <p><u>Class Counsel</u></p> <p>Adam J. Levitt DiCello Levitt Gutzler LLC Ten North Dearborn Street, Eleventh Floor Chicago, IL 60602</p> |

19. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on _____, 2019 at ____:____.m. at the United States Courthouse, 350 W. 1st Street, Courtroom 7C, Los Angeles, CA 90012.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to pay Class Counsel and the Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have, but you may come at your own expense. If you submit an objection, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time to the proper addresses, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear." Your request must be filed with the Clerk of the Court and served on Class Counsel and Defendant's Counsel no later than _____, 2019.

Any such request must state the name, address, and telephone number of the Class Member, as well as the name, address, and telephone number of the person that shall appear on his or her behalf. Any request for appearance that fails to satisfy these requirements, or that has otherwise not been properly or timely submitted, shall be deemed ineffective and a waiver of such Class Member's rights to appear and to comment on the Settlement at the Fairness Hearing. Only the Parties, Class Members, or their counsel may request to appear and be heard at the Fairness Hearing. Persons or entities that opt out may not request to appear and be heard at the Fairness Hearing.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will not get a payment from the Settlement. Unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant about the legal issues in this case, ever again.

GETTING MORE INFORMATION

24. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement, available at the Settlement Website, www.wessonoilsettlement.com. If you have additional questions or want to request a Claim Form, you can visit the Settlement Website or contact the Settlement Administrator:

By Mail: Wesson Oil Settlement, c/o JND Legal Administration, P.O. Box 91249, Seattle, WA 98111-9349

By Email: info@wessonoilsettlement.com

By Phone Toll-Free: 1-833-291-1651.

Updates will be posted at the Settlement Website, www.wessonoilsettlement.com, as information about the Settlement process becomes available.

For a more detailed statement of the matters involved in the litigation or the Settlement, you may review the various

documents on the Settlement Website, www.wessonoilsettlement.com, and/or the other documents filed in this case by visiting (during business hours) the clerk's office at the United States District Court for the Central District of California, First Street Courthouse, 350 W. 1st Street, Suite 4311, Los Angeles, CA 90012, File: *In re ConAgra Foods, Inc*, Case No. 2:11-cv-05379-CJC-AGR, or by accessing the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

PLEASE DO TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THE SETTLEMENT OR THE CLAIM PROCESS.

Dated: _____, 2019

By Order of the Court
United States District Court
Central District of California

CLAIM FORM INSTRUCTIONS

| | | |
|--|--|-------------------|
| <i>Your claim must be either submitted online or postmarked and mailed by: _____, 2019</i> | Wesson Oil Settlement c/o JND Legal Administration P.O. Box 91249 Seattle, WA 98111-9349 Website: www.wessonoilsettlement.com | WESSON OIL |
|--|--|-------------------|

Instructions for Completing the Claim Form

You are eligible to submit a Claim Form if you resided in any of these eleven States* and purchased Wesson brand cooking oils, including Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil, and Wesson Best Blend (“Wesson Oil Products”), in that state for your own personal, non-commercial use during these time periods:

| <u>State:</u> | <u>Class Period:</u> |
|---------------|---------------------------------------|
| California | June 28, 2007 through July 1, 2017 |
| Colorado | January 12, 2009 through July 1, 2017 |
| Florida | January 12, 2008 through July 1, 2017 |
| Illinois | January 12, 2007 through July 1, 2017 |
| Indiana | January 12, 2006 through July 1, 2017 |
| Nebraska | January 12, 2008 through July 1, 2017 |
| New York | January 12, 2008 through July 1, 2017 |
| Ohio | January 12, 2010 through July 1, 2017 |
| Oregon | January 12, 2006 through July 1, 2017 |
| South Dakota | January 12, 2006 through July 1, 2017 |
| Texas | January 12, 2010 through July 1, 2017 |

Class Members who timely submit a Valid Claim Form are entitled to receive settlement compensation of Fifteen Cents (\$0.15) per unit of the Wesson Oil Product purchased during the relevant Class Period, up to a maximum of thirty (30) units per Household without providing proof of purchase receipts. With proof of purchase receipts, there is no limit on the number of units for which Class Members are entitled to receive settlement compensation. Proof of purchase means an itemized retail sales receipt showing, at a minimum, the purchase of the Product, and the date, place and amount of purchase. Household means all persons residing at the same physical address.

Additional Fund for Residents of New York and Oregon: The Settlement includes a \$575,000 fund to be allocated solely among New York and Oregon Class Members — those individuals who resided in New York or Oregon during the class periods and purchased Wesson brand cooking oils in those states during the class periods — who submit Valid Claim Forms. This fund is to compensate New York and Oregon Class Members for the statutory damages provided for in the consumer protections laws of those states which Class Counsel would seek at trial. Participation in the separate fund for New York and Oregon Class Members requires verification of the city or town in which the purchases were made in either New York or Oregon, in Section C of this Claim Form.

* If you did not reside in any of these eleven States or did not purchase Wesson brand cooking oils in these states during these time periods, do not submit this Claim Form. You are not a Class Member and are not affected by this Action or this Settlement.

Only one (1) Claim Form may be submitted per Household, which is defined as all persons residing at the same physical address.

On or before _____, 2019, your completed Claim Form must be either submitted online at www.wessonoilsettlement.com or postmarked and mailed to:

Wesson Oil Settlement
c/o JND Legal Administration
P.O. Box 91249
Seattle, WA 98111-9349

You must complete the entire Claim Form and sign the Claim Form under penalty of perjury. If you are submitting purchase receipts in support of your Claim Form, provide copies of those receipts. Do not submit original receipts, as they will not be returned to you.

ALL CLAIMS ARE SUBJECT TO VERIFICATION

PLEASE KEEP A COPY OF YOUR COMPLETED CLAIM FORM FOR YOUR RECORDS.

| <u>CLAIM FORM</u> | | |
|--|--|-------------------|
| <i>Your claim must be either submitted online or postmarked and mailed by:</i> _____, 2019 | Wesson Oil Settlement c/o JND Legal Administration P.O. Box 91249 Seattle, WA 98111-9349 Website: www.wessonoilsettlement.com | WESSON OIL |

SECTION A: NAME AND CONTACT INFORMATION

Provide your name and contact information below. It is your responsibility to notify the Settlement Administrator of any changes to your contact information after the submission of your Claim Form.

| | | |
|--|---------------------|-----------------|
| | | |
| First Name | Last Name | |
| | | |
| Physical Address (Street Address, Including Apartment or Unit Number) | | |
| | | |
| City | State | Zip Code |
| | | |
| Email Address | Phone Number | |

SECTION B: PURCHASE INFORMATION

Check the box below to verify the State[†] where your Household resided and where you purchased Wesson Oil Products for your own personal, non-commercial use during the applicable Class Period:

| | <u>State:</u> | <u>Class Period:</u> |
|--------------------------|----------------------|---------------------------------------|
| <input type="checkbox"/> | California | June 28, 2007 through July 1, 2017 |
| <input type="checkbox"/> | Colorado | January 12, 2009 through July 1, 2017 |
| <input type="checkbox"/> | Florida | January 12, 2008 through July 1, 2017 |
| <input type="checkbox"/> | Illinois | January 12, 2007 through July 1, 2017 |
| <input type="checkbox"/> | Indiana | January 12, 2006 through July 1, 2017 |
| <input type="checkbox"/> | Nebraska | January 12, 2008 through July 1, 2017 |
| <input type="checkbox"/> | New York** | January 12, 2008 through July 1, 2017 |

[†] If you did not reside in any of these eleven States during these time periods, do not submit this Claim Form. You are not a Class Member and are not affected by this Action or this Settlement.

| | <u>State:</u> | <u>Class Period:</u> |
|--------------------------|---------------|---------------------------------------|
| <input type="checkbox"/> | Ohio | January 12, 2010 through July 1, 2017 |
| <input type="checkbox"/> | Oregon** | January 12, 2006 through July 1, 2017 |
| <input type="checkbox"/> | South Dakota | January 12, 2006 through July 1, 2017 |
| <input type="checkbox"/> | Texas | January 12, 2010 through July 1, 2017 |

** Note: Participation in the separate fund for New York or Oregon state consumers requires verification of the city or town in which the purchases were made in either New York or Oregon. If you are a New York or Oregon purchaser, you must complete Section C of this Claim Form.

If your Household address at the time of purchase of Wesson Oil Products during the above applicable Class Period **differs from the address provided above**, provide your Household address at the time of purchase below:

Household Address (Physical Address, Including Apartment or Unit Number)

City

State

Zip Code

- ☐ Check this box to verify that only one Claim Form has been submitted per Household, which is defined as all persons residing at the same physical address.

List in the box below the total number of units of Wesson Oil Product you purchased in the state selected above during the applicable Class Period:

Units

- ☐ Check this box to verify that each of the above purchase units were for private, household use, and not purchases for commercial use or catering operations.
- ☐ Check this box if you are providing proof of purchase receipts in support of your Claim Form. You may submit a claim for up to 30 units without providing proof of purchase. There is no limit on the number of units you can claim for which you submit proof of purchase. Proof of purchase means itemized retail sales receipts showing, at a minimum, the name of the product, and the date, place, and amount of purchase.

SECTION C: PURCHASE INFORMATION FOR NEW YORK AND OREGON PURCHASERS ONLY

If you did not reside in either New York or Oregon and make purchases in those states, skip this section and go to Section D.

- ☐ Check this box if you are a New York or Oregon Class Member to verify state residence and provide in the box below the city or town where your purchases were made:

| <u>City or Town where purchases were made during the applicable Class Period:</u> | <u>State (NY or OR)</u> |
|---|-------------------------|
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SECTION D: CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information provided in this Claim Form, and any attachments, is true and correct to the best of my knowledge, information and belief. I understand the Settlement Administrator may contact me to request further verification of the information provided in this Claim Form.

Signed: _____ Date: _____

Full Printed Name: _____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE CONAGRA FOODS, INC.

Case No. CV 11-05379-CJC (AGR_x)

MDL No. 2291

**DECLARATION OF JENNIFER M.
KEOUGH REGARDING PROPOSED
NOTICE PROGRAM**

I, JENNIFER M. KEOUGH, declare as follows:

INTRODUCTION

1. I am the Chief Executive Officer (“CEO”) of JND Legal Administration LLC (“JND”). This Declaration is based on my personal knowledge, as well as upon information provided to me by experienced JND employees, and if called upon to do so, I could and would testify competently thereto.

2. I have more than 20 years of legal experience creating and supervising notice and claims administration programs and have personally overseen well over 500 matters. A summary overview of my experience is attached hereto as Exhibit A. A more comprehensive description of my experience is available on request.

3. JND is a legal administration service provider with headquarters in Seattle, Washington. JND has extensive experience with all aspects of legal administration and has administered hundreds of class action settlements.

4. As CEO, I am involved in all facets of JND’s operation, including monitoring the implementation of our notice and claims administration programs.

5. I submit this Declaration at the request of Counsel in the above-referenced litigation to describe the proposed Notice Program, attached hereto as Exhibit B, and address why it is consistent with other best practicable court-approved notice programs and the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”) and the Federal Judicial Center (“FJC”) guidelines for best practicable due process notice.

RELEVANT EXPERIENCE

6. JND is one of the leading legal administration firms in the country. JND’s class action division provides all services necessary for the effective implementation of class action settlements including: (1) all facets of legal notice, such as outbound mailing, email notification, and the design and implementation of media programs, including through digital and social media platforms; (2) website design and deployment, including on-line claim filing capabilities; (3) call center and other contact support; (4) secure class member data management; (5) paper and electronic claims processing; (6) calculation design and programming; (7) payment disbursements through check, wire, PayPal, merchandise credits, and other means; (8) qualified settlement fund tax reporting; (9) banking services and reporting; and (10) all other functions related to the secure and accurate administration of class action settlements.

7. JND was recently approved as a vendor for the United States Securities and Exchange Commission (“SEC”) as well as by the Federal Trade Commission (“FTC”). We also have Master Services Agreements with various law firms, corporations, banks, and other government agencies, which were only awarded after JND underwent rigorous reviews of our systems, privacy policies, and procedures. JND has also been certified as SOC 2 compliant by noted accounting firm Moss Adams. Finally, JND has been recognized by various publications, including the *National Law Journal*, the *Legal Times*, and, most recently, the *New York Law Journal*, for excellence in class action administration.

8. JND and its principals have extensive experience handling Settlements in courts throughout the 9th Circuit including, but not limited to: *Hernandez v. Experian Information Solutions, Inc.*, Case No. 05-cv-1070-DOC (MLGx) (C.D. Cal.); *Chester v. The TJX Co., Inc.*, Case No. 5:15-cv-01437-DDP-DTBx (C.D. Cal.); *Gragg v. Orange CAB Co., Inc.*, Case No. CV 12-576 RSL (W.D. Wash.); *Kellgren, et al., v. Petco Animal Supplies, Inc., et al.*, Case No. 3:13-cv-00644-L-KSC (S.D. Cal.); *Nozzi, et al., v. Housing Authority of the City of Los Angeles, et al.*, Case No. CV 07-0380-PA-FFMx (C.D. Cal.); *Kissel v. Code42 Software, Inc., et al.*, Case No. SACV 15-1936-JLS (KES) (C.D. Cal.); *Harris, et al., v. Amgen, Inc., et al.*, Case No. CV 07-05442-PSG(PLAx) (C.D. Cal.); *In re: Resonant Inc. Securities Litigation*, Case No. 15-cv-01970-SJO-MRW (C.D. Cal.); *Scherer v. Tiffany & Co.*, Case No. 11-cv-00532 (S.D. Cal.); *Seebrook v. The Children's Place Retail Stores*, Case No. 11-cv-00837 (N.D. Cal.); *Fleury v. Richemont North America, Inc. (Cartier)*, Case No. 05-cv-04525 (N.D. Cal.); *Howell v. Checkr, Inc.*, Case No. 3:17-cv-04305-SK (N.D. Cal.); *Lloyd v. CVB Financial Corp., et al.*, Case No. 10-cv-06256-CAS-PJW (C.D. Cal.); *In re Intuit Data Litigation*, Case No. 15-cv-1778-EJD (N.D. Cal.); *DeFrees, et al. v. John C. Kirkland, et al. and U.S. Aerospace, Inc.*, Case No. 11-cv-04272-JLS-SP (C.D. Cal.); *McKibben, et al. v. McMahon, et al.*, Case No. 14-cv-02171-JGB-SP (C.D. Cal.); *Schwartz v. Opus Bank et al.*, Case No. 16-cv-07991-AB-JPR (C.D. Cal.); *Paggos v. Resonant, Inc. et al.*, Case No. 15-cv-01970-SJO (MRW) (C.D. Cal.); *Wahl v. Yahoo! Inc. d/b/a Rivals.com*, Case No. 17-cv-02745-BLF (N.D. Cal.); *del Toro Lopez v. Uber Technologies, Inc.*, Case No. 17-cv-06255-YGR (N.D. Cal.); *In re Yahoo! Inc. Securities Litigation*, Case No. 17-cv-00373 (N.D. Cal.); *Connolly v. Umpqua Bank*, Case No. C15-517-TSZ (W.D. Wash.).

9. The principals of JND, including myself, collectively have over 75 years of experience in class action legal and administrative fields. We have personally overseen some of the most complex legal administration programs including: \$20 billion Gulf Coast Claims Facility; \$10 billion Deepwater Horizon BP Settlement; \$6.15 billion WorldCom Securities Settlement; \$3.4 billion Indian Trust (the largest U.S. Government class action ever); and \$3.05 billion VisaCheck/MasterMoney Antitrust Settlement.

10. In the past several months alone, JND has been appointed Notice Expert in the following matters: *Linneman, et al. v. Vita-Mix Corp.*, Case No. 15-cv-748 (S.D. Ohio); *In re Intuit Data Litig.*, Case No. 15-cv-1778-EJD (N.D. Cal.); *In re Broiler Chicken Antitrust Litig.*, Case No. 1:16-cv-08637 (N.D. Ill.); *McWilliams v. City of Long Beach*, Case No. BC361469 (Cal. Super. Ct.); *Granados v. County of Los Angeles*, Case No. BC361470 (Cal. Super. Ct.); *Finerman v. Marriott Ownership Resorts, Inc.*, Case No. 3:14-cv-1154-J-32MCR (M.D. Fla.); *Huntzinger et al. v. Suunto Oy et al.*, Case No. 37-2018-00027159-CU-BT-CTL (Cal. Super. Ct.); and *Dover v. British Airways, PLC (UK)*, Case No. 12-5567 (E.D.N.Y.). I have also been appointed as the Independent Claims Administrator by the United States District Court for the Northern District of California in *Allagas v. BP Solar Int'l, Inc.*, Case No. 14-cv-00560.

11. JND's legal notice team, which operates under my direct supervision, researches, designs, develops, and implements a wide array of legal notice programs to meet the requirements of Rule 23 and relevant state court rules. Our notice campaigns, which are regularly approved by courts throughout the United States, use a variety of media including newspapers, press releases, magazines, trade journals, radio, television, social media and the internet. The media proposed depends on the circumstances and allegations of the case, the demographics of the class, and the habits of its members, as reported by various research and analytics tools. During my career, I have submitted several hundred affidavits to courts throughout the country attesting to our role in the creation and launch of various media programs.

NOTICE PLAN OVERVIEW

12. The objective of the Notice Program is to provide notice of the proposed Settlement to members of the following Settlement Classes, which are limited by the applicable statute of limitations periods established by the laws of the eleven states ("Class States"):

- a. California Class: all natural persons who resided in the State of California and purchased Wesson Oil Products in California, for personal, non-commercial use, between June 28, 2007 and July 1, 2017 ("California Class Period").
- b. Colorado Class: all natural persons who resided in the State of Colorado and purchased Wesson Oil Products in Colorado, for personal, non-commercial use, between January 12, 2009 and July 1, 2017 ("Colorado Class Period").

- c. Florida Class: all natural persons who resided in the State of Florida and purchased Wesson Oil Products in Florida, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“Florida Class Period”).
- d. Illinois Class: all natural persons who resided in the State of Illinois and purchased Wesson Oil Products in Illinois, for personal, non-commercial use, between January 12, 2007 and July 1, 2017 (“Illinois Class Period”).
- e. Indiana Class: all natural persons who resided in the State of Indiana and purchased Wesson Oil Products in Indiana, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“Indiana Class Period”).
- f. Nebraska Class: all natural persons who resided in the State of Nebraska and purchased Wesson Oil Products in Nebraska, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“Nebraska Class Period”).
- g. New York Class: all natural persons who resided in the State of New York and purchased Wesson Oil Products in New York, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“New York Class Period”).
- h. Ohio Class: all natural persons who resided in the State of Ohio and purchased Wesson Oil Products in Ohio, for personal, non-commercial use, between January 12, 2010 and July 1, 2017 (“Ohio Class Period”).
- i. Oregon Class: all natural persons who resided in the State of Oregon and purchased Wesson Oil Products in Oregon, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“Oregon Class Period”).
- j. South Dakota Class: all natural persons who resided in the State of South Dakota and purchased Wesson Oil Products in South Dakota, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“South Dakota Class Period”).
- k. Texas Class: all natural persons who resided in the State of Texas and purchased Wesson Oil Products in Texas, for personal, non-commercial use, between January 12, 2010 and July 1, 2017 (“Texas Class Period”).

13. Excluded from the Classes are: (a) governmental entities; (b) Conagra, and its affiliates, subsidiaries, employees, current and former officers, directors, agents, and representatives; (c) the members of the Court and its staff; and (d) Opt-Outs.

14. It is our understanding that contact information is not readily available for Class Members. As a result, JND designed a Notice Program that will effectively reach unknown Class Members in the Class States through a consumer media campaign. JND’s proposed Notice Program consists of a print effort in the national edition of a leading consumer magazine (*People*); a heavy digital effort geographically focused on the Class States that includes the leading digital network (Google Display Network) and the top social platform (Facebook); newspaper notice placements in the *Los Angeles Daily News* to fulfill

California's Consumers Legal Remedies Act (CLRA) notice requirements; an internet search effort on a top search engine site (Google); a press release that will be distributed to media outlets nationwide; and the establishment of a settlement website and toll-free phone number from which Class Members may receive additional information about the Settlement. The print and digital media effort alone is designed to reach 70% of potential Class Members.¹ The CLRA notice placements, internet search effort and the distribution of the press release will enhance reach beyond the estimated 70%.

TARGET ANALYSIS

15. JND utilizes reputable advertising media research tools when analyzing our target, selecting media and determining the effectiveness of our media plans. GfK Mediamark Research & Intelligence, LLC (MRI)² data was used to analyze demographic and media usage for households located in the Class States that purchased Wesson Best Blend or Wesson Vegetable Oil in the past six months ("Wesson Oil Consumers in the Class States"). According to MRI data, the majority of Wesson Oil Consumers in the Class States are: 25 years of age or older (91.0%), from households with incomes less than \$150,000 (84.5%), White (68.5%), and women (52.4%). Compared to the general adult population, Wesson Oil Consumers in the Class States are more likely to be: 45 years of age or older, Spanish-speakers, and Black/African American or Spanish/Hispanic/Latino descent/origin.

16. U.S. Census data was also studied, indicating a mobility rate ranging between 10.8-12.7% during the 2006-2017 Class period, of which 14.7-19.3% moved out of state. Therefore, JND considered the fact that some Class Members may no longer reside within the Class States. As a result, for media

¹ Reach is the net, unduplicated percent of potential Class Members who have an opportunity to be exposed to notice at least one time over the course of the notice campaign.

² MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media. Established in 1979, MRI measures the usage of nearly 6,000 product and service brands across 550 categories, along with the readership of hundreds of magazines and newspapers, internet usage, television viewership, national and local radio listening, yellow page usage, and out-of-home exposure. Based on a yearly face-to-face interview of 26,000 consumers in their homes, MRI's Survey of the American Consumer™ is the primary source of audience data for the U.S. consumer magazine industry and the most comprehensive and reliable source of multi-media audience data available.

buying and reach calculating purposes, a broad target of adults 18 years of age or older (“Adults 18+”) in the Class States will be used and internet impressions will be allocated based on the age breakdown of Wesson Oil Consumers in the Class States.³ In addition, an emphasis will be placed on reaching Spanish-speaking Class Members and some nationwide notice tactics will be considered to reach Class Members who now reside outside of the Class States.

17. In terms of media usage, MRI data indicates that 85% of Wesson Oil Consumers in the Class States use the internet in a 30-day period, with 74% looking at or using the internet on their cellphone or smartphone. As a result, JND’s proposed plan relies heavily on digital notice efforts geographically targeted to the Class States. Given that 15% of likely Class Members *do not* use the internet in a 30-day period and the fact that some Class Members may no longer reside within the Class States, a national print effort is also proposed.

NOTICE PLAN DETAILS

18. **Print Notice:** JND will place a minimum third page notice in the national edition of *People*, a leading weekly entertainment magazine. *People* provides readership to over 38 million adults nationwide, reaching 15.5% of Adults 18+ and 17.6% of Wesson Oil Consumers in the Class States. Its readers are also 14% more likely to be Wesson Oil Consumers in the Class States, as compared to the general population. *People* extends reach among a broad demographic segment, including Class Members who may not use the internet as frequent, as well as those who may no longer reside in the Class States.

19. **Digital Notice:** JND will implement a digital notice effort that includes notice placements on GDN and Facebook. The digital effort will deliver approximately 194 million impressions to Adults 18+ in the Class States. Parameters will be set up for each state specifically, so that impressions will be designated based on the state’s population. Impressions will also be allocated

³ Impressions or Exposures are the total number of opportunities to be exposed to a media vehicle or combination of media vehicles containing a notice. Impressions are a gross or cumulative number that may include the same person more than once. As a result, impressions can and often do exceed the population size

based on MRI's demographic age breakdown of Wesson Oil Consumers in the Class States (i.e. (approximately), 9% to Adults 18-24 years of age, 14% to Adults 25-34 years of age, 16% to Adults 35-44 years of age, 19% to Adults 45-54 years of age, 20% to Adults 55-64 years of age, and 22% to Adults 65 years of age or older). In addition, nearly 12% of GDN impressions will target Spanish Adults 18+. Activity will run across all devices (i.e., desktop, laptop, tablet, and mobile), with a heavy emphasis on mobile, over a 12-week period.

20. **CLRA Notice**: To fulfill the CLRA notice requirement, JND will place an approximately quarter page notice once per week, over four consecutive weeks in the *Los Angeles Daily News*.

21. **Internet Search**: Web browsers frequently default to a search engine pages like Google, Bing or Yahoo!, making search engines a common source to get to a specific website (i.e., as opposed to typing in the desired URL in the navigation bar). As a result, JND will implement an internet search effort with Google. When purchased keywords related to the case are searched, a paid ad with a hyperlink to the case website may appear on the search engine results page. Efforts will be monitored and optimized so that ads appear above or below organic search results generating the most click-throughs to the case website. The internet search effort enhances notice exposure nationwide and allows Class Members who may be searching about the case to readily find a direct link to the case url.

22. **Press Release**: JND will distribute a press release in English and Spanish that will be issued to approximately 11,000 English media outlets and approximately 150 Spanish media outlets nationwide. The press release will provide information about the settlement and allow for additional notice exposure.

23. **Settlement Website**: JND will develop an informational, interactive, settlement website that will allow Class Members to obtain more information about the Settlement, including relevant pleadings, settlement documents, any applicable deadlines, the Posted Notice, and a notice in Spanish for Spanish-speaking Class Members. The Settlement website will have an easy-to-navigate design and will be formatted to emphasize important information and deadlines.

24. The Settlement website will be optimized for mobile visitors so that information loads quickly on mobile devices and will also be designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms will be included in the site's metadata to maximize search engine rankings. Visitors to the Settlement website will have the ability to download a Claim Form or submit one electronically.

25. **Settlement Toll-Free Number:** JND will establish and maintain a 24-hour, toll-free telephone line where callers may obtain information about the Settlement.

NOTICE REACH

26. To calculate the reach of the Notice Program, JND used MRI and a comScore reach platform with a total Adult 18+ population base, as opposed to an internet population base which would result in fewer impressions and would inflate the overall reach calculation.⁴ According to these two reputable resources, the proposed Notice Plan will reach 70% of likely Class Members on average 2.6 times each. The CLRA notice placements, internet search effort and the press release will enhance reach beyond the estimated 70%.⁵

NOTICE DESIGN AND CONTENT

27. I have reviewed the proposed notice documents and believe they are in plain language and comply with the Federal Judicial Center's guidelines for class action notices. They contain easy-to-read summaries of the Settlement and the options that are available to each potential Class Member. The notices also provide instructions on how to get more information about the Settlement.

⁴ comScore is a leading cross-platform measurement and analytics company that precisely measures audiences, brands and consumer behavior everywhere, capturing 1.9 trillion global interactions monthly. comScore's proprietary digital audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reached more effectively. comScore operates in more than 75 countries, serving over 3,200 clients worldwide.

⁵ The FJC's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide considers 70-95% reach among class members reasonable.

NOTICE TIMELINE

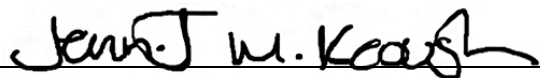
28. JND will commence the media campaign within 10 days of a court order directing notice. The media campaign will run for a period of 84 days (i.e., 12 weeks). JND will activate the settlement website and toll-free number no later than one day before First Publication of Class Notice. The proposed objection and exclusion deadlines are 114 days after First Publication of Class Notice, and the final approval hearing on or after 165 days after First Publication of Class Notice. 30 days are allowed from the last notice appearance and the first court deadline (i.e., the exclusion/objection deadline); therefore, in my opinion, the proposed notice timeline allows adequate time for Class Members to review the notice and make an informed decision regarding the Settlement.

CONCLUSION

29. In JND's opinion, the Notice Program as described herein provides the best notice practicable under the circumstances; is consistent with the requirements of Rule 23 and all applicable court rules; and is consistent with other similar court-approved notice programs. The Notice Program is designed to reach at least 70% of likely Class Members via the digital notice effort alone and provide them with the opportunity to review a notice and the ability to easily take next steps to learn more about the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 11, 2019, in Seattle, Washington.


JENNIFER M. KEOUGH

— EXHIBIT A —
Jennifer Keough's
Bio

As Chief Executive Officer, Ms. Keough has a hand in all facets of JND's business, from day-to-day processes to high-level strategy. Ms. Keough is recognized by practitioners on both sides of the aisle as an expert in all facets of class action administration, from notice through distribution. She has testified on settlement matters in many courts nationally and before the Senate Committee for Indian Affairs.

With more than 20 years of legal and administration experience, Jennifer has directly overseen hundreds of high-profile engagements, including such landmark matters as the BP Deepwater Horizon Settlement, Cobell Indian Trust Settlement, Engle Smokers Trust Fund, Gulf Coast Claims Facility, and Stryker Modular Hip Settlement. Since forming JND with her partners, Jennifer has been appointed notice expert in a number of high-profile matters and was appointed by the United States District Court for the Northern District of California as the Independent Claims Administrator ("ICA") supervising the notice and administration of a settlement involving inspection, remediation and replacement of solar panels on homes and businesses throughout the United States.

Prior to forming JND, Jennifer was COO and executive vice president for one of the then largest legal administration firms in the country. Previously, Jennifer worked as a class action business analyst at Perkins Coie, responsible for managing complex class action settlements and remediation programs, including the selection, retention and supervision of legal administration firms.

Jennifer earned her J.D. from Seattle University. She also graduated from Seattle University with a B.A. and M.S.F. with honors. In 2013, she was profiled in a CNN article, "What Changes With Women in the Boardroom." In 2015 and 2017, she was named a "Woman Worth Watching" by Profiles in Diversity Journal. In 2017, she was also named a female entrepreneur of the year in the 14th annual Stevie Awards for Women in Business. Jennifer is frequently invited to speak on class action issues and has written numerous articles in her areas of expertise.

JENNIFERKEOUGH

CHIEF EXECUTIVE OFFICER, FOUNDER

jennifer.keough@JNDLA.com

www.linkedin.com/in/jennifer-keough



— EXHIBIT B —
Notice Plan



Briseno v. Conagra Foods, Inc.

Objective:

The objective of the proposed Notice Plan is to provide the best notice practicable, consistent with the requirements set forth in Rule 23 of the Federal Rules of Civil Procedure and all applicable state laws and court rules. The methods and tools used in developing this Notice Plan have been employed in many other court-approved notice programs.

Case Information:

The proposed Notice Plan is based on the following case information:

1. Plaintiffs challenged Conagra's use of the term "natural" on the labels of Wesson oil products because the products are made from genetically modified crops (GMOs).
2. Conagra removed the "natural" claim from Wesson labels in July 2017.
3. Class members must be reached through a consumer media campaign.
4. It is our understanding that the class action alleges violations of California's Consumers Legal Remedies Act (CLRA); therefore, CLRA notice requirements will need to be fulfilled.

Class Definition:

It is our understanding that the "Class" or "Class members" consist of purchasers of Wesson oil products between 2006 and July 2017 (consumers, not commercial) in 11 states: CA, CO, FL, IL, IN, NE, NY, OH, OR, SD, TX (the "Class States").

Media Resources:

JND utilizes reputable advertising media research tools to analyze class demographics and media usage of Class members and to determine the effectiveness of our media plans. These resources include:

- comScore, Inc. (comScore): comScore is a leading cross-platform measurement and analytics company that precisely measures audiences, brands and consumer behavior everywhere, capturing 1.9 trillion global interactions monthly. comScore's proprietary digital audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reached more effectively. comScore operates in more than 75 countries, serving over 3,200 clients worldwide.
- GfK Mediamark Research & Intelligence, LLC (MRI): MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media. Established in 1979, MRI measures the usage of nearly 6,000 product and service brands across 550 categories, along with the readership of hundreds of magazines and newspapers, internet usage, television viewership, national and local radio listening, yellow page usage, and out-of-home exposure. Based on a yearly face-to-face interview of 26,000 consumers in their homes, MRI's Survey of the American Consumer™ is the primary source of audience data for the U.S. consumer magazine industry and the most comprehensive and reliable source of multi-media audience data available.



Estimated Class Size:

MRI measures consumer demographic and media usage data, not sales data over a given period. However, for general estimating purposes, according to MRI, 31.7 million households have purchased a Wesson oil product in the last 6 months nationwide. Applying census data where the 11 Class States represent 47% of the U.S. population, we can assume there are approximately 14.9 million households in the Class States that have purchased a Wesson oil product in a 6-month period. Keep in mind that: 1) the purchase cycle for a Wesson oil product may be longer than 6 months; 2) with this type of product, consumers are likely to change brands frequently; and 3) the estimated 14.9 million purchasers does not factor in a changing customer base over the 10-year class period. We understand that Conagra estimates 2.1 million Class members in New York state alone, which based on population, supports our estimate.

Target Analysis:

MRI measures demographics and media usage for households located in the Class States that purchased Wesson Best Blend or Wesson Vegetable Oil in the past six months ("Wesson Oil Consumers in the Class States").¹ According to MRI data, the majority of Wesson Oil Consumers in the Class States are: 25 years of age or older (91.0%), from households with incomes *less than* \$150,000 (84.5%), White (68.5%), and women (52.4%). Compared to the general adult population, Wesson Oil Consumers in the Class States are more likely to be: 45 years of age or older, Spanish-speakers, and Black/African American or Spanish/Hispanic/Latino descent/origin.

| DEMOGRAPHIC | % OF ADULTS 18+ | % OF WESSON OIL CONSUMERS IN THE CLASS STATES | INDEX % OF WESSON OIL CONSUMERS IN THE CLASS STATES V. % OF ADULTS 18+ |
|------------------------------|-----------------|---|--|
| Men | 48.26 | 47.61 | 99 |
| Women | 51.74 | 52.39 | 101 |
| 18-24 | 12.18 | 9.04 | 74 |
| 25-34 | 17.85 | 13.72 | 77 |
| 35-44 | 16.36 | 15.92 | 97 |
| 45-54 | 17.38 | 18.75 | 108 |
| 55-64 | 16.77 | 19.99 | 119 |
| 65+ | 19.46 | 22.58 | 116 |
| Household Income: \$150,000+ | 15.02 | 15.48 | 103 |
| Household Income: \$100,000+ | 32.25 | 33.08 | 103 |
| Household Income: \$75,000+ | 45.83 | 45.06 | 98 |
| Household Income: \$60,000+ | 55.85 | 55.15 | 99 |
| Household Income: \$50,000+ | 63.24 | 62.83 | 99 |
| Household Income: \$40,000+ | 71.11 | 71.20 | 100 |
| Household Income: \$30,000+ | 79.66 | 79.60 | 100 |

¹ The MRI data included the following six states that are not part of the Class States: WA, ND, KS, MT, ID, WY.



| DEMOGRAPHIC | % OF ADULTS 18+ | % OF WESSON OIL CONSUMERS IN THE CLASS STATES | INDEX % OF WESSON OIL CONSUMERS IN THE CLASS STATES V. % OF ADULTS 18+ |
|---|-----------------|---|--|
| Race: White | 75.14 | 68.53 | 91 |
| Race: Black/African American | 12.91 | 15.02 | 116 |
| Spanish, Hispanic or Latino Origin or Descent | 15.74 | 22.89 | 145 |
| Hispanic Respondent Personally Speaks at Home: Only Spanish | 4.34 | 6.96 | 160 |
| Hispanic Respondent Personally Speaks at Home: Mostly Spanish, but some English | 4.00 | 4.73 | 118 |

Source: 2018 MRI Doublebase Study.

U.S. Census data indicates a mobility rate ranging between 10.8 - 12.7% during the 2006-2017 Class period, of which 14.7-19.3% moved out of state.² Therefore, JND will consider the fact that some Class members may no longer reside within the Class States.

| TIME PERIOD | % MOBILITY | % OF MOVERS WHO MOVED OUT OF STATE |
|-------------|------------|------------------------------------|
| 2006-2007 | 12.7 | 16.3 |
| 2007-2008 | 11.7 | 17.2 |
| 2008-2009 | 12.0 | 15.8 |
| 2009-2010 | 12.0 | 14.7 |
| 2010-2011 | 11.1 | 17.4 |
| 2011-2012 | 11.4 | 17.7 |
| 2012-2013 | 11.3 | 16.7 |
| 2013-2014 | 11.2 | 16.9 |
| 2014-2015 | 11.3 | 19.0 |
| 2015-2016 | 10.8 | 17.6 |
| 2016-2017 | 10.8 | 19.3 |

As a result, for media buying and reach calculating purposes, a broad target of adults 18 years of age or older in the Class States ("Adults 18+ in the Class States") will be used; however:

- internet impressions will be allocated based on the age breakdown of Wesson Oil Consumers in the Class States;
- an emphasis will be placed on reaching Spanish-speaking Class members; and
- some nationwide notice tactics will be considered to reach Class members who now reside outside of the Class States.

² <https://www.census.gov/topics/population/migration/data/tables.2004.html>



Proposed Notice Tactics:

MRI research indicates that 85% of Wesson Oil Consumers in the Class States use the internet in a 30-day period, with 74% looking at or using the internet on their cellphone or smartphone. Given that 15% of likely Class members do not use the internet in a 30-day period and the fact that some Class members may no longer reside within the Class States, JND designed a notice program that includes the **national edition** of a leading consumer magazine (*People*), as well as a heavy digital effort geographically focused on the Class States that consists of the leading digital network (Google Display Network) and the top social network (Facebook), which skews to the older age segment of Class members. To fulfill the CLRA notice requirements, a notice will appear once per week, over four consecutive weeks in the *Los Angeles Daily News*. An internet search effort and the distribution of a national press release are also proposed to further extend notice exposure **nationwide**.

Recommended Print Effort:

| PRINT | INSERTIONS |
|---|------------|
| <i>People</i> (Nationwide distribution) | 1 |
| TOTAL INSERTIONS | 1 |

Recommended Digital Effort:

| INTERNET | TARGET/DESCRIPTION |
|------------------------------|---|
| Google Display Network (GDN) | Adults 18+ in the Class States; Across all devices (desktop, laptop, tablet and mobile), with a heavy emphasis on mobile; Impressions allocated based on the age breakdown of Wesson Oil Consumers in the Class States; 11.7% of impressions allocated to Spanish sites |
| Facebook | Adults 18+ in the Class States; Across all devices (desktop, laptop, tablet and mobile); 11.7% of impressions allocated to Spanish accounts |
| TOTAL IMPRESSIONS | Over 194 million impressions displayed over 12 weeks |

Recommended Extended Efforts (not calculated into reach):

| CLRA NOTICE REQUIREMENT | INSERTIONS |
|-------------------------------|------------|
| <i>Los Angeles Daily News</i> | 4 |

| TACTIC | DETAILS |
|------------------------|--|
| Internet Search Effort | Keywords pertaining to the case; Across all devices (desktop, laptop, tablet and mobile) |
| National Press Release | Distributed to English and Spanish outlets |



Plan Delivery:

To calculate the reach, JND used MRI data, a comScore reach and frequency platform and a total Adult 18+ population base within the Class States, *as opposed to an internet population base which would result in fewer impressions and would inflate the overall reach calculation*. According to these two reputable resources, the proposed Notice Plan will reach 70% of likely Class members on average 2.6 times each. The potential for direct notice, the CLRA notice placements, internet search effort and the press release will enhance reach beyond the estimated 70%.

MEDIA DETAILS



People Magazine

- Weekly entertainment magazine
- Largest consumer magazine
- Provides a readership of over 38 million
- Reaches 15.5% of Adults 18+ and 17.6% of Wesson Oil Consumers in the Class States
- Readers are 14% more likely to be Wesson Oil Consumers in the Class States, as compared to the general population
- Extends reach among a broad demographic segment, including Class members who may not use the internet as frequent as well as those who may no longer reside in the Class States



Google Display Network

- Vast ad network that reaches over 90% of internet users
- Harnesses the power of advertising opportunities to over two million websites, including some of the most-visited websites and most recognizable properties on the entire internet
- Impressions will be delivered across all devices (desktop, laptop, tablet and mobile), with a heavy emphasis on mobile
- Impressions will be allocated based on the demographic age breakdown of Wesson Oil Consumers in the Class States:

| TARGET | % OF WESSON OIL CONSUMERS IN CLASS STATES |
|--------|--|
| A18-24 | 9.04% |
| A25-34 | 13.72% |
| A35-44 | 15.92% |
| A45-54 | 18.75% |
| A55-64 | 19.99% |
| A65+ | 22.58% |

- Based on MRI data, 11.7% of impressions will be allocated to Spanish sites



Facebook

- The largest social media network, with over 200 million users nationwide
 - Impressions will be delivered across all devices (desktop, laptop, tablet and mobile)
 - Extends reach to the older segment of Class members
 - Based on MRI data, 11.7% of impressions will be allocated to Spanish accounts
-

Internet Search Effort

- Web browsers frequently default to a search engine pages like Google, Bing or Yahoo!, making search engines a common source to get to a specific website (i.e., as opposed to typing in the desired URL in the navigation bar)
 - When purchased keywords related to the case are searched, a paid ad with a hyperlink to the case website may appear on the search engine results page
 - Efforts will be monitored and optimized so that ads appear above or below organic search results for keywords generating the most click-throughs to the case website
 - Enhances notice exposure nationwide and allows Class members who may be searching about the case to readily find a direct link to the case url
-

Press Release

- Issued nationwide to approximately 11,000 English and 150 Spanish media outlets
- Cost-efficient method of distributing information
- Assists in getting “word of mouth” out about the litigation
- Enhances notice exposures nationwide

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

| | |
|---------------------------|---|
| IN RE CONAGRA FOODS, INC. | Case No. CV 11-05379-CJC (AGR _x) MDL No. 2291 <u>CLASS ACTION</u> |
|---------------------------|---|

[PROPOSED] FINAL ORDER APPROVING CLASS ACTION SETTLEMENT

This matter came on for hearing upon the joint application of the Parties for the approval of the Settlement set forth in the Settlement Agreement.

On the _____ day of _____, 2019, a hearing having been held before this Court to consider and determine: (1) whether the proposed settlement is fair, reasonable, and adequate to Class Members and should be approved by the Court; (2) whether the Classes satisfy the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and 23(b)(3) for purposes of the proposed settlement; (3) whether the Court should enjoin Defendant according to the specific terms in the Settlement Agreement; (4) whether final judgment should be entered, dismissing the Action as to Defendant, on the merits and with prejudice, and to determine whether the release by Class Members of the Released Claims, as set forth in the Settlement Agreement, should be provided; (5) whether the Court should approve Class Counsel's application for an award of attorneys' fees, expenses, and costs; (6) whether the Court should approve any motion for service awards for the Class Representatives; and (7) such other matters as the Court may deem appropriate.

The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was disseminated in the manner directed by the Court-approved Notice Plan, IT IS ORDERED THAT:

1. This Final Approval Order incorporates by reference the definitions set forth in the Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the Settlement Agreement unless otherwise specified herein. The terms of the Settlement Agreement are incorporated in this Final Approval Order as if fully set forth herein.

2. This Court has jurisdiction over the subject matter of the Action pursuant to 28 U.S.C. § 1332(d). This Court also has jurisdiction over all Parties to the Action, including all members of the Classes, as defined below.

3. The Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23 (a) and (b)(3) have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Classes; (c) the claims of the Class Representatives are typical of the claims of the Class they seek to represent; (d) the Class Representatives and Class Counsel have and will fairly and adequately represent the interests of the Classes; (e) the questions of law and fact common to the Class Members predominate over any questions affecting only individual members of the Classes; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies this action as a class action on behalf of the following Classes:

(a) California Class: all natural persons who resided in the State of California and purchased Wesson Oil Products in California, for personal, non-commercial use, between June 28, 2007 and July 1, 2017 (“California Class Period”);

(b) Colorado Class: all natural persons who resided in the State of Colorado and purchased Wesson Oil Products in Colorado, for personal, non-commercial use, between January 12, 2009 and July 1, 2017 (“Colorado Class Period”);

(c) Florida Class: all natural persons who resided in the State of Florida and purchased Wesson Oil Products in Florida, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“Florida Class Period”);

(d) Illinois Class: all natural persons who resided in the State of Illinois and purchased Wesson Oil Products in Illinois, for personal, non-commercial use, between January 12, 2007 and July 1, 2017 (“Illinois Class Period”);

(e) Indiana Class: all natural persons who resided in the State of Indiana and purchased Wesson Oil Products in Indiana, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“Indiana Class Period”);

(f) Nebraska Class: all natural persons who resided in the State of Nebraska and purchased Wesson Oil Products in Nebraska, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“Nebraska Class Period”);

(g) New York Class: all natural persons who resided in the State of New York and purchased Wesson Oil Products in New York, for personal, non-commercial use, between January 12, 2008 and July 1, 2017 (“New York Class Period”);

(h) Ohio Class: all natural persons who resided in the State of Ohio and purchased Wesson Oil Products in Ohio, for personal, non-commercial use, between January 12, 2010 and July 1, 2017 (“Ohio Class Period”);

(i) Oregon Class: all natural persons who resided in the State of Oregon and purchased Wesson Oil Products in Oregon, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“Oregon Class Period”);

(j) South Dakota Class: all natural persons who resided in the State of South Dakota and purchased Wesson Oil Products in South Dakota, for personal, non-commercial use, between January 12, 2006 and July 1, 2017 (“South Dakota Class Period”); and

(k) Texas Class: all natural persons who resided in the State of Texas and purchased Wesson Oil Products in Texas, for personal, non-commercial use, between January 12, 2010 and July 1, 2017 (“Texas Class Period”).

5. Excluded from the Classes are (a) governmental entities; (b) Conagra, and its affiliates, subsidiaries, employees, current and former officers, directors, agents, and representatives; and (c) the members of the Court and its staff. **[Also excluded from the Classes are the persons who requested exclusion as listed on Exhibit 1 attached hereto OR No requests for exclusion from the Classes were received.]**

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finally certifies the following persons as Class Representatives:

- (a) Robert Briseño and Michele Andrade for the California Class;
- (b) Jill Crouch for the Colorado Class;
- (c) Julie Palmer for the Florida Class;
- (d) Pauline Michael for the Illinois Class;
- (e) Cheri Shafstall for the Indiana Class;
- (f) Dee Hooper-Kercheval for the Nebraska Class;
- (g) Kelly McFadden and Necla Musat for the New York Class;

- (h) Maureen Towey for the Ohio Class;
- (i) Erika Heins for the Oregon Class;
- (j) Rona Johnston for the South Dakota Class; and
- (k) Anita Willman for the Texas Class.

7. Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court appoints DiCello Levitt Gutzler LLC and Milberg Tadler Phillips Grossman LLP as Class Counsel.

8. Class Notice. As established by the Settlement Administrator's Declaration, filed on _____, 2019, the Settlement Administrator caused the Publication Notice to be published in the manner required by the Order Directing Notice and caused the Posted Notice and the Claim Form, also in the forms approved by the Order Directing Notice, to be made available to Class Members on the Settlement Website and upon their request.

9. The Court finds that the Settlement Administrator fully complied with this Court's Order Directing Notice and that notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The Court further finds that the notice program in accordance with the terms of the Order Directing Notice met the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

10. CAFA Notice. The Court finds that Settlement Administrator provided notice of the proposed Settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715.

11. Objections. [The Court finds there were no objections to the Settlement.] OR [All objections to the Settlement, to the extent not previously withdrawn, are overruled.]

12. Final Settlement Approval. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court fully and finally approves the Settlement set forth in the Settlement Agreement is approved as fair, reasonable, and adequate. Class Members and the Parties are directed to consummate the Settlement in accordance with terms and provisions of the Settlement Agreement.

13. Gross Settlement Proceeds. The Settlement Administrator has processed all Claim Forms submitted and has determined there are ____ Valid Claim Forms representing a recovery for ____ units. Defendant is directed to pay the Gross Settlement Proceeds to provide the Classes with monetary relief 20 days after the Final Effective Date as set forth in the Settlement Agreement.

14. Value of Injunctive Relief. During the pendency of this litigation Conagra removed the “natural” claim from the labels of Wesson Oil Products and stopped marketing, advertising, and selling Wesson Oil Products as “natural.”

(a) Plaintiffs point to this change as a result achieved in the wake of this litigation, while acknowledging that this Settlement does not constitute an admission by Conagra of liability, damages, or any other issue in the lawsuit, including but not limited to what prompted the label change. Conagra denies its decision to drop ‘natural’ from the labels was in any way related to this litigation.

(b) As part of the Settlement, Conagra agrees to injunctive relief under which should Conagra reacquire the Wesson Oil brand, (1) Conagra will not advertise, market or sell Wesson Oil Products labeled as “natural” unless the FDA issues guidance or a regulation, or

federal legislation is enacted, permitting use of a “natural” claim on a product containing oil derived from genetically engineered seed stock; and (2) Conagra will not advertise, market or sell Wesson Oil Products as “non-GMO” unless the claim is certified by an independent third-party certification organization.

(c) The Settlement does not preclude Conagra from making other changes to the advertising and marketing of Wesson Oil Products, should Conagra reacquire the brand, provided that those changes do not conflict with the provisions of the Settlement.

(d) The Parties agree that the value of the Injunctive Relief to the Classes is \$27,000,000.

15. Released Claims and Covenants Not to Sue

(a) In consideration of the benefits described and the provisions contained in the Settlement Agreement, all Class Members (regardless of whether a Class Member submits a Claim Form) shall be deemed to have, as of the Final Effective Date and by operation of the Final Approval Order, fully and irrevocably released and forever discharged the Released Parties (as defined in the Settlement Agreement) from any liability for all claims of any nature whatsoever in law or in equity, past and present, and whether known or unknown, suspected or claimed, relating to or arising under any federal, state, local, or international statute, regulation, or law (including state consumer fraud, warranty, unjust enrichment laws, codal law, adjudication, quasi-adjudication, tort claims, contract claims, actions, causes of action, declaratory judgment actions, cross-claims, counterclaims, third-party claims, demands, and claims for damages, compensatory damages, liquidated damages, punitive damages, exemplary damages, multiple damages, and other noncompensatory damages or penalties of any kind, fines, equitable relief, injunctive relief, conditional or other payments or interest of any type, debts, liens, costs, expenses and/or attorneys’

fees, interest, or liabilities) that have been or could have been brought in connection with the Released Parties' distribution, labeling, packaging, marketing, advertising, and/or sale of the Wesson Oil Products during the applicable Class Period, subject only to the express exceptions listed in the Reservation of Claims and Rights below. Specifically excluded from this release is any claim for bodily injury allegedly suffered in connection with the Wesson Oil Products. Conagra shall be deemed to have fully and irrevocably released and forever discharged Class Representatives and Class Members from any liability that was or could have been asserted arising out of or relating in any way to the institution, prosecution, or settlement of the Action ("Released Defendant's Claims").

(b) All Class Members shall not hereafter seek to sue or otherwise establish liability against any Released Parties based, in whole or in part, on any of the Released Claims. Each Class Member has expressly waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims without regard to the subsequent discovery or existence of different or additional facts. The Parties shall cooperate and assist one another in defending against and obtaining the dismissal of any claims brought by Persons seeking to assert claims released under the Settlement Agreement. Similarly, Conagra shall not hereafter seek to sue or otherwise establish liability against any Class Representative or Class Member regarding this litigation, or any Released Defendant's Claims that Conagra could have brought as part of this litigation or in litigation concerning distribution, sale, purchase, labeling, packaging, marketing, and/or advertising of the Wesson Oil Products.

(c) IN ADDITION, EACH CLASS MEMBER SHALL BE DEEMED TO HAVE FULLY AND IRREVOCABLY WAIVED AND RELEASED, UPON THE FINAL EFFECTIVE DATE, ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED

BY § 1542 OF THE CALIFORNIA CIVIL CODE OR ANY OTHER STATUTE, LAW OR PRINCIPLE OF COMMON LAW, WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO § 1542 OF THE CALIFORNIA CIVIL CODE, WHICH READS:

SECTION 1542. GENERAL RELEASE; EXTENT. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

(d) Each Class Member may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the Released Claims, but each Class Member has expressly waived and fully, finally, and forever settled and released, upon the Final Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims with respect to the subject matter of the Released Claims whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class Member has also expressly waived and fully, finally, and forever settled and released any and all Released Claims it may have against the Released Parties under § 17200, *et seq.*, of the California Business and Professions Code. Similarly, to the extent that Conagra hereafter discovers facts other than or different from those which it knows or believes to be true with respect to the Released Defendant's Claims that it could have brought in this litigation, it has mutually waived and fully, finally, and forever settled and released any Released Defendant's Claims that it could have brought in connection with this litigation.

16. Reservation of Claims and Rights

(a) Released Claims shall not include any claim against the Released Parties for bodily injury allegedly suffered in connection with the purchase or use of the Wesson Oil Products.

(b) This Final Approval Order and the Settlement Agreement, whether or not the Final Effective Date occurs, and any and all negotiations, documents, and discussions associated with the Settlement Agreement, shall be without prejudice to the rights of any Party (other than those compromised in the Settlement Agreement); shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, any liability or wrongdoing by any of the Released Parties, or of the truth of any of the claims or allegations contained in any complaint or pleading, whether in the Action, any other actions, or otherwise. The Parties expressly reserve all of their rights if the Settlement Agreement fails to become Final and effective substantially in accordance with its terms.

(c) If the Final Effective Dates does not occur, then the Action, for all purposes, shall revert to its status as of the date before the execution of the Settlement Agreement. Conagra shall also be entitled to a refund of any Gross Settlement Proceeds that it has deposited into the Escrow Account, and any Fee and Expense Award it has paid to Class Counsel and/or Class Representatives.

17. Enforcement of Settlement. Nothing in this Final Approval Order shall preclude any action to enforce the terms of the Settlement.

18. Binding Effect. The terms of the Settlement Agreement and of this Final Approval Order shall be forever binding upon, and inure to the benefit of, the successors and assigns of the Parties

19. No Admissions. Neither this Final Approval Order nor the Settlement Agreement, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of the Settlement Agreement is intended to be or may be construed as or deemed to be evidence of an admission or concession by Conagra of any (i) liability or wrongdoing or of the truth of any allegations in the Complaint against Conagra, or (ii) infirmity of, or strength of any alleged defense against, the allegations in the Complaint; and neither the Settlement Agreement nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of the Settlement Agreement shall be admissible in evidence for any such purpose in any proceeding.

20. Dismissal of Action. The Action is hereby dismissed with prejudice on the merits.

21. Attorneys' Fees and Expenses and Service Awards. Having considered Class Counsel's Fee and Expense Application, the Court hereby awards attorneys' fees and expenses to Class Counsel in the amount of \$_____, which the Court finds to be fair and reasonable to compensate Class Counsel for their time incurred and expenses advanced. This award shall be paid to Class Counsel as provided in the Settlement Agreement. Class Counsel shall allocate the attorneys' fees amongst Class Counsel and other counsel representing plaintiffs in the Action in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Action with Defendant. Defendant shall have no liability or other responsibility for allocation of any such attorneys' fees or costs and expenses awarded. This Court shall retain jurisdiction over any disputes among plaintiffs' counsel relating to the award, allocation, or entitlement to any fees, costs, or expenses.

22. In making this award of attorneys' fees and expenses, the Court has considered and found that:

(a) Class Counsel achieved a favorable result for the Classes.

(b) The Settlement created a benefit with a substantial value to the Classes: the Parties agree that the value to the Classes of the Injunctive Relief is \$27,000,000, and Conagra will pay Gross Settlement Proceeds of \$_____ in cash;

(c) After reaching agreement in principle regarding monetary relief to Class Members and the provisions of injunctive relief, the parties entered into arm's length negotiations regarding attorneys' fees and expenses for Class Counsel, with the Honorable Douglas F. McCormick, United States Magistrate Judge, acting as mediator. Consistent with the agreement mediated by Magistrate Judge McCormick, Conagra took no position with respect to the Fee and Expense Application submitted by Class Counsel;

(d) Notice was disseminated to the Classes indicating that Class Counsel were moving for up to \$6,850,000 in fees and expenses, as well as service awards of (a) up to \$3,000 for each of the six Class Representatives who were deposed (Robert Briseño, Michele Andrade, Jill Crouch, Pauline Michael, Necla Musat, and Maureen Towey) and (b) up to \$1,000 for each of the seven who were not deposed (Julie Palmer, Cheri Shafstall, Dee Hooper-Kercheval, Kelly McFadden, Erika Heins, Rona Johnston, and Anita Willman) and Class Counsel filed and posted their Fee and Expense Application in time for the Classes to make a meaningful decision whether to object to the Fee and Expense Application, and [_____] objections were filed;

(e) The action involves complex factual and legal issues and was actively prosecuted over eight years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(f) Had Class Counsel not achieved the Settlement there would remain a significant risk that no relief would have been obtained;

(g) Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(h) Class Counsel devoted substantial effort to pre-and post-filing investigation, legal analysis, and litigation;

(i) Class Counsel prosecuted the class claims on a contingent fee basis, investing significant time and accumulating costs with no guarantee that they would receive compensation for their services or recover their expenses;

(j) Class Counsel employed their knowledge of and experience with class action litigation in achieving a valuable settlement for the Class, despite Conagra's legal defenses and its experienced and capable counsel;

(k) Class Counsel's rates and hours billed are reasonable; and

(l) Class Counsel have devoted over _____ hours, with a lodestar value of \$_____, to achieve the Settlement.

23. For the six Class Representatives whose depositions were taken: Robert Briseño is hereby awarded \$_____, Michele Andrade is hereby awarded \$_____, Jill Crouch is hereby awarded \$_____, Pauline Michael is hereby awarded \$_____, Necla Musat is hereby awarded \$_____, and Maureen Towey is hereby awarded \$_____.

24. For the seven Class Representatives whose depositions were not taken: Julie Palmer is hereby awarded \$_____, Cheri Shafstall is hereby awarded \$_____, Dee Hooper-Kercheval is hereby awarded \$_____, Kelly McFadden is hereby awarded \$_____, Erika Heins is hereby awarded \$_____, Rona Johnston is hereby awarded \$_____, and Anita Willman is hereby awarded \$_____.

25. These awards are for their contributions to the prosecution of the Action and for the time, effort, and risk they undertook as Class Representatives.

26. Conagra shall pay the fee and expense award to Class Counsel and the service awards to the Class Representatives 20 days after the Final Effective Date in accordance with the terms of the Settlement Agreement.

27. Counsel for the Parties are hereby instructed to abide by any stipulation and Protective Order entered in this Action with regard to disposition of confidential documents obtained during the course of this Action. Counsel for the Parties are also authorized (unless required by their clients, any stipulation or protective order entered in this Action to either return or destroy confidential documents produced in this Action) to destroy any and all documents (whether paper, electronic or any other form) in their custody or control that were obtained in the course of the Action from their adversaries, third party witnesses or anyone else (including from their clients or any affiliates of their clients) not less than one (1) year after the Final Effective Date.

28. The stipulation or orders entered during this Action relating to the confidentiality of information shall survive this Settlement.

29. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

30. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement.

31. There is no just reason for delay in the entry of this Final Approval Order and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure.

SO ORDERED this ____ day of _____, 2019.

The Honorable Judge Cormac J. Carney
United States District Court
Central District of California



NEW YORK
LOS ANGELES

THE FIRM'S PRACTICE AND ACHIEVEMENTS

Milberg Tadler Phillips Grossman LLP ("MTPG") helps clients challenge corporate wrongdoing through class action, mass tort, personal injury, consumer, and shareholder rights services. MTPG was established in 2018 by members of Milberg LLP, a leading class action and complex litigation firm, and Sanders Phillips Grossman LLC, a nationally recognized plaintiffs' law firm representing consumers in mass tort and personal injury cases.¹ MTPG is headquartered in New York City and works with a network of lawyers located across the country.

Milberg LLP, founded in 1965, took the lead in landmark cases that set groundbreaking legal precedents and prompted changes in corporate governance benefitting shareholders and consumers. Milberg LLP pioneered federal class action litigation and is widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing. It has been responsible for recoveries valued at approximately \$56 billion during the life of the firm.

Sanders Phillips Grossman LLC provides exemplary legal representation in the practice areas of Defective Drugs, Defective Medical Devices, Consumer Fraud, Whistleblower, Class Actions, Catastrophic Injury, and Toxic Exposure. As a nationally recognized leading plaintiffs' law firm for the past three decades, the firm and its predecessors have recovered more than one billion dollars for injured consumers. Sanders Phillips Grossman has offices in Seattle, WA; Los Angeles, CA; and Puerto Rico.

Through these firms' strategic partnership, MTPG represents government entities and individuals who have suffered harm from securities fraud, data breaches, antitrust violations, consumer fraud, corporate misconduct, opioids, water contamination, and a wide range of commercial and pharmaceutical malfeasance.

MTPG's ability to pursue claims against defendants is augmented by its investigators, headed by a 27-year veteran of the Federal Bureau of Investigation. The firm's lawyers have been regularly recognized as leaders in the plaintiffs' bar by the National Law Journal, Legal 500, Chambers USA, and Super Lawyers, among others.

MTPG'S LAWYERS ARE INDUSTRY LEADERS IN A VARIETY OF PRACTICE AREAS

Securities and Financial Litigation and Arbitration: In its early years, Milberg LLP built a new area of legal practice in representing shareholder interests under the then recently amended Rule 23 of the Federal Rules of Civil Procedure, which allowed securities fraud cases, among others, to proceed as class actions. MTPG's attorneys have since represented plaintiffs in an array of financial cases, including securities class actions, derivative litigations, accounting malpractice disputes, and FINRA arbitrations. Significant litigation results include: *In re Vivendi Universal, S.A. Securities Litigation* (jury verdict for plaintiff class in January 2010); *In re Tyco International, Ltd. Securities Litigation* (\$3.2 billion settlement); *In re Nortel Networks Corp. Securities Litigation* (settlement for cash and stock valued at \$1.142 billion); *In re Merck & Co., Inc. Securities Litigation*, Nos. 05-1151 and 05-2367 (D.N.J.) (a \$1.062 billion recovery); *In re Comverse Technology, Inc. Derivative Litigation*, No. 601272/2006 (N.Y. Sup. Ct. N.Y. Cnty.) (\$62 million settlement which also resulted in significant corporate governance reforms).

Consumer Litigation: MTPG's lawyers have long been leaders in protecting consumers from fraudulent and deceptive practices. For example, MTPG lawyers are part of the Court-appointed

¹ As of January 1, 2018, Milberg LLP's lawyers are now prosecuting new and active cases out of MTPG.

Plaintiffs' Executive Committee in *In re Apple, Inc. Device Performance Litigation*, 5:18-MD-02827-EJD (N.D. Cal.), a class action alleging Apple throttled the performance of certain devices, including iPhones, with degraded batteries.

MTPG lawyers also serve as co-lead counsel in class actions challenging the use of "natural" labeling on food products made with crops grown from seeds that have been genetically engineered using sophisticated laboratory techniques (GMOs). *In re Conagra Foods, Inc.*, No.11-05379 (M.D. Cal.) (multi-state class certified; affirmed by Ninth Circuit; petition for writ of certiorari denied by U.S. Supreme Court); *Frito-Lay North America, Inc. "All Natural" Litigation*, No. 12-MD-02413 (E.D.N.Y.) (resolved by a court-approved settlement). Other representative consumer matters include *Correa v. Sensa Products, LLC.*, No. BC476808 (Cal. Super. Court, Los Angeles Cty.) (\$9 million settlement in case alleging that the defendant, manufacturer of a weight-loss product, lacked a sufficient scientific basis for certain of its marketing claims); *In re Shop-Vac Marketing and Sales Practices Litigation*, No. 4:12-md-02380 (M.D. Pa.) (class action against Shop-Vac and Lowe's alleging that the companies misrepresented the tank capacity and horsepower of its wet/dry vacuums; settlement led to extended warranties and marketing and advertising changes); *Novak v. Pacific Bioscience Laboratories Products, Inc., and Pacific Bioscience Laboratories Products, Inc.*, Case No. BC582188 (Cal. Super. Court, Los Angeles Cty.) (pending case alleging that batteries in certain Clarisonic skin brushes are defective; motion for approval of settlement, which would extend owners' warranties and require the repair or replacement of affected brushes).

Data Breach and Privacy Litigation: MTPG's Data Breach and Privacy Practice Group litigates class actions alleging massive data breaches and other violations of consumers' personal and data privacy. Its attorneys have spearheaded numerous highly technical cases and have successfully advanced novel legal theories to protect consumers from ever-evolving cybersecurity and data privacy threats. Representative matters include *In re Equifax, Inc. Customer Data Breach Litigation*, 17-md-02800 (N.D. Ga.) (appointed to Plaintiffs' Steering Committee ("PSC")); *In re Yahoo Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752 (N.D. Cal.) (appointed to the Plaintiffs' Executive Committee); *In re Target Corporation Customer Data Security Breach Litig.*, No. 14-md-2522 (D. Minn.) (appointed to the PSC; achieved a \$10 million settlement (pending appeal)); *Torres, et al. v. Wendy's International, LLC*, 16-cv-00210 (M.D. Fla.) (plaintiffs' counsel; \$3.4 million class action settlement awaiting final Court approval); *Fero v. Excellus Health Plan*, No. 6:16-cv-06569 (W.D.N.Y.) (special discovery counsel to lead counsel); *In re Anthem, Inc. Data Breach*, No. 15-MD-02617 (N.D. Cal.) (plaintiffs' counsel; settlement created a \$115 million non-reversionary cash fund, delivered more than \$500 million in value to the class, and required extensive injunctive relief to prevent a future breach (pending approval)); *In re Premera Blue Cross Customer Data Breach Litig.*, No. 3:15-md-2633-SI (D. Or.) (plaintiffs' counsel); *Carandang v. Google, Inc.* CGC-12-518415 (Cal. Super., San Francisco Cty.) (plaintiff's counsel; reached confidential resolution); *Ung, et al. v. Facebook, Inc.*, 1-12-CV-217244 (Cal. Super., Santa Clara Cty.) (plaintiff's counsel).

Antitrust: MTPG's Antitrust Practice Group prosecutes large, complex antitrust and trade regulation class actions and other cases that target some of the most powerful and well-funded corporate interests in the world. It has played an important role in many cases involving price-fixing, supply manipulation, tying arrangements, exclusive dealing, and refusals to deal. Significant antitrust cases include *In re Dealer Management Systems Antitrust Litigation*, 18-cv-00864 (N.D. Ill.) (Interim Lead Class Counsel for auto dealerships in a pending class action alleging anticompetitive practices in the markets for dealer management systems and data integration services); *Blessing v. Sirius XM Radio Inc.*, No. 09-cv-10035 (S.D.N.Y.) (Co-Lead Counsel; class settlement valued at \$180 million); *Sandhaus v. Bayer AG, et al.*, No. 00-cv-6193 (D. Kan.) (Co-Lead Counsel, secured largest consumer recovery from a pay-for-delay case in Kansas: \$9 million settlement); and *In re Fresh & Process Potatoes Antitrust Litig.*, No. 4:10-md-2186 (D. Idaho) (Co-Lead Counsel for Indirect Purchaser Plaintiffs, \$5.5 million

settlement and agreed upon injunctive relief). The MTPG Antitrust Practice Group continues to act in a number of significant and ongoing antitrust cases including *In re Liquid Aluminum Sulfate Antitrust Litig.*, No. 16-md-2687 (D.N.J. 2015) (Plaintiffs' Steering Committee member); *In re Processed Eggs Antitrust Litig.*, MDL No. 2002 (E.D. Pa., 2008) (Indirect Purchaser Plaintiffs' Co-Lead Counsel); and *In re Disposable Contact Lens Antitrust Litigation*, No. 3:15-md-02626 (M.D. Fla. 2015).

False Claims Act Litigation: MTPG attorneys have expertise in a wide range of federal and state false claims act ("FCA") cases and have returned hundreds of millions of dollars to federal and state treasuries. Their successful results include: *CareCore* (alleging that CareCore violated the FCA by approving "prior authorizations" for expensive diagnostic procedures without reviewing them for medical necessity. The government intervened, the case settled for \$54 million, and the relator received a 20% (\$10.5 million) share of the settlement); *Bank of America* (alleging that Bank of America improperly recouped insurance proceeds from the U.S. Department of Housing and Urban Development. Settled as part of the \$16.65 billion global settlement regarding Bank of America's mortgage practices – the largest civil settlement with a single entity in American history); *CareAll* (alleging one of Tennessee's largest home healthcare providers made fraudulent submissions of Medicare and Medicaid claims. The government intervened and the case settled for \$25 million with a relator's share of \$3.9 million); *Medline* (case arising from unlawful kickbacks, bribes, and other illegal remuneration to induce health care providers to continue to purchase defendant's medical supplies in which the government declined to intervene. The resulting \$85 million settlement is one of the largest settlements of a non-intervened FCA case to date.); *Bristol-Myers Squibb* (FCA case brought in connection with the company's "off-label" promotion and sales of an anti-psychotic drug. One of seven FCA actions that formed the basis of the government's investigation into BMS's illegal marketing tactics which resulted in a total settlement of over \$515 million.).

E-Discovery: Among the first plaintiffs' firms in the country to assemble and train a dedicated team to meet the e-discovery demands of complex litigation, Milberg LLP, at Ariana J. Tadler's direction, developed some of the most exceptional e-discovery capabilities among U.S. law firms. Established more than 15 years ago, that e-discovery practice has grown extensively and today, MTPG offers clients the ability to go toe-to-toe with adversaries in the fast-evolving e-discovery climate. This multidisciplinary group offers clients a full array of counsel services relating to discovery strategy, data preservation, data collection and storage, sophisticated data search and analysis, production, and computer forensic investigation, as well as training on e-discovery issues, including application of the recent amendments to the Federal Rules of Civil Procedure, local rules, and state law. MTPG's e-discovery attorneys are regularly called on by attorneys and courts to oversee complex discovery in high-stakes litigation. *E.g.*, *In re Apple, Inc. Device Performance Litigation*, 5:18-MD-02827-EJD (N.D. Cal.) (appointed to Plaintiffs' Executive Committee and responsible for ESI and offensive discovery); *In re Equifax, Inc. Customer Data Breach Litigation*, 17-md-02800 (N.D. Ga.) (appointed to Plaintiffs' Steering Committee and responsible for leading discovery); *In re Yahoo Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752 (N.D. Cal.) (appointed to Plaintiffs' Executive Committee and responsible for leading discovery); *In re Target Corporation Customer Data Security Breach Litig.*, No. 14-md-2522 (D. Minn.) (appointed to the PSC and charged with leading discovery); *Fero v. Excellus Health Plan*, No. 6:16-cv-06569 (W.D.N.Y.) (special discovery counsel to lead counsel).

NOTEWORTHY RESULTS AND PRECEDENT-SETTING DECISIONS

The quality of MTPG's representation is further evidenced by Milberg LLP's and MTPG's numerous significant recoveries and successes. Those firms and their attorneys have also been responsible for establishing many important precedents. Some of those achievements are described below:

- ***In re Merck & Co., Inc. Securities Litigation***, Nos. 05-1151 and 05-2367 (D.N.J.). Milberg LLP served as co-lead counsel in this federal securities fraud class action, and following over 12 years of hard-fought litigation, ultimately obtained a combined settlement totaling \$1.062 billion, the largest securities class action settlement ever against a pharmaceutical company, which received final approval on June 28, 2016. This lawsuit involved claims under the Securities Exchange Act of 1934 against Merck and certain of its executives arising out of allegations that defendants made materially false and misleading statements concerning the safety profile and commercial viability of Merck's purported "blockbuster" drug VIOXX. During this litigation, Milberg LLP and co-lead counsel engaged in exhaustive discovery, including the review and analysis of over 35 million pages of documents involving complex scientific and medical issues, as well as the examination of over 59 fact and expert witnesses. Plaintiffs successfully appealed the dismissal of this action on state of limitations grounds to the Third Circuit Court of Appeals, and prevailed in defendants' further appeal to the Supreme Court, resulting in a unanimous decision by the Supreme Court in Plaintiffs' favor which clarified the law regarding the application of the statute of limitations to federal securities fraud claims. Plaintiffs' claims also survived additional motions to dismiss and motions for summary judgment, and the parties reached settlement less than three months before trial was scheduled to commence.
- ***In re Oppenheimer Rochester Funds Group Securities Litigation***, No. 09-md-02063-JLK-KMT (D. Colo.). Milberg LLP, serving as co-lead counsel, litigated this complex securities class action brought on behalf of six separate classes of defrauded investors and obtained settlements totaling \$89.5 million in cash for the classes.
- ***In re Vivendi Universal, S.A. Securities Litigation***, No. 02-5571 (S.D.N.Y.). Milberg LLP lawyers served among lead trial counsel and obtained a jury verdict for a class of defrauded investors after a trial lasting nearly four months. The jury found Vivendi liable for 57 false or misleading class period statements. At the close of the trial, Judge Richard Holwell commented, "I can only say that this is by far the best tried case that I have had in my time on the bench. I don't think either side could have tried the case better than these counsel have."
- ***In re Target Corporation Customer Data Security Breach Litigation***, No. 14-md-02522-PAM (D. Minn.). Partner Ariana J. Tadler serves on the Steering Committee guiding the landmark data breach case. In addition to participating in overall case strategy, the drafting of pleadings and motions, and settlement negotiation, the Milberg LLP team was responsible for leading discovery, which included targeted discovery requests, the establishment of a series of discovery protocols, the selection of a data-hosting provider, and discovery motion practice that involved unique topics warranting special attention. The case, which involved an estimated 110 million consumers whose personal information was compromised, settled for \$10 million, entitling individual consumers to recover losses up to \$10,000. (An appeal remains pending before the Eighth Circuit.)
- ***In re Conagra Foods, Inc., No.11-05379 (M.D. Cal.)***. The firm is co-lead counsel in a class action against ConAgra Foods, Inc., the maker of Wesson Oils, concerning the company's use of the phrase "100% Natural" to market food products made with crops grown from seeds that have been genetically engineered using sophisticated

laboratory techniques. The District Court certified eleven separate statewide classes of Wesson purchasers. ConAgra appealed the class certification order to the Ninth Circuit Court of Appeals, which affirmed in a decision considered extremely favorable to consumer class actions. Conagra petitioned the U.S. Supreme Court for review of the Ninth Circuit's decision. The Supreme Court denied the petition.

- ***In re Chase Bank USA, N.A. "Check Loan" Contract Litig.***, No. 09-2032 (N.D. Cal.). Milberg LLP served on the Executive Committee representing the class in this action against JP Morgan Chase & Co. The complaint alleged that Chase improperly increased by 150% the minimum monthly payment requirement for customers who entered into balance transfer loans with "fixed" interest rates that were guaranteed to remain so for the "life of the loan." Milberg and its co-counsel achieved a \$100 million settlement for the class.
- ***Mason v. Medline***, No. 07-05615 (N.D. Ill.). Milberg LLP successfully represented a healthcare worker in a False Claims Act case against his former employer, Medline Industries, Inc., one of the nation's largest suppliers of medical and surgical products, along with its charitable arm, The Medline Foundation. The suit alleged that Medline engaged in a widespread illegal kickback scheme targeting hospitals and other healthcare providers that purchase medical products paid for by federal healthcare programs. Although a party to the settlement agreement, the U.S. Department of Justice chose not to intervene in the lawsuit. Milberg LLP pursued the case on a non-intervened basis and recovered \$85 million on behalf of the federal government -- one of the largest settlements of a False Claims Act case in which the government declined to intervene. The whistleblower was awarded 27.5% of the proceeds.
- ***Blessing v. Sirius XM Radio, Inc.***, No. 09-10035 (S.D.N.Y.). This antitrust case stemmed from the 2008 merger of Sirius Satellite Radio, Inc. and XM Satellite Holdings, Inc. that created Sirius XM, the nation's only satellite radio company. The plaintiffs alleged that the merger of the only two U.S. satellite radio providers was an illegal move to eliminate competition and monopolize the satellite radio market. Before the merger, Sirius CEO Mel Karmazin convinced regulators not to block the deal by promising that "the combined company will not raise prices" and that the merger would actually result in "lower prices and more choice for the consumer." After the merger, Sirius quickly reversed course, raised prices by 15-40%, and eliminated multiple radio stations. Milberg LLP achieved a settlement for the class valued at \$180 million.
- ***In re Initial Public Offering Securities Litigation***, No. 21-MC-92 (S.D.N.Y.). Milberg LLP represented investors in 300+ consolidated securities actions arising from an alleged market manipulation scheme. Plaintiffs alleged, among other things, that approximately 55 defendant investment banks, in dealing with certain of their clients, conditioned certain allocations of shares in initial public offerings on the subsequent purchase of more shares in the aftermarket, thus artificially boosting the prices of the subject securities. This fraudulent scheme, plaintiffs alleged, was a major contributing factor in the now infamous technology "bubble" of the late 1990s and early 2000s. As a member of the court-appointed Plaintiffs' Executive Committee, and with certain partners appointed by the court as liaison counsel, Milberg LLP oversaw the efforts of approximately 60 plaintiffs' firms in combating some of the most well-respected defense firms in the nation. In granting final approval to a \$586 million settlement on

October 5, 2009, the court described the law firms comprising the Plaintiffs' Executive Committee as the "cream of the crop."

- ***In re Tyco International Ltd., Securities Litigation***, MDL 1335 (D.N.H.). Milberg LLP served as co-lead counsel in this litigation, which involved claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 against Tyco and its former CEO, CFO, general counsel, and certain former directors arising out of allegations of Tyco's \$5.8 billion overstatement of income and \$900 million in insider trading, plus hundreds of millions of dollars looted by insiders motivated to commit the fraud. Plaintiffs also asserted claims under the 1933 and 1934 Acts against PricewaterhouseCoopers LLP for allegedly publishing false audit opinions on Tyco's financial statements during the class period and failing to audit Tyco properly, despite knowledge of the fraud. On December 19, 2007, the court approved a \$3.2 billion settlement of the plaintiffs' claims lauded Milberg LLP's efforts as co-lead counsel:

This was an extraordinarily complex and hard-fought case. Co-Lead Counsel put massive resources and effort into the case for five long years, accumulating [millions of dollars in expenses] and expending [hundreds of thousands of hours] on a wholly contingent basis. But for Co-Lead Counsel's enormous expenditure of time, money, and effort, they would not have been able to negotiate an end result so favorable for the class. . . . Lead Counsel's continued, dogged effort over the past five years is a major reason for the magnitude of the recovery. . . .

535 F. Supp. 2d 249, 270 (D.N.H. 2007).

- ***In re Biovail Corp. Securities Litigation***, No. 03-8917 (S.D.N.Y.). Milberg LLP, representing Local 282 Welfare Trust Fund and serving as co-lead counsel, litigated this

complex securities class action brought on behalf of a class of defrauded investors, alleging that defendants made a series of materially false and misleading statements concerning Canadian company Biovail's publicly reported financial results and the company's then new hypertension/blood pressure drug, Cardizem LA. This was a highly complex case in which counsel took numerous depositions across the U.S. and Canada and obtained documents from defendants and several third-parties, including, among others, UBS, McKinsey & Co., and Merrill Lynch. Milberg LLP obtained a \$138 million settlement for the class, and Biovail agreed to institute significant corporate governance changes.

- ***In re Nortel Networks Corp. Securities Litigation***, No. 01-1855 (S.D.N.Y.). In this federal securities fraud class action, Milberg LLP served as lead counsel for the class and the court-appointed lead plaintiff, the Trustees of the Ontario Public Service Employees' Union Pension Plan Trust Fund. In certifying the class, the court specifically rejected the defendants' argument that those who traded in Nortel securities on the Toronto Stock Exchange (and not the New York Stock Exchange) should be excluded from the class. The Second Circuit denied the defendants' attempted appeal. On January 29, 2007, the court approved a settlement valued at \$1.142 billion.
- ***In re CMS Energy Corp. Securities Litigation***, No. 02-72004 (E.D. Mich.). Milberg LLP served as co-lead counsel in this federal securities fraud case arising out of alleged round-trip trading practices by CMS Energy Corporation, Judge Steeh approved a cash settlement of more than \$200 million.
- ***In re Deutsche Telekom AG Securities Litigation***, No. 00-9475 (S.D.N.Y.). Milberg LLP served as co-lead counsel in

this securities class action alleging that Deutsche Telekom issued a false and misleading registration statement, which improperly failed to disclose its plans to acquire VoiceStream Wireless Corporation and materially overstated the value of the company's real estate assets. In June 2005, Judge Buchwald approved a \$120 million cash settlement.

- ***In re Comverse Technology, Inc. Derivative Litigation***, No. 601272/2006 (N.Y. Sup. Ct. N.Y. Cnty.). On December 28, 2009, Milberg LLP announced a \$62 million settlement for the derivative plaintiffs, which was approved by the Court on June 23, 2010. The settlement also resulted in significant corporate governance reforms, including the replacement of the offending directors and officers with new independent directors and officers; the amendment of the company's bylaws to permit certain long-term substantial shareholders to propose, in the Company's own proxy materials, nominees for election as directors (proxy access); and the requirement that all equity grants be approved by both the Compensation Committee and a majority of the non-employee members of the Board.
- ***In re Topps Co., Inc. Shareholder Litig.***, No. 600715/2007 (N.Y. Sup. Ct. N.Y. Cnty. Apr. 17, 2007). Milberg LLP served as co-lead counsel in this transactional case, which led to a 2007 decision vindicating the rights of shareholders under the rules of comity and the doctrine of *forum non conveniens* to pursue claims in the most relevant forum, notwithstanding the fact that jurisdiction might also exist in the state of incorporation. This case was settled in late 2007 in exchange for a number of valuable disclosures for the class.
- ***Platinum Partners v. Chicago Board Options Exchange, Inc.***, No. 1-11-2903 (Ill. App. Ct. 2012). Milberg LLP

represented an investment management group in a case against the Chicago Board Options Exchange, Inc. ("CBOE") and Options Clearing Corp. ("OCC"). The plaintiff investment management group alleged that it was injured when the CBOE and OCC privately disclosed strike price information to certain insiders prior to the information being made public. In the interim between the private disclosure and the public announcements, the plaintiff purchased tens of thousands of affected options. The lower court dismissed the complaint on the grounds that the CBOE and OCC, as self-regulatory organizations, were immune from suit. However, the Appellate Court reversed, holding that a private disclosure to insiders served no regulatory purpose and should not be protected from suit. The Illinois Supreme Court declined the defendants' petition for leave to appeal.

- ***In re Lord Abbett Mutual Funds Fee Litigation***, 553 F.3d 248 (3d Cir. 2009). This important decision set significant precedent regarding the scope of preemption under the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"). In reversing the District Court's dismissal of the plaintiffs' claims, the Third Circuit held that "SLUSA does not mandate dismissal of an action in its entirety where the action includes only some pre-empted claims." In so holding, the court explained that "nothing in the language, legislative history, or relevant case law mandates the dismissal of an entire action that includes both claims that do not offend SLUSA's prohibition on state law securities class actions and claims that do"
- ***Tellabs, Inc. v. Makor Issues & Rights, Ltd.***, 551 U.S. 308 (2007). In *Tellabs*, in which Milberg LLP was lead counsel for the class, the United States Supreme Court

announced a uniform standard for evaluating the sufficiency of a complaint under the PSLRA. The court held that on a motion to dismiss, a court “must consider the complaint in its entirety,” accepting “all factual allegations in the complaint as true,” as well as “tak[ing] into account plausible opposing inferences.” On remand, the Seventh Circuit concluded that “the plaintiffs have succeeded, with regard to the statements identified in our previous opinion as having been adequately alleged to be false and material, in pleading scienter in conformity with the requirements of the PSLRA. We therefore adhere to our decision to reverse the judgment of the district court dismissing the suit.” The unanimous decision was written by Judge Richard A. Posner.

- *South Ferry LP #2 v. Killinger*, 542 F.3d 776 (9th Cir. 2008). The important opinion

issued by the Ninth Circuit in this securities fraud class action clarified, in the post-*Tellabs* environment, whether a theory of scienter based on the “core operations” inference satisfies the PSLRA’s heightened pleading standard. In siding with the plaintiffs, represented by Milberg LLP, the Ninth Circuit held that “[a]llegations that rely on the core operations inference are among the allegations that may be considered in the complete PSLRA analysis.” The court explained that under the “holistic” approach required by *Tellabs*, all allegations must be “read as a whole” in considering whether plaintiffs adequately plead scienter. After remand, the District Court found that the plaintiffs sufficiently alleged scienter under the Ninth Circuit’s analysis.

MTPG's ATTORNEYS WHO WORKED ON THIS MATTER

CONAGRA FOODS, INC. Case No. CV 11-05379-CJC (AGR_x)

MANAGING PARTNERS

ARIANA J. TADLER is a Managing Partner at Milberg Tadler Phillips Grossman LLP. She has extensive experience litigating and managing complex securities and consumer class actions, including high profile, fast-paced cases and data breach litigations. Ms. Tadler is recognized as one of the nation's preeminent leading authorities on electronic discovery and pioneered the establishment of an E-Discovery Practice group within a plaintiffs' firm structure. Ms. Tadler is regularly invited to speak on a variety of litigation and discovery-related topics and has authored numerous articles and developed and promoted best practice tips and tools, including *The Jumpstart Outline*, now in its third edition, published by The Sedona Conference®.

Ms. Tadler and her team have actively litigated numerous highly publicized data breach litigations on behalf of consumers and data service users. Ms. Tadler was recently appointed to serve on the Plaintiffs' Steering Committee in the multidistrict litigation *In Re Equifax, Inc. Customer Data Security Breach Litigation* pending in the United States District Court for the Northern District of Georgia, Atlanta Division, relating to the credit bureau's data breach last year, which exposed the financial information of more than 145 million consumers. Ms. Tadler and her team are principally responsible for the pursuit, management, and utilization of discovery from the defendant as well as the negotiation of key stipulations and proposed orders and agreements governing discovery.

Ms. Tadler is also a court-appointed member of the Plaintiffs' Executive Committee in *In re Yahoo Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752 (N.D. Cal.), a class action arising from a breach affecting more than 3 billion Yahoo! user accounts. The firm's team, under Ms. Tadler's direction, is primarily

responsible for the massive and complex discovery in the case.

Ms. Tadler is also a member of the court-appointed Steering Committee in *In re Target Corporation Customer Data Security Breach Litigation*, No. 14-md-2522 (D. Minn.), representing consumers in a class action alleging that Target Corp. failed to protect customers from a massive data breach during the holiday shopping season (achieved a \$10 million settlement, pending appeal).

Ms. Tadler is also currently serving on the Plaintiffs' Executive Committee in the multidistrict litigation *In re Apple Inc. Device Performance Litigation*, No. 5:18-md-02827-EJD (N.D. Cal.). The *Apple* litigation arises from a December 2017 admission by Apple that it had released iOS updates designed to slow down the performance of certain iPhones and iPads. The case alleges that Apple throttled the performance of these devices to conceal problems with their batteries. Ms. Tadler serves as Co-Chair of the Offensive Discovery and ESI Coordination Committee.

Ms. Tadler is currently serving as lead counsel in a number of consumer cases involving the mislabeling as "natural" products that contained GMOs, including *In re ConAgra Foods, Inc.*, No. 11-05379 (M.D. Cal.) in which a class was certified by the district court, affirmed by the Court of Appeals for the Ninth Circuit and successfully survived a petition for a writ of *certiorari* to the United States Supreme Court by defendants.

Ms. Tadler has also successfully represented an alternative energy company in its claims of negligence against one of the Big 4 accounting firms.

Ms. Tadler has been recognized for her ability to manage particularly large, complex, fast-paced

litigations. Tadler's accomplishments include litigation of three cases in the Eastern District of Virginia (a/k/a the "Rocket Docket") in less than four years, including *In re MicroStrategy Securities Litigation* in which plaintiffs' counsel negotiated settlements valued at more than \$150 million. Ms. Tadler served as one of the court-appointed plaintiffs' liaison counsel in the *Initial Public Offering Securities Litigation* in which the court approved a \$586 million cash settlement. Among the thousands of defendants in this coordinated action were 55 prominent investment banks and more than 300 corporate issuers.

Ms. Tadler also has been retained as Special Discovery Counsel in complex litigation and class actions. She represented the government of Colombia as Special Discovery Counsel in its pursuit of claims alleging smuggling and illegal sales of alcohol by several international companies for violation of United States RICO statutes and other common law claims. The engagement encompassed identifying relevant information responsive to defendants' requests, confirming and guiding preservation practices, and interviewing and collecting data from more than 100 custodians in 23 Colombian Departments (Colombia's equivalent to our States in the U.S.). The team also reviewed and produced data in the litigation, and was tasked with ensuring compliance with the various privacy laws of Colombia and the United States with regard to personal data, controlled data and the transfer of sensitive information—all hot topics in the area of e-discovery today. Lawyers from other firms faced with e-discovery challenges seek out Ms. Tadler for her guidance and counsel.

Ms. Tadler was recently appointed by United States Supreme Court Chief Justice Roberts to serve on the Federal Civil Rules Advisory Committee. Additionally, she has been appointed by Committee Chair Judge John D. Bates to the subcommittee tasked with reviewing and considering potential civil rules for multidistrict litigation (MDL) cases.

Ms. Tadler recently completed her service on The Sedona Conference®'s Board of Directors and, after serving for five years as Chair, has continued to serve as Chair Emeritus of the Steering Committee for Working Group 1 on Electronic Document Retention and Production, the preeminent "think tank" on e-discovery. In addition, she serves on the Advisory Board of Georgetown University Law Center's Advanced e-discovery Institute where she has helped educate federal judges and lawyers on e-discovery issues and also serves on the Bloomberg Law Litigation Innovation Board. Ms. Tadler also recently completed her service as Executive Director for the Board of Advisors of the Benjamin N. Cardozo School of Law's Data Law Initiative (CDLI).

Ms. Tadler continues to be recognized for her litigation prowess by prominent legal industry rating organizations. Ms. Tadler's recent accolades include: Band 1 (highest) recognition by Chambers and Partners' for E-Discovery; selection by Super Lawyers 2017 "Top 100 Lawyers in New York Metro Area"; Super Lawyers 2017 "Top 50 Women Lawyers in New York Metro Area"; Who's Who Legal Litigation: Leading Practitioner-E-Discovery (2017); and AV® Preeminent rating from Martindale Hubbell. The Legal 500 2016 rankings stated: "'Consummate professional' Ariana Tadler, who leads the E-Discovery unit [of Milberg LLP], is 'exceptional, clear and forceful, a giant in her field' ... 'able to navigate technical discovery issues at a very high level.'"

Ms. Tadler is a member of several legal industry associations, including: American Bar Association; American Bar Foundation (Fellow); American Association for Justice; Federal Bar Council; New York State Bar Association; National Association of Women Lawyers; New York Women's Bar Association; and The New York Inn of Court. Ms. Tadler is a fellow of the Litigation Counsel of America, an invitation-only trial lawyer honorary society that recognizes the country's top attorneys. She is also involved in various community and not-for-

profit organizations and currently serves on the board of Mobilization for Justice for which she once served as Chair.

With gratitude for and in recognition of the many opportunities that have paved the way for her career growth and success, Ms. Tadler commits countless hours to mentoring others in their educational and professional pursuits. She is particularly focused on fostering education and career opportunities for women and underprivileged youth.

Ms. Tadler is also a Principal in Meta-e Discovery LLC, a data hosting, management and consulting company, which is the result of the 2015 spin-off of Milberg LLP's prior Litigation Support and Data Hosting services division that Ms. Tadler spearheaded.

Ms. Tadler graduated from Hamilton College in 1989 and received her J.D. from Fordham University School of Law in 1992.

PARTNERS

DAVID AZAR received his B.S. in Finance from Indiana University School of Business in 1991. He graduated from Duke University School of Law, *magna cum laude*, in 1999, where he was a member of the Order of the Coif (top 10% of the class). While in law school, he served as a senior editor of *Law and Contemporary Problems*, and was a member of the Moot Court Board. After law school, he clerked for Chief Justice Veasey of the Delaware Supreme Court.

Mr. Azar focuses his practice on class actions on behalf of defrauded investors and consumers, as well as disputes regarding contracts, partnerships, closely-held corporations, corporate governance, and other complex commercial matters for businesses and individuals. He also provides corporate counseling in pre-litigation and transactional matters, working with transactional or specialty counsel to provide a litigation perspective or to act as an outside general counsel.

Building upon his nine years of experience representing business enterprises and high-net-worth individuals at two of the most prominent business litigation firms, Mr. Azar has prosecuted several multiparty and other class actions that resulted in more than \$300 million in settlements during the past few years alone. Recent significant settlements include obtaining total recovery for investors of \$219 million against Bank of New York Mellon and Wells Fargo in a securities fraud/breach of contract action, which reflected one of the largest recoveries against indenture trustees in United States history. In addition, Mr. Azar was part of the team that served as co-lead counsel in a class action resulting in \$86 million in settlements on behalf of airline passengers who alleged that Korean Air Lines and Asiana Airlines conspired to fix the price of air travel between the United States and Korea. Mr. Azar's significant litigation experience includes first-chair trial and

appellate work. He is co-author of the chapters on LLC and partnership disputes in *Litigating and Judging California Business Entity Governance Disputes*, scheduled to be published by Lexis in 2019. He is also a contributing author of *Antitrust Law Developments* (7th Edition), published by the ABA Section of Antitrust Law. Mr. Azar is also a co-founding president and board member of the California Discovery Law Initiative, a non-profit that is reviving a publicly accessible and free-to-use website regarding California discovery law practice and case law.

Mr. Azar serves as a volunteer prosecutor through the Los Angeles Bar Association's Trial Advocacy Project, and he has been named by *Los Angeles Magazine* as a Southern California Super Lawyers Rising Star. Mr. Azar has extensive knowledge of dispute resolution, having served as a mediator in more than 160 cases, and he has trained and reviewed other mediators. He served for five years as the editor of the quarterly publication of the Society of Professionals in Dispute Resolution, and was honored with the association's Presidential Recognition award.

HENRY KELSTON received a B.S. degree, *cum laude*, from Tufts University in 1975, and a J.D. degree from New York University School of Law in 1978, where he was a member of the *Annual Survey of American Law*.

Mr. Kelston's practice is concentrated in the areas of complex litigation, class actions and electronic discovery. Mr. Kelston has represented consumers in class actions against major food manufacturers challenging the use of "natural" claims on products containing GMOs. He has also litigated major data breach cases, including *In re Yahoo! Inc. Customer Data Security Breach Litigation*, concerning the largest consumer data breach in history.

Mr. Kelston has extensive experience in state and federal court litigation, administrative proceedings, and arbitrations, and is a regular speaker and CLE presenter on electronic discovery. He is a member of The Sedona Conference® Working Group 1 on Electronic Document Retention and Production. Most recently, he assisted in drafting The Sedona Conference® COMMENTARY ON LEGAL HOLDS: THE TRIGGER & THE PROCESS (expected publication in 2019), and served on the faculty for The Sedona Conference® E-DISCOVERY NEGOTIATION TRAINING. Mr. Kelston also taught Basics of E-Discovery at Legal Services of New Jersey's 2018 In Depth Litigation Skills Training program.

Mr. Kelston is admitted in the United States District Courts for the Southern and Eastern Districts of New York and the District of Connecticut.

ANDREI RADO focuses his practice on securities litigation, consumer class actions, and SEC whistleblower matters.

Since the passage of the Dodd-Frank Act in 2010, Mr. Rado has represented numerous whistleblowers before the commission under a program that rewards and protects whistleblowers that report violations of securities laws to the Securities and Exchange Commission. These involved a variety of complaints, including allegations of bribing foreign officials to gain business, accounting fraud, and consumer fraud, against a variety of companies diverse in size and business.

Mr. Rado's securities practice has included numerous complex litigations nationwide, including *In re Initial Public Offering Securities Litigation*, which alleged, in hundreds of consolidated cases then pending in the Southern District of New York, that investment banks manipulated the initial public offerings of hundreds of companies, and mutual fund timing cases alleging that mutual fund managers allowed select investors to profit by improperly timing their trading in fund shares.

Mr. Rado also investigates, launches, and litigates consumer class actions. These cases are as diverse as consumer fraud itself. Early in his career, Mr. Rado litigated a case against jewelry company Zales for improperly denying credit-insurance claims made by unemployed and retired consumers, and a class action against computer maker Gateway for improperly understating in advertising the costs of internet access to consumers, some of whom incurred internet-access fees of hundreds of dollars. More recently, among other cases, Mr. Rado has launched and litigated consumer cases against companies that misled consumers by inflating the technical specifications of their products, and "all natural" food cases, including the first case alleging that products made from genetically modified organisms (GMOs) should not be advertised as natural.

Mr. Rado is editor of MTPG's consumer blog classactioncentral.com

Prior to joining Milberg LLP, Mr. Rado worked as an attorney at a New York City-based investment bank focusing on compliance, with rules and regulations relating to re-sales of control and restricted securities under the Securities Act of 1933. Mr. Rado also worked at another prominent New York City law firm specializing in plaintiffs' securities class action litigation.

Mr. Rado received his Juris Doctor degree from St. John's University School of Law, *cum laude*, in 1999. While in law school, Mr. Rado served as a senior member of the *New York International Law Review*. He is admitted to practice in the courts of the State of New York, as well as the United States District Court for the Southern District of New York. Mr. Rado was born in Bucharest Romania, and lived in Israel for several years before immigrating to New York in the early 80s.

OF COUNSEL

PAUL J. ANDREJKOVICS graduated from Union College, Schenectady, NY, in 1992, *Phi Beta Kappa, magna cum laude*, with a B.A. degree in political science. In 1995, Mr. Andrejkovics received his J.D. degree from Albany Law School.

Mr. Andrejkovics's practice concentrates on class action settlements and settlement administration. He was admitted as a member of the New York bar in 1996 and is admitted to practice before the United States District Court for the Northern, Southern, and Eastern Districts of New York.

SENIOR COUNSEL

JENNIFER S. CZEISLER graduated from Hofstra University in 1994 with a B.A. degree in psychology. After completing graduate degree work at Hunter School of Social Work (1994-95), she pursued a J.D. degree, which she earned in 1999 from the University of Miami School of Law, where she graduated *cum laude*. Ms. Czeisler was on the editorial board of the *Law Review of Psychology, Public Policy & Law* and earned numerous awards, including the CALI excellence for the Future Award, Dean's Certificate of Achievement Award, and membership in the Phi Delta Phi National Honor Society.

American Bar Association Commission on Legal Problems of the Elderly.

Ms. Czeisler is admitted to practice in the State of New York and is a member of the American Bar Association, where she is committed to her *pro bono* work with the

ASSOCIATES

JOHN HUGHES focuses his practice on antitrust, consumer protection, and False Claims Act Litigation as well as e-discovery.

Mr. Hughes graduated from Michigan State University with a B.A. in Political Science in 2005. And earned his J.D. degree from Wayne State University School of Law in 2012.

During law school, Mr. Hughes served as Director of The Free Legal Aid Clinic in Detroit, Co-managing a facility that specializes in providing family and elder law services to city residents. Prior to joining Milberg LLP, John helped lead a non-profit organization with a presence in New York City, Detroit, and Los Angeles that focused on providing legal support to creative communities.

Mr. Hughes is admitted to practice in Michigan.

ROLANDO G. MARQUEZ represents whistleblowers in a wide variety of *qui tam* lawsuits brought under the federal False Claims Act and parallel state false claims laws. His practice includes pursuing fraud cases involving the healthcare industry, defense contractors, and government procurement.

Mr. Marquez's representative False Claims Act matters include *United States ex rel. Miller v. CareCore National LLC, et al.* (resulting in a \$54 million recovery for the United States as well as 28 States and the District of Columbia in an intervened action arising from the improper prior authorization of costly diagnostic tests which caused federal and state healthcare programs to pay for tests that were not properly authorized as being medically reasonable or necessary); *Mason v. Medline* (resulting in a recovery of \$85 million for the United States in a non-intervened case

arising from unlawful kickbacks, bribes, and other illegal remuneration to induce health care providers to continue to purchase defendant's medical supplies, including supplies paid for with government funds tainted by the kickbacks); and *United States ex rel. Marchese v. Cell Therapeutics, Inc.* (resulting in a \$10.5 million recovery for the United States in an intervened action arising from the unlawful off-label promotion of the cancer drug Trisenox).

From December 2012 to March 2014, Mr. Marquez was a Senior Litigation Counsel in a boutique New York class-action firm as a member of its False Claims Act practice group. Mr. Marquez was part of the co-counsel team that litigated one of the largest *qui tam* lawsuits ever to settle on a non-intervened basis against Omnicare, Inc., the nation's largest provider of pharmacy services to nursing home patients, and which returned \$120 million to the United States Treasury to resolve kickback and false-claims allegations. In addition, Mr. Marquez represented a whistleblower in an action against Smith & Nephew, one of the world's largest medical device manufacturers, in which the company sold products to the government that were manufactured in countries not designated as trade partners of the United States in violation of the Trade Agreements Act.

Before he started in the False Claims Act arena, Mr. Marquez was part of the Milberg LLP team that served as co-lead plaintiffs' counsel in *In re Tyco International, Ltd. Securities Litigation*, one of the largest securities fraud and accountant liability class action suits ever to settle, recovering over \$3.2 billion for the company's injured shareholders.

Prior to joining the firm initially, Mr. Marquez was an associate at a boutique New York patent firm, where he concentrated on

patent litigation matters involving medical device, computer software, and consumer electronic device technologies.

Mr. Marquez received a B.S. degree from Brown University in 1994 and his M.S. degree from New York University in 1998. In 2003 he received his J.D. degree from Fordham University School of Law.

Mr. Marquez is admitted to practice in the state courts of New York as well as in the United States District Courts for the Southern and Eastern Districts of New York and the United States Patent and Trademark Office.

J. BIRT REYNOLDS represents whistleblowers who bring claims under the federal False Claims Act and its state counter-parts. Since joining the firm's Qui Tam practice group, he has worked on several cases that have brought substantial recoveries to federal and state governments. Mr. Reynolds also represents plaintiffs in complex commercial litigation involving contractual, tort, and statutory claims. Before joining Milberg, Mr. Reynolds clerked for a magistrate judge in the Middle District of Florida, as well as Florida appellate and trial court judges.

Mr. Reynolds earned his J.D. from Case Western Reserve University School of Law in 2004. He is admitted to practice in the state courts of Florida and New York, the United States District Courts for the Eastern and Southern Districts of New York, the Northern, Middle, and Southern Districts of Florida, and the Western District of Michigan.

CHRISTOPHER SCHUYLER represents whistleblowers in *qui tam* lawsuits brought under the federal False Claims Act and parallel state false claims laws. He also has experience pursuing consumer protection and data breach claims, along with litigating various securities and M&A actions.

Before joining Milberg Tadler Phillips Grossman LLP, Mr. Schuyler clerked with the Fortune Society, a New York City non-profit organization focused on providing an alternative to incarceration for non-violent offenders. While in law school, he co-chaired a student organization promoting pro bono legal assistance to indigent members of the community, a role for which he was awarded a university scholarship for public service.

Mr. Schuyler graduated from Temple University, *cum laude*, with a B.A. degree in 2007. In 2011 he earned his J.D. degree from the University of Dayton School of Law. Mr. Schuyler is a member of the bar of the State of New York and is admitted to practice before the United States District Court for the Southern and Eastern Districts of New York.

ROY SHIMON focuses his practice on securities and stockholder derivative litigation in both state and federal courts. Mr. Shimon also has experience in the areas of insider trading and antitrust litigation. *Super Lawyers* recognized him as a "Rising Star" in the New York Metro area each year from 2014-2018.

Mr. Shimon has served as lead or co-lead counsel in a number of complex matters on behalf of stockholders and employee investors, including *In re PLX Tech. Inc. S'holders Litig.* (Del. Ch.) (stockholder recovery of \$14.1 million); *In re Zynga Inc. Sec. Litig.* (N.D. Cal.) (investor recovery of \$23 million); *In re Popular Inc. ERISA Litig.* (D.P.R.) (employee investor recovery of \$8.2 million); and *Shanehchian, et al. v. Macy's Inc.* (S.D. Ohio) (employee investor recovery of \$8.5 million). Mr. Shimon currently represents the City of Charlotte, North Carolina in ongoing antitrust litigation in *In re Liquid Aluminum Sulfate Antitrust Litig.*, No. 16-md-2687 (D.N.J. 2015).

Mr. Shimon graduated *cum laude* from Franklin & Marshall College in 2003, where he was inducted into the Pi Sigma Alpha and Alpha Kappa Delta National Honor

Societies. He received his J.D. from St. John's University School of Law in 2006, where he served on the Executive Board of the Moot Court Honor Society and as Vice President of the Entertainment & Sports Law Society.

Mr. Shimon is admitted to practice in the state and federal courts of New York.



DICELLO LEVITT GUTZLER

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DiCello Levitt Gutzler LLC's Experience and Representative Cases

Representing institutional investors, individuals, businesses, and public clients, the firm's attorneys have successfully prosecuted and settled numerous complex cases and class actions, resulting in billions of dollars in recoveries for their clients and other class members. Partners Mark DiCello, Adam Levitt, and Greg Gutzler lead a top-notch team of recognized leaders who share a collective depth of experience and steadfast commitment to justice. Their tireless advocacy on behalf of their clients is well-known, recently leading Mike Bowers, Georgia's former Attorney General, to characterize a settlement obtained by Adam Levitt and Amy Keller on behalf of small business owners against a major credit card processor as a "work of art," and "one of the best pieces of legal work I have ever observed." *Champs Sports Bar & Grill v. Mercury Payment Systems, LLC*, No. 16-cv-00012 (N.D. Ga.).

Based in Chicago, Cleveland, and New York, with a nationwide practice, the firm's attorneys have successfully led—and are presently leading—many large class and multidistrict actions, including against industry titans such as Apple, Intel, General Motors, and Equifax, and representing businesses and investors in arbitrations and litigation in multiple courts.

REPRESENTATIVE MULTI-DISTRICT AND CLASS ACTION CASES

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| <i>In re Intel Corp. CPU Marketing, Sales Practices and Products Liability Litigation</i> , No. 18-md-02828 (D. Or.) | Nationwide class action related to security flaws in Intel-manufactured CPUs. | Plaintiffs' Steering Committee |
| <i>In re Apple Inc. Device Performance Litigation</i> , No. 18-md-02827 (N.D. Cal.) | International class action concerning device performance throttling. | Plaintiffs' Executive Committee |
| <i>In re Polaris Marketing, Sales Practices, and Products Liability Litigation</i> , No. 18-0939 (D. Minn.) | Nationwide class action against off-road vehicle manufacturer related to design defects impacting driver safety. | Co-Lead Counsel |
| <i>In re Equifax, Inc. Customer Data Security Breach Litigation</i> , No. 17-MD-02800 (N.D. Ga.) | Data breach affecting nearly 150 million people. | Co-Lead Counsel |
| <i>State of New Mexico, ex rel. Hector H. Balderas v. Takata Corporation</i> , No. D-101-CV-2017-00176 (Santa Fe 1st Jud. Dist., N.M.) | Consumer protection lawsuit brought by state attorney general involving defective and dangerous airbags. | Counsel by Special Commission |
| <i>Champs Sports Bar & Grill v. Mercury Payment Systems, LLC</i> , No. 16-cv-00012 (N.D. Ga.) | Card processing fee class action resulting in nationwide settlement of \$52 million for small businesses. | Co-Lead Counsel |
| <i>Sloan v. General Motors LLC</i> , No. 16-cv-07244-EMC (N.D. Cal.) | Excessive oil consumption defect class action. | Co-Lead Counsel |
| <i>State of New Mexico, ex rel. Hector H. Balderas v. Volkswagen Group of America</i> , No. D-101-CV-2017-00176 (Santa Fe 1st Jud. Dist., N.M.) | Consumer protection lawsuit related to corporation's use of defeat device to circumvent state consumer and environmental laws. | Counsel by Special Commission |

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| <i>In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation</i> , No. 15-md-2672 CRB (JSC) (N.D. Cal.) | Vehicle emissions/defeat device class action litigation resulting in over \$16 billion in total settlements for consumers. | Plaintiffs' Steering Committee |
| <i>In re General Motors LLC Ignition Switch Litigation</i> , No. 14-md-2542 (S.D.N.Y.) | Ignition switch defect class action. | Executive Committee |
| <i>In re Navistar MaxxForce Litigation</i> , No. 14-cv-5249 (N.D. Ill.) | Nationwide truck emissions control system defect class action. | Co-Lead Counsel |
| <i>NCUA v. RBS Securities, Inc.</i> , No. 13-cv-6726 (S.D.N.Y.) | Securities litigation related to residential mortgage-backed securities Accepted offer of judgment for \$129.6 million, plus fees | Represented Successful Government Agency |
| <i>In re Adobe Systems, Inc. Privacy Litigation</i> , No. 13-cv-05226 (N.D. Cal.) | Data breach affecting 38 million customer accounts. | Executive Committee |
| <i>CMFG Life Ins. Co. v. RBS Sec. Inc.</i> , No. 12-cv-037 (W.D. Wis.) | Securities litigation related to residential mortgage-backed securities; recovery amounts confidential. | Counsel for Large Wisconsin Corporation |
| <i>Roberts v. Electrolux Home Products, Inc.</i> , No. 12-cv-1644 CAS (C.D. Cal.) | Defective dryer class action resulting in \$35.5 million nationwide settlement. | Co-Lead Counsel |
| <i>In re Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation</i> , MDL No. 2284 (E.D. Pa.) | Tree and shrub damage from defective herbicide class action resulting in \$550 million settlement. | Co-Lead Counsel |
| <i>In re Sony Gaming Networks and Customer Data Security Breach Litigation</i> , No. 11-md-02258 (S.D. Cal.) | Data breach case affecting 77 million accounts. | Co-Lead Counsel |
| <i>In re Michaels Stores Pin Pad Litigation</i> , No. 11-C-3350 (N.D. Ill.) | Data breach lawsuit concerning compromised payment information. | Co-Lead Counsel |
| <i>In re StarLink Corn Products Liability Litigation</i> , MDL No. 1403 (N.D. Ill.) | Biotechnology class action concerning contamination of U.S. corn supply with unapproved genetically modified trait resulting in \$110 million settlement. | Co-Lead Counsel |
| <i>In re Genetically Modified Rice Litigation</i> , MDL No. 1811 (E.D. Mo.) | Biotechnology mass tort concerning contamination of U.S. rice supply resulting in aggregate settlements exceeding \$1.1 billion. | Co-Lead Counsel |
| <i>In re Porsche Cars Plastic Coolant Tubes Litigation</i> , MDL No. 2233 (S.D. Ohio) | Nationwide class action involving defective engine coolant tubes resulting in \$45 million settlement. | Co-Lead Counsel |

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|--|---|---|
| <i>In re: Reebok Easytone Litigation</i> , No. 10-CV-11977 (D. Mass.) | False advertising class action resulting in \$25 million, non-reversionary settlement fund. | Class Counsel |
| <i>In re Pharmatrak, Inc. Privacy Litigation</i> , No. 00-11672 (D. Mass.) | Internet privacy lawsuit related to collection of personal information without consent. | Co-Lead Counsel |
| <i>NCUA v. Barclays Capital, Inc.</i> , No. 13-cv-6727 (S.D.N.Y.) & No. 12-1631 (D. Kan.) | Securities litigation related to residential mortgage-backed securities. Settled for \$325 million combined. | Represented Successful Government Agency |
| <i>NCUA v. Wachovia Capital Markets LLC</i> , No. 13-cv-6719 (S.D.N.Y.) & No. 11-2649 (D. Kan.) | Securities litigation related to residential mortgage-backed securities. Settled for \$53 million combined. | Represented Successful Government Agency |
| <i>NCUA v. Morgan Stanley & Co., Inc.</i> , No. 13-cv-6705 (S.D.N.Y.) & No. 13-cv-2418 (D. Kan.) | Securities litigation related to residential mortgage-backed securities. Settled for \$225 million combined. | Represented Successful Government Agency |
| <i>NCUA v. RBS Securities, Inc., et al.</i> , No. 11-2340 (D. Kan.) & No. 11-5887 (C.D. Cal.) | Securities litigation related to residential mortgage-backed securities. Settled for \$1.1 billion. | Represented Successful Government Agency |
| <i>Monsanto v. Syngenta Seeds, Inc.</i> , No. 07-cv-543 (E.D. Mo) | Breach of licensing agreement related to access to Monsanto's newest patented soybean technology. Resulted in favorable settlement agreement. | Represented Large Biotechnology Corporation |
| <i>Gulf Power v. Peabody</i> , No. 06-cv-270 (N.D. Fla.) | Defending breach of coal supply agreement. Tried to successful verdict. | Represented Large Energy Company |
| <i>Monsanto v. Delta & Pine Land Company CA</i> , No. 1970-N (Del. Chancery) | Confidential arbitration re licensing fees and obligations related Monsanto's patented cotton technology. | Represented Large Biotechnology Corporation |
| <i>Monsanto v. Syngenta Seeds, Inc.</i> , No. 2107CC-01361 (Missouri State Court, St. Louis County) | Licensing dispute related to Monsanto's patented soybean technology. Tried to successful verdict; received all remedies sought, including declaratory judgment and injunctive relief. | Represented Large Biotechnology Corporation |
| <i>Monsanto v. Garst Seed Co.</i> , No. 2104CC-04999 (Missouri State Court – St. Louis County) | Breach of contract case. Won summary judgment. | Represented Large Biotechnology Corporation |

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| <i>In re DoubleClick, Inc. Privacy Litigation</i> , No. 00-civ0641 (S.D.N.Y.) | Internet privacy class action. | Class Counsel |
| <i>Supnick v. Amazon.com, Inc.</i> , No. C00-0221P (W.D. Wash.) | Internet privacy lawsuit related to installation of tracking software. | Co-Lead Counsel |
| <i>Monsanto v. E.I. du Pont De Nemours & Co. Inc.</i> , No. 00-cv-00952 (E.D. Mo.) | Patent infringement lawsuit. Tried to successful \$1 billion verdict, the fourth-largest patent-infringement jury verdict in U.S. history | Represented Large Biotechnology Corporation |

DiCello Levitt Gutzler LLC's Experienced Roster of Attorneys

Acknowledged as Super Lawyers and Leading Lawyers by Law Dragon, and AV-Rated by Martindale-Hubbell, the attorneys of DiCello Levitt are recognized as best in their field by prominent legal publications. In addition, the firm's attorneys have been included in the Law Bulletin's 40 Under 40 award, National Trial Lawyers 40 Under 40 list, and the *Best Lawyers in America* publication.

Beyond recognition from legal publications, the firm's attorneys have contributed to the legal community through scholarship and speaking engagements, including as a panelist for the Women's Bar Association of Illinois, testifying before the Illinois Supreme Court Rules Committee on class action practice, and chairing an annual class action litigation conference in Chicago.

Biographies for the firm's attorneys who worked on this matter are listed below.



Adam J. Levitt
Partner

EMAIL:
alevitt@dicellolevitt.com

EDUCATION
Northwestern University Law
School, J.D.

Columbia College, Columbia
University, A.B., *magna cum laude*

Adam operates one of the nation's leading commercial litigation practices, having achieved billions in recoveries for his clients.

A founding partner of DiCello Levitt, Adam Levitt is one of the nation's leading advocates for plaintiffs in commercial litigation, class actions, mass torts, and public client cases. He has extensive experience leading multidistrict and other nationwide complex litigation lawsuits, with a substantial focus on deceptive trade practices, financial fraud, sophisticated technology issues, and new approaches to compound legal issues.

A leader in the field of developing novel approaches to damages methodologies, Mr. Levitt has recovered billions of dollars for clients and class members. As co-lead counsel in three of the largest biotechnology class actions in history, he recovered more than \$1.7 billion for class members: *In re Genetically Modified Rice Litig.* (E.D. Mo.) (securing settlements exceeding \$1.1 billion); *In re Imprelis Herbicide, Sales Practice and Products Liability Litig.* (E.D. Pa.) (\$550 million settlement); and *In re StarLink Corn Products Liability Litig.* (N.D. Ill.) (\$110 million settlement). In those cases, Mr. Levitt devised the market loss damages model used in every similar case since *StarLink*. His legal writing related to these novel theories and damages modeling earned Mr. Levitt the Burton Award for Finest Law Firm Writer (2017) and the American Agricultural Law Association's Professional Scholarship Award (2017).

Recognized as a "pioneer" in litigation involving complex technology issues by Judge James Ware, former Chief Judge of the United States District Court for the Northern District of California, Mr. Levitt has served in leadership roles in a variety of multidistrict class action cases related to sophisticated frauds committed through the utilization of technology. For example, Mr. Levitt was recently appointed to the Plaintiffs' Steering Committee in the nationwide class action against Intel Corp. related to security vulnerabilities in the company's ubiquitous CPUs. *In re: Intel Corp. CPU Marketing, Sales Practices and Products Liability Litigation* (D. Or.).

Mr. Levitt's victories extend to other areas of practice, including in automotive cases, where he served as a member of the Plaintiffs' Steering Committee in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litig.* (N.D. Cal.), a case resulting in over \$16 billion in total settlements for consumers. Mr. Levitt has also served in leadership positions in a number of other cases, including *In re Polaris Mktg., Sales Practices, and Prods. Liab. Litig.* (D. Minn.) (Co-Lead Counsel); *In re Navistar Maxxforce Engines, Sales Practices and Products Liability Litig.* (N.D. Ill.) (Co-Lead Counsel); and *In re General Motors LLC Ignition Switch Litig.* (S.D.N.Y.) (Executive Committee).

Nationally recognized as an authority on class action litigation, Mr. Levitt is the President of Class Action Trial Lawyers, an elected member of the American Law Institute and the Economic Club of Chicago and serves on advisory boards for the Duke Law Center for Judicial Studies, the American Constitution Society, and the Institute for Consumer Antitrust Studies. He has testified before the Illinois Supreme Court Rules Committee on class action practice and chairs an annual class action litigation conference in Chicago. Mr. Levitt has an "AV" rating from Martindale-Hubbell and has been named an Illinois Super Lawyer every year since 2012.

Adam J. Levitt,
continued

PRACTICE AREAS

- Antitrust Litigation
- Appellate Litigation
- Commercial Litigation
- Class Action Litigation
- Product Liability Litigation
- Public Client Litigation
- Securities Litigation

HONORS

- Burton Award, Finest Law Firm Writer (2017)
- “AV” rating, Martindale-Hubbell
- Super Lawyer: Class Actions & Mass Torts, Illinois (2012-present)
- 500 Leading Lawyers in the U.S., Lawdragon (2011)
- Litigator of the Week, American Lawyer (2011)

SELECTED WRITINGS AND PRESENTATIONS

Law review articles

- *The Gift That Keeps on Giving: Price Overhang Damages in Commodity Crop Cases*, 51 VAL. U. L. REV. 375 (2017) (co-authored with Russell L. Lamb)
- *Agricultural “Market Touching”: Modernizing Trespass to Chattels in Crop Contamination Cases*, 38 U. HAW. L. REV. 409 (2016) (co-authored with Nicole Negowetti)
- *CAFA and Federalized Ambiguity: The Case for Discretion in the Unpredictable Class Action*, 120 YALE L.J. ONLINE 231 (2011)

Other recent writings

- *March of the Machines – Robotic Vehicles and the Changing Landscape of Motor Vehicle Liability*, TRIAL, Vol. 53, No. 2 (2017)
- *The Volkswagen Emissions Scandal: What’s Next?*, TRIAL, Vol. 52, No. 2 (2016)
- *Volkswagen Scandal is Perfect Fit for a Damages Class Action*, Portfolio Media (Law360) (September 2015)

Recent notable presentations

- *Analysis and Application of the Ninth Circuit’s Briseño v. ConAgra Opinion*, Rapid Response: Analysis of the Ninth Circuit Rejection of Ascertainability Webinar (2017)
- *Criteria for Approving Class Action Settlements*, The Duke Law Center for Judicial Studies – Class Action Settlement Conference (2016)
- *Proving Class-Wide Damages After Comcast in Consumer Products Class Actions*, AAJ Summer Conference (2016)

ADMISSIONS

- United States Supreme Court
- United States Courts of Appeals for the First, Second, Third, Seventh, Eighth, Ninth, Eleventh, and Federal Circuits
- United States District Courts for the District of Colorado; Northern, Central, and Southern Districts of Illinois; Northern District of Indiana; Eastern District of Michigan; District of Nebraska; Eastern and Northern Districts of Texas; and the Western District of Wisconsin.
- Illinois



Amy Keller
Partner

EMAIL:

akeller@dicellolevitt.com

EDUCATION

John Marshall Law School, J.D.

University of Michigan, B.A.

Amy is a SuperLawyers Rising Star, developing a national profile in class action litigation.

Amy Keller has experience successfully litigating a variety of complex litigation cases in leadership positions across the United States. Recently, Ms. Keller was appointed to serve as co-lead counsel in the pending nationwide litigation against Equifax related to its 2017 data breach. In that case, Ms. Keller represents nearly 150 million class members. *In re Equifax, Inc. Customer Data Security Breach Litig.*, No. 17-MD-02800 (N.D. Ga.). As the recently-appointed Co-Chair of Law and Briefing on the Plaintiffs' Executive Committee in *In re: Apple Inc. Device Performance Litigation* (N.D. Cal.), Ms. Keller employed her technical savviness in directing an effort to craft a nationwide and international consolidated complaint. Ms. Keller's numerous other leadership positions have also required sophistication in not only understanding complex legal theories, but also presenting multifaceted legal strategies to ensure a favorable result to her clients. See, e.g., *Gengler v. Windsor Window Company, et al.*, No. 16-cv-00180 (E.D. Wis.) (plaintiffs' steering committee; case resulted in nationwide settlement); *Catalano v. BMW of North America, LLC, et al.*, No. 15-cv-04889 (S.D.N.Y.) (interim settlement counsel for nationwide settlement providing repair and replacement of certain electrical parts in automobiles); *Roberts, et al. v. Electrolux Home Prods., Inc.*, No. 12-cv-01644 (C.D. Cal.) (co-lead settlement counsel in nationwide settlement benefitting owners of certain allegedly-defective clothes dryers).

Ms. Keller's expertise spans a wide variety of practice areas and topics—including benefit of the bargain analysis and consumer protection. See *Grasso, et al. v. Electrolux Home Prods., Inc.*, No. 16-cv-00911 (M.D. Fla.). Ms. Keller's experience also extends to the development of briefing and strategy at the district and appellate court level concerning ascertainability of class members in consumer class actions, complex personal jurisdiction challenges in multi-state cases, the use of conjoint analysis in determining damages, and the enforceability of arbitration clauses in consumer contracts. See, e.g., *Conagra Brands, Inc. v. Briseno, et al.*, 138 S. Ct. 313 (2017); *Bell v. PNC Bank, Nat. Ass'n*, 800 F.3d 360 (7th Cir. 2015); and *Elward v. Electrolux Home Prods., Inc.*, No. 15-cv-09882 (N.D. Ill.); among others.

As a two-time chair of the Chicago Bar Association Class Action Committee, Ms. Keller gave a number of presentations on topics impacting large-scale consumer class actions, including presentations on emerging legal issues in technology and privacy matters and in consumer cases. Chicago Bar Association Class Action Committee Winter Seminar, Class Actions and the Trump Administration (2017); Women's Bar Association of Illinois, Panel on Emerging Issues in Privacy and Technology Law (2017); Perrin Class Action Litigation Conference, Current Trends in Product Liability Class Action Litigation (2016); Chicago Bar Association, 2015 Annual Spring Seminar on Class Action Litigation (2015).

Ms. Keller is recognized by Illinois Super Lawyers as a "Rising Star," and serves as a board member of Public Justice, a not-for-profit legal advocacy organization. She is a member of the Sedona Conference's Working Group 11, which focuses on litigation issues surrounding technology, privacy, artificial intelligence, and data security. In 2018, Ms. Keller was named as a *National Law Journal* Plaintiff Trailblazer, and a one of the "Top 40 Under 40" trial lawyers in Illinois by National Trial Lawyers.

Amy Keller,
continued

PRACTICE AREAS

- Antitrust Litigation
- Appellate Litigation
- Class Action Litigation
- Commercial Litigation
- Employment Litigation

HONORS

- Super Lawyer: Rising Star, Illinois (2016-2019)
- National Trial Lawyers, Top 40 Under 40 (2018)
- Plaintiff Trailblazer, *National Law Journal* (2018)

SELECTED WRITINGS AND PRESENTATIONS

- *Class Actions and the Trump Administration*, Chicago Bar Association Class Action Committee Winter Seminar (2017)
- *Emerging Issues in Privacy and Technology Law*, Women's Bar Association of Illinois (2017)
- *Current Trends in Product Liability Class Action Litigation*, Perrin Class Action Litigation Conference in Chicago, Illinois (2016)
- *A Funny Thing Happened on the Way to the Forum: When to Choose Federal Over State Court*, American Bar Association Section of Litigation Annual Conference in Chicago, Illinois (2016)
- Chicago Bar Association 2015 Annual Spring Seminar on Class Action Litigation in Chicago, Illinois (2015)
- *Circuit Court Update, ABA Section of Labor and Employment Law*, 6th Annual Section Conference in Coronado, California (2013)
- *Preemptive Collateral Estoppel Blocks Consumer Class Action in Thorogood*, CADS Report, Vol. 21, Winter 2011 (Co-authored by associate Dawn M. Goulet)
- *The Criminal Law Edit, Alignment and Reform Initiative: A Symposium on the New Criminal Code*, 41 J. MARSHALL L. REV. 610-935 (Spring 2008) (as Chair of the Symposium)

ADMISSIONS

- United States Courts of Appeals for the Third, Seventh, Eighth, and Ninth Circuits
- United States District Courts for the Northern District of Florida, Southern District of Florida, Northern District of Illinois, Southern District of Illinois, District of Nebraska, Eastern District of Michigan, and Western District of Michigan
- Illinois
- Michigan

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE CONAGRA FOODS, INC.

Case No. 11-cv-05379- CJC(AGR)

MDL No. 2291

Declaration

of

COLIN B. WEIR

March 8, 2019

REFERENCES MATERIALS DESIGNATED "CONFIDENTIAL" AND "CONFIDENTIAL
ATTORNEYS' EYES ONLY" UNDER PROTECTIVE ORDER

I, Colin B. Weir, declare as follows:

I am Vice President at Economics and Technology, Inc. ("ETI"), One Washington Mall, 15th Floor, Boston, Massachusetts 02108. ETI is a research and consulting firm specializing in economics, statistics, regulation, and public policy.

I. QUALIFICATIONS, BACKGROUND, AND EXPERIENCE

1. I hold a Masters of Business Administration, with honors, from the High Technology program at Northeastern University, Boston, Massachusetts. I hold a Bachelor of Arts degree, *cum laude*, in Business Economics from The College of Wooster, Wooster, Ohio. I have provided expert testimony before federal and state courts, the Federal Communications Commission, and state regulatory commissions, and have contributed research and analysis to numerous ETI publications and expert testimony at the state, federal, and international levels. I have consulted on a variety of consumer and wholesale products cases, calculating damages relating to food products, household appliances, herbal remedies, health/beauty care products, electronics, furniture, and computers. My Statement of Qualifications, which outlines my professional experience, publications, and record of expert testimony, is annexed hereto as Exhibit 1. This includes a list of all cases in which, during the previous four years, I have testified as an expert at trial or by deposition. Prior to joining ETI, I worked at Stop and Shop Supermarkets for a period of seven years, working as a cash department head, grocery/receiving clerk, and price-file maintenance head.

2. Contained in Exhibit 1 is a list of numerous litigations in which I have participated in the design, execution and/or determination of the economic suitability of conjoint surveys, or have been found by the court to have expertise in conjoint analysis. These cases include, but are not limited to *Jones v. Nutiva*; *Hunter v. Nature's Way*; *Looper v. FCA*; *Sanchez-Knutson v. Ford Motor Company*; *Belfiore v. Procter and Gamble*; *Kurtz v. Kimberly Clark*; *In re Scotts EZ Seed Litigation*; *In re: ConAgra Foods*; and *Hadley vs. Kellogg*.

Declaration of Colin B. Weir

March 8, 2019

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3. I am the same Colin B. Weir who has previously testified in this proceeding. Incorporated by reference is my October 27, 2014 Reply Declaration and my September 5, 2014 Amended Declaration.

II. ENGAGEMENT

4. I was previously advised by Counsel for Plaintiffs that people purchased certain Wesson Oil Products labeled as being "100% Natural" claim ("Natural Claim") and that Plaintiffs allege that this Claim is false or misleading to reasonable consumers.¹ Over the course of several declarations, I proposed "Price Premium Damages" as a method to determine damages on a Class-wide basis, and provided methods to estimate such damages to a Class of consumers from eleven states through hedonic regression analysis. As I outlined in my earlier Declarations, hedonic regression is an econometric model commonly used by economists to quantify the relationship between the price of a product and its attributes, and the technique has a long history in use for determining damages in class action litigation.² This Court also recognized that Price Premium Damages can be calculated on a Class-wide basis using hedonic regression.

5. I have been informed that that, as of July 2017, Conagra had ceased advertising, marketing or selling Wesson Oils products as "natural" and removed the Natural Claim from the labels of all of its Wesson Oil products sold in the U.S.

6. Counsel for Plaintiffs has informed me that they have reached a settlement with Defendant that provides for, among other things, injunctive relief requiring that in the future, Wesson Oils will not be advertised, marketed or sold as "natural" unless the FDA issues express guidance or a regulation, or federal legislation is enacted, authorizing permitting use of a

¹ See, generally, Class Action Complaint.

² See, e.g., *Hedonic Prices and Implicit Markets: Product Differentiation in Pure Competition*. Rosen, Sherwin, The Journal of Political Economy, Vol. 82, No. 1. (Jan. - Feb., 1974); *The Use of Hedonic Analysis for Certification and Damage Calculations in Class Action Complaints*, Doane, Michael (Analysis Group) and Hartman, Raymond, Journal of Law, Economics, & Organization, Vol. 3, No. 2 (Autumn, 1987), pp. 351-372.

Declaration of Colin B. Weir

March 8, 2019

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"natural" claim on a product containing processed oil derived from genetically engineered seed stock.

7. I have been asked to estimate, using hedonic regression analysis, the annual value to consumers of the removal of the Natural Claim from the labels of all Wesson Oils.

8. I have also been asked to estimate the maximum amount of damages that Plaintiffs could obtain at trial pursuant to Judge Morrow's rulings in the case. Specifically, I was asked to calculate the portion of the Price Premium for the Natural Claim that is specifically attributable to "non-GMO" meaning of the Natural Claims to consumers, through the combined use of hedonic regression analysis and conjoint analysis.³

9. Earlier in this litigation, Judge Morrow ruled that I am qualified as an expert in both hedonic regression analysis and conjoint analysis, and that Plaintiffs' combined use of hedonic regression and conjoint survey is a valid method of calculating Class-wide damages in this case.⁴

III. SUMMARY OF OPINIONS

10. In my opening Declarations, I discussed how consumers have paid a market price premium as a result of Defendant's use of the Natural Claim on its Wesson Oils. This premium is reflective of the fact that the market prices cooking oils higher when they carry a "natural" claim on the label compared to oils that do not carry such a label (holding all else equal).

11. I have been informed that Conagra removed the Natural Claim from all the Wesson Oils sold in the United States and stopped advertising, marketing or selling Wesson Oils as

³ Conjoint analysis is well-accepted quantitative method in marketing research and is commonly used to measure how consumers perceive and value the different product features (called "attributes") that make up an individual product or service. I used it here to determine relative value of the GMO-free interpretation of the Natural Claim vis-à-vis other possible interpretations that were identified throughout the course of the litigation. This fractional value can be applied to the hedonic regression results to determine the portion of the price premium resulting from the Natural Claim that is specifically attributable to the GMO-free issue.

⁴ Order Denying Plaintiffs' Motion for Class Certification; Granting in Part and Denying in Part Defendants' Motion to Strike, ECF No. 350 at 10 (August 1, 2014) ("The court concludes that Weir's academic training and practical experience qualify him to testify to the calculation of damages using hedonic regression and conjoint analysis.").

Declaration of Colin B. Weir

March 8, 2019

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"natural" as of July 2017. As a result of Conagra's label and marketing changes, consumers have been receiving the full economic benefit of the removal of that entire Natural Claim -- namely, paying less for the Wesson Oils because they are no longer paying the price premium that results from the use of the Natural Claim.

12. I have also been informed that the parties have reached a settlement that, among other relief, provides for the entry of an injunction ordering that Wesson Oils will not be advertised, marketed, or sold as "natural" unless the FDA issues express guidance or a regulation, or federal legislation is enacted, authorizing permitting use of a "natural" claim on a product containing processed oil derived from genetically engineered seed stock. As a result of that injunction, consumers will continue to receive the full economic benefit of the removal of the Natural Claim from all Wesson Oils labels for at least the foreseeable future, and possibly in perpetuity.

13. In my Amended Declaration, I set forth a detailed hedonic regression methodology for determining the price premium that consumers pay as a result of the Natural Claim. I described the empirical and historic price and attribute data I had reviewed for thousands of different products within the cooking oil market.

14. Since that time, I have obtained additional, more granular, retail sales data, and have conducted state-specific hedonic regressions to determine the price premium attributable to the Natural Claim on the Wesson Oil labels. The results generally demonstrate positive, statistically significant price premiums for the Natural Claim ranging from approximately 2% to as high as 18%.

15. As I discuss in greater detail below, using a combination of the retail and wholesale sales of the Wesson Oils and the results of the hedonic regressions, I have determined that the annual value of the injunctive relief provided by the settlement across the eleven-state class to be approximately \$11,540,000 per year.

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IV. SALES OF WESSON OIL

16. Defendant has provided certain updated documentation of its Wesson Oil sales.⁵ I have analyzed this data and estimated the total number of units sold of the Wesson Products at issue in this litigation during the most recent calendar year.

17. I have analyzed voluminous retail sales data concerning Wesson Oils from both IRI and Nielsen -- the leading retail sales data providers. These data sets provide, among other information, quantities of each Wesson Oils product sold at retail in both units and dollars during the Class Period. Using this data, I have estimated an aggregate average retail price for the Wesson Oils across all sizes and varieties of the Products -- including the premium that consumers paid for the Natural Claim.⁶

18. The IRI data that I have reviewed provides sales data for the Wesson Oil on a nationwide and state-by-state basis for the eleven Class States that have been certified in this litigation and are the only states at issue in the proposed settlement.^{7,8} Using this data, I have estimated the share of Wesson sales in each of the eleven Class States. I have also examined US population data both nationwide and on a state-by-state basis.⁹ I have used this data to cross check the state share data from IRI.

19. Using the estimate of retail sales price, units sold of the Wesson Oils, and the state share data, I have apportioned the estimated annual retail sales of the Wesson Products by state for each of the eleven class states.¹⁰

⁵ Bates No. CAG0050052, CAG047635.

⁶ IRI Data.

⁷ *Id.*

⁸ California, Colorado, Florida, Illinois, Indiana, Nebraska, New York, Ohio, Oregon, South Dakota, and Texas.

⁹ Census.gov (last accessed February 11, 2019).

¹⁰ I am omitting the actual sales data and calculations due to the confidentiality of the data that Conagra has provided.

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**V. PRICE PREMIUM ATTRIBUTABLE TO
"NATURAL"**

20. As discussed at length in my previous Declarations, I have used the economic method of hedonic regression analysis to isolate the price premium attributable to the natural claim made on the Wesson Oils.

21. Through counsel, I have obtained IRI sales data that is broken down by state and by sales channel. This data included over six years of through-the-register pricing and sales data for the Wesson Oils at issue in this litigation as well as for Wesson's major competitors. I have merged this data with the oil attributes contained in the original Nielsen dataset. Together, these two data sets contain numerous brands, representing dozens of individual products, and billions of units sold, with myriad product attributes as tracked by Nielsen.

22. Using this data, I have obtained state-specific results for the price premium attributable to the Natural Claim made on the Wesson Products, which are shown below in Table 1.¹¹

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¹¹ As I have discussed in my previous Declarations, the coefficient from the regression results must be exponentiated to determine the price premium.

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| Table 1. | | |
|--|---------------|------------------------------------|
| Class State-Specific Price Premium Attributable to the Natural Claim | | |
| State | Price Premium | Price Premium Factor ¹² |
| CA | 2.77% | 2.70% |
| CO | 6.92% | 6.48% |
| FL | 6.08% | 5.73% |
| IL | 10.52% | 9.52% |
| IN | 9.89% | 9.00% |
| NE | 2.22% | 2.17% |
| NY | 18.82% | 15.84% |
| OH | 13.16% | 11.63% |
| OR | 5.64% | 5.34% |
| SD ¹³ | 2.22% | 2.17% |
| TX ¹⁴ | 7.71% | 7.16% |

VI. VALUE OF THE LABEL AND MARKETING CHANGES

23. Using the retail sales of the Wesson Products by state, and the state specific price premium factors, I have calculated the portion of the annual retail sales of the Wesson Oils attributable to the price premium for the Natural claim in each of the eleven Class states

¹² As I discussed in my previous Declarations, the price premium (which reflects the amount by which a base price is increased by the claim) must be converted to a price premium factor to reflect the fact that the retail pricing already includes both the base and the price premium.

¹³ There was insufficient data to produce a reliable result for South Dakota. Given its geographical proximity, and the conservative nature of the result, I have thus used the premium results from Nebraska as a proxy.

¹⁴ There was insufficient data specific to the state of Texas to produce a state specific result for Texas. I have thus used the average of the model results as a proxy.

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24. The total price premium for the Natural Claim on Wesson Oils in the eleven Class States is approximately \$11.54-million per year.

25. As a result of the 2017 label change and the injunctive relief, consumers will receive the full economic benefit of the removal of that entire Natural Claim -- namely, paying less for the Products because they are no longer paying the price premium that results from the use of the Natural Claim.

26. This means that, all else being equal, one would expect that after the labeling changes, for the eleven states at issue in the litigation, the total amount that will be paid by consumers for the Products will be at least \$11.54-million less than it would have been in the absence of the changes on an annual basis.

27. Class Members have received these benefits since July 2017 and the injunctive relief obtained as part of the Settlement ensures that they will continue to receive the benefits in the future.

28. Because the Natural Claim has been removed from Wesson Oils products throughout the U.S., consumers living outside of the 11 states would also realize an economic benefit from the removal of the Natural Claim in the form of lower market prices. On a going forward basis this value may vary based upon the quantities of the product sold. For example, if sales quantities increase in the future, this value would be higher (Conagra's wholesale sales data show a 3.67% increase in case sales of Wesson Oil in its Fiscal 2018 results).¹⁵

VII. MAXIMUM DAMAGES AT TRIAL

29. In her Order denying Plaintiffs' first Motion for Class Certification, Judge Morrow ruled that that, for purposes of measuring damages, the premium associated with the Natural

¹⁵ Bates no. CAG047635. FY 2018 compared to FY 2016. ConAgra's fiscal year runs from June of the prior year through May of the stated year.

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Claim needed to be subdivided to quantify the portion of the premium associated solely with the "GMO-free" meaning of that claim.¹⁶

30. To address this requirement, my firm oversaw the design, execution, and analysis of a conjoint survey to measure the relative value that consumers place on the GMO-free meaning of the Natural Claim on the Wesson Products as compared to other meanings of the Natural Claim. The survey was conducted among respondents in the eleven Class States.

31. Based on the results of that conjoint survey, I have calculated the relative importance of the GMO-free meaning to Wesson Oil purchasers (or likely purchasers) in each individual Class State; and, in total, across all eleven Class States.

| Table 2. Individual State GMO-Free Attribute Importance | | |
|--|--------|--------|
| State | All | Wesson |
| CA | 25.98% | 25.98% |
| CO | 28.11% | 28.42% |
| FL | 25.93% | 26.00% |
| IL | 26.73% | 26.42% |
| IN | 27.82% | 28.24% |
| NE | 26.35% | 26.07% |
| NY | 27.13% | 27.12% |
| OH | 27.62% | 27.66% |
| OR | 28.38% | 28.38% |
| SD | 26.14% | 26.88% |
| TX | 27.79% | 27.75% |

¹⁶ Order Denying Plaintiffs' Motion for Class Certification; Granting in Part and Denying in Part Defendants' Motion to Strike, ECF No. 350 (August 1, 2014).

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32. As can be seen from the data, the GMO-Free attribute importance is consistent across all eleven Class States, falling into an approximate range of 26-28% of the total value of the Natural Claim.

33. I have also conducted additional checks of the data, to confirm the reliability of the results.

34. Across the eleven Class States, the conjoint survey indicated that 27.20% of the value of the "natural" premium on the price of Wesson Oils was attributable to the GMO-Free meaning of "natural" in the minds of Wesson Oil purchasers.

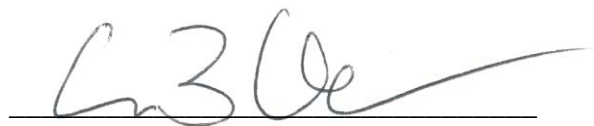
35. By combining the results of the conjoint survey with the results of the hedonic regression described above, and the average retail price per unit of Wesson Oils sold during the Class period, I have calculated that the maximum average compensation Plaintiffs could seek at trial, under the constraints of Judge Morrow's decisions, would be approximately \$0.102 (10.2 cents) per unit purchased.

VIII. RESERVATION OF RIGHTS

My testimony is based upon the information and data presently available to me. I understand that additional, different, and/or updated data including market research data may be obtained in advance of trial. I therefore reserve the right to amend or modify my testimony.

VERIFICATION

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief, and that this declaration was executed at Boston, Massachusetts, this 8th day of March, 2019.



Colin B. Weir

Exhibit 1

Statement of Qualifications
of

COLIN B. WEIR

Statement of Qualifications

COLIN B. WEIR

Colin B. Weir is Vice President at Economics and Technology, Inc. Mr. Weir conducts economic, statistical, and regulatory research and analysis, and testifies as an expert witness. Mr. Weir's work involves econometric and statistical analysis, multiple regression, surveys, statistical sampling, micro- and macroeconomic modeling, accounting and other economic analysis. Such analysis often involves analysis of databases, call detail records, and other voluminous business records. Mr. Weir is familiar with common statistical and econometric software packages such as STATA and Sawtooth Software. Mr. Weir assists with analysis of economic, statistical and other evidence; and preparation for depositions, trial and oral examinations. Mr. Weir has provided expert testimony before federal and state courts, the FCC, and state regulatory commissions, and has contributed research and analysis to numerous ETI publications and testimony at the state, federal, and international levels. Prior to joining ETI, Mr. Weir worked at Stop and Shop Supermarkets as a cash department head, grocery/receiving clerk, and price-file maintenance head.

Mr. Weir's experience includes work on a variety of issues, including: economic harm and damage calculation; liquidated damages provisions; lost profits; false claims; diminution in value; merger/antitrust analysis; Early Termination Fees (ETFs); Late Fees; determination of Federal Excise Tax burden; and development of macroeconomic analyses quantifying the economic impact of corporate actions upon the US economy and job markets.

Mr. Weir has conducted research and analysis in numerous litigation and regulatory matters on behalf of corporate, government and individual clients, including AT&T, MTS Allstream (Canada), The US Department of Justice, Office of the Attorney General of Illinois, Pennsylvania Department of Revenue, Thomas v. Global Vision, (class action litigation, Superior Court, County of Alameda), Ayyad v. Sprint (class action litigation, Superior Court, County of Alameda), Forcellati v. Hylands (class action, U.S. District Court, Central District of California), and Ebin v. Kangadis Foods (class action, U.S. District Court, Southern District of New York).

Mr. Weir holds an MBA with honors from Northeastern University. He also holds a Bachelor of Arts degree *cum laude* in Business Economics from The College of Wooster.

Mr. Weir is a member of the Boston Economic Club, a business member of the Boston Bar Association, serves on the Board of Trustees of the Waring School, and serves as the comptroller for the Sybaris Investment Partnership.

Publications and Testimony of Colin B. Weir

Mr. Weir has co-authored the following:

Interoperability and Spectrum Efficiency: Achieving a Competitive Outcome in the US Wireless Market (with Lee L. Selwyn) Economics and Technology, Inc., prepared on behalf of United States Cellular Corporation, July 2012.

The Price Cap LECs' "Broadband Connectivity Plan": Protecting Their Past, Hijacking the Nation's Future (with Lee L. Selwyn and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of United States Cellular Corporation, September 2011.

Regulation, Investment and Jobs: How Regulation of Wholesale Markets Can Stimulate Private Sector Broadband Investment and Create Jobs (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of Cbeyond, Inc., Covad Communications Company, Integra Telecom, Inc., PAETEC Holding Corp, and tw telecom inc., February 2010.

Revisiting Us Broadband Policy: How Re-regulation of Wholesale Services Will Encourage Investment and Stimulate Competition and Innovation in Enterprise Broadband Markets, (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of MTS Allstream, February 2010.

Longstanding Regulatory Tools Confirm BOC Market Power: A Defense of ARMIS (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of the AdHoc Telecommunications Users Committee, January 2010.

Choosing Broadband Competition over Unconstrained Incumbent Market Power: A Response to Bell and TELUS (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of MTS Allstream, April 2009.

The Role of Regulation in a Competitive Telecom Environment: How Smart Regulation of Essential Wholesale Facilities Stimulates Investment and Promotes Competition (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of MTS Allstream, March 2009.

Special Access Overpricing and the US Economy: How Unchecked RBOC Market Power is Costing US Jobs and Impairing US Competitiveness (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of the AdHoc Telecommunications Users Committee, August 2007.

The AWS Spectrum Auction: A One-Time Opportunity to Introduce Real Competition for Wireless Services in Canada (with Lee L. Selwyn and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of MTS Allstream, June 2007.

Comparison of Wireless Service Price Levels in the US and Canada (with Lee L. Selwyn) Economics and Technology, Inc., prepared on behalf of MTS Allstream, May 2007.

Statement of Qualifications – Colin B. Weir

Hold the Phone! Debunking the Myth of Intermodal Alternatives for Business Telecom Users In New York (with Susan M. Gately and Lee L. Selwyn) Economics and Technology, Inc., prepared for the UNE-L CLEC Coalition, August 2005.

Mr. Weir has submitted the following testimony:

United States District Court, Western District of Washington, Jacob Beaty and Jessica Beaty on, behalf of themselves and all others similarly situated, v. Ford Motor America, Case No. 3:17-CV-05201-RBL, on behalf of Simmons Hanly Conroy LLC; Declaration submitted on February 22, 2019.

United States District Court, Southern District of New York, Nicholas Parker, on behalf of himself and all others similarly situated, v. United Industries Corporation, Case No. 1:17-cv-05353, on behalf of Bursor & Fisher, P.A., Declaration submitted February 3, 2019.

United States District Court, Northern District of California, Debbie Krommenhock and Stephen Hadley, on behalf of themselves, all others similarly situated, and the general public, v. Post Foods, LLC, Case No. 3:16-cv-04958-WHO (JSC), on behalf of Law Offices of Jack Fitzgerald, PC, Declaration submitted January 11, 2019; Deposition on March 1, 2019.

United States District Court, Southern District of New York, Leona Hunter and Anne Marie Villa, on behalf of themselves and all others similarly situated, v. Time Warner Cable Inc., Case No. 15-cv-06445-JPO (JLC), on behalf of Bursor & Fisher, P.A. Declaration submitted on November 30, 2018; Deposition on December 21, 2018; Reply Declaration submitted on February 27, 2019.

United States District Court, Northern District of California, Jeremiah Revitch, on Behalf of Himself and all Others Similarly Situated, v. Citibank, N.A., Case No. 17-cv-06907-JCS, on behalf of Bursor & Fisher, P.A. Declaration submitted on November 27, 2018; Deposition on December 28, 2018; Reply Declaration submitted on February 1, 2019; Deposition on February 26, 2019.

United States District Court, Central District of California, Kaylee Browning and Sarah Basile, on behalf of themselves and all others similarly situated, v. Unilever United States Inc., Case No. 8:16-cv-02210, on behalf of Bursor & Fisher, P.A., Declaration submitted on October 22, 2018; Deposition on November 1, 2018; Reply Declaration submitted on November 23, 2018.

United States District Court, Southern District of New York, Lori Canale, individually, and on behalf of all others similarly situated, v. Colgate-Palmolive Co., Case No. 7:16-CV-03308-CS, on behalf of Bursor & Fisher, P.A., Declaration submitted on September 19, 2018.

Superior Court for the State of California, In and for the County of San Francisco, Michelle Gyorke-Takatri and Katie Silver on behalf of themselves and all others similarly situated, v. Nestlé USA, Inc. and Gerber Products Company, Case No. CGC 15-546850, on behalf of Stanley Law Group, Declaration submitted on September 7, 2018.

United States District Court, Northern District of Illinois, Eastern Division, Ryan Porter and Haarin Kwon, individually and on behalf of all others similarly situated, NBTY, Inc., United States Nutrition Inc., Healthwatchers (DE), Inc., and MET-RX Nutrition, Inc., Case No. 15-cv-11459, on behalf of Bursor & Fisher, P.A., Declaration submitted on August 15, 2018; Deposition on October 12, 2018; Reply Declaration on December 21, 2018.

Superior Court of the State of California, For The County of San Francisco, Deanna Gastelum and Heather Bryden individually and on behalf of all other persons similarly situated, v. Frontier California Inc., Case No. CGC-11-511467, on behalf of Bramson, Plutzik, Mahler and Birkhaeuser; Declaration submitted on July 31, 2018, Declaration submitted August 13, 2018.

United States District Court, For the Southern District of New York, Suzanna Bowling, individually and on behalf of all others similarly situated, v. Johnson & Johnson and McNeil Nutritionals, LLC, Case No. 1:17-cv-03982-AJN, on behalf of Bursor & Fisher, P.A., Declaration submitted on July 30, 2018, Deposition on September 6, 2018; Reply Declaration submitted on November 16, 2018.

United States District Court, Southern District of New York, Anne De Lacour, Andrea Wright, and Loree Moran individually and on behalf of all others similarly situated, v. Colgate-Palmolive Co., and Tom's of Maine Inc., Case No. 1:16-cv-08364-RA, on behalf of Bursor & Fisher, P.A., Declaration submitted on June 15, 2018; Deposition on August 28, 2018; Reply Declaration submitted on November 21, 2018.

United States District Court, Northern District of California, San Francisco Division, In re: Chrysler-Dodge-Jeep EcoDiesel® Marketing, Sales Practices, and Products Liability Litigation Dorun Bali, et al., v. Fiat Chrysler Automobiles N.V., FCA US LLC, Sergio Marchionne, VM Motori S.p.A., VM North America, Inc., Robert Bosch GmbH, Robert Bosch LLC, and Volkmar Denner, Case No. MDL 2777-EMC, on behalf of Lieff Cabraser Heimann & Bernstein, Declaration submitted on June 6, 2018, Deposition on July 18, 2018, Reply Declaration submitted on September 4, 2018.

United States District Court, Northern District of California, Stephen Hadley, on behalf of himself, all others similarly situated, and the general public, v. Kellogg Sales Company, Case No. 5:16-cv-04955-LHK-HRL, on behalf of Law Offices of Jack Fitzgerald, PC, Declaration submitted April 30, 2018, Deposition on May 31, 2018; Reply Declaration submitted June 25, 2018; Declaration submitted on September 20, 2018; Deposition on September 28, 2018.

Statement of Qualifications – Colin B. Weir

United States District Court, Northern District of Illinois, Eastern Division, Teresa Elward, Dennis Keesler, Leasa Brittenham, Kathy Beck and Nathaniel Beck, Angelia East, Sarah LaVergne, Tony And Lauren Fitzgerald, Gregory Gray, Bethany Williams, John McLaughlin, Stacy Cisco, and William Ferguson and Cheryl Ferguson, individually and on behalf of all others similarly situated, v. Electrolux Home Products, Inc., Case No. 1:15-cv-09882-JZL, on behalf of Greg Coleman Law, Declaration submitted April 20, 2018; Reply Declaration submitted on July 13, 2018; Deposition on August 17, 2018.

United States District Court for the Northern District of California, Jackie Fitzhenry-Russell, an individual, on behalf of herself, the general public and those similarly situated v. The Coca Cola Company, and Does 1-50, Case No. 5:17-CV-00603-EJD, on behalf of Gutride Safier, LLP, Declaration submitted April 16, 2018; Deposition on October 3, 2018.

United States District Court for the Southern District of New York, Josephine James Edwards, individually and on behalf of all others similarly situated, v. Hearst Communications, Inc., Case No. 15-cv-09279-AT, on behalf of Bursor & Fisher, P.A., Declaration submitted April 16, 2018; Deposition on June 7, 2018.

United States District Court, Northern District of California, Jackie Fitzhenry-Russell, Robin Dale, and Gegham Margaryan, as individuals, on behalf of themselves, the general public and those similarly situated, v. Dr. Pepper Snapple Group, Inc., Dr Pepper/Seven Up, Inc., and Does 1-50, Case No. 5:17-cv-00564-NC (lead); Case No. 5:17-cv-02341-NC (consolidated); Case No. 5:17-cv-04435-NC (consolidated), on behalf of Gutride Safier, LLP, Declaration submitted April 9, 2018; Deposition on April 19, 2018; Reply Declaration submitted June 6, 2018; Supplemental Declaration submitted on November 19, 2018.

United States District Court for the Western District of Texas, Austin Division, Sylvia Morris, on behalf of herself and all others similarly situated, v. Modernize Inc., Case No. 17:-cv-963-SS, on behalf of Bursor & Fisher, P.A., Declaration submitted March 13, 2018; Deposition on June 14, 2018.

United States District Court, Northern District of California, San Jose Division, In re: Arris Cable Modem Consumer Litigation, Case No. 17-cv-1834-LHK, on behalf of Schubert Jonckheer & Kolbe, Declaration submitted on March 9, 2018; Reply Declaration submitted April 9, 2018; Deposition on April 11, 2018; Declaration submitted June 13, 2018; Declaration submitted January 31, 2019; Deposition on February 14, 2019.

United States District Court, Southern District of New York, In re: Amla Litigation, Case No. 1:16-cv-06593-JSR, on behalf of Levi & Korsinsky LLP, Declaration submitted on March 5, 2018; Declaration submitted November 14, 2018; Deposition on November 28, 2018.

Statement of Qualifications – Colin B. Weir

United States District Court, Eastern District of Michigan, *Toby Schechner, Barbara Barnes, Laura Bliss, Kathleen Jordan, Kathryn Limpede, Louise Miljenovic, Candace Oliarny, Beverly Simmons, Richard Thome And Mary Ellen Thome, V. Whirlpool Corporation*, Case No. 16-cv-12409-SJM, on behalf of Robbins Geller Rudman & Dowd, LLP, Declaration submitted February 12, 2018; Deposition on May 15, 2018; Reply Declaration submitted May 17, 2018.

United States District Court, Southern District of California, *Jose Conde, et al., v. Sensa, et al.*, Case No. 14-cv-51 JLS (WVG), on behalf of Bursor & Fisher, P.A., Declaration submitted February 6, 2018; Declaration submitted February 21, 2019.

United States District Court, Northern District Of Illinois, Eastern Division, *Angel Bakov, Julie Herrera, and Kinaya Hewlett, individually and on behalf of all others similarly situated, v. Consolidated World Travel, Inc. d/b/a Holiday Cruise Line, a Florida corporation*, Case No. 15-cv-02980-HDL SEC, on behalf of Bursor & Fisher, P.A., Declaration submitted February 6, 2018; Deposition on April 25, 2018.

United States District Court, Northern District of Illinois, *Jennifer Beardsall, Daniel Brown, Jennifer Carlsson, Deborah Carnick, Amy Connor-Slaybaugh, Phyllis Czapski, Raelee Dallacqua, Autumn Dean, Skye Doucette, Christopher Draus, Gerald Gordon, Alexandra Groffsky, Emma Groffsky, Joyce Ivy, La Tanya James, Michelle Jessop, Joy Judge, Kathy Mellody, Susan Nazari, Megan Norsworthy, Deborah Ostrander, Martina Osley, Dana Phillips, Thomas Ramon, Jr., Nancy Reeves, Matthew Robertson, Shelley Waitzman, Jamilla Wang, and Amber Wimberly, Individually and on Behalf of All Others Similarly Situated, v. CVS Pharmacy, Inc., Target Corporation, Walgreen Co., Wal-Mart Stores, Inc., and Fruit of the Earth, Inc.*, Case No. 1:16-cv-06103, on behalf of Greg Coleman Law, Declaration submitted December 22, 2017; Reply Declaration on May 4, 2018.

United States District Court, Southern District of New York, *Jaish Markos, individually and on behalf of all others similarly situated, v. Russell Brands, LLC*, Case No. 16-CV-04362(CS), on behalf of The Sultz Law Group, Declaration submitted on December 1, 2017, Deposition on January 4, 2018.

United States District Court, Northern District of California, *Siera Strumlauf, Benjamin Robles, and Brittany Crittenden, individually and on behalf of all others similarly situated, v. Starbucks Corporation*, Case No. 16-CV-01306-YGR, on behalf of Bursor & Fisher, P.A., Declaration submitted on October 31, 2017, Deposition on December 13, 2017.

United States District Court, Southern District of California, *Sheila Dashnaw, William Meier, and Sherryl Jones, individually, and on behalf of all others similarly situated, v. New Balance Athletics, Inc., a corporation; and DOES 1 through 50, inclusive*, Case No. 3:17-cv-00159-L-JLB, on Behalf of The Wand Law Firm, Declaration submitted on September 8, 2017; Deposition on October 5, 2017; Rebuttal Declaration submitted December 11, 2017.

United States District Court, Central District of California, *Veronica Brenner, on behalf of herself and all others similarly situated, v. Procter & Gamble Co.*, Case No. 8:16-1093-JLS-JCG, on behalf of Bursor & Fisher, P.A., Declaration submitted September 5, 2017; Deposition on October 10, 2016.

United States District Court, Eastern District of California, *Joann Martinelli, individually and on behalf of all others similarly situated, v. Johnson & Johnson And McNeil Nutritionals, LLC*, Case No. 2:15-cv-01733-MCE-DB, on behalf of Bursor & Fisher, P.A., Declaration submitted August 28, 2017, Deposition on December 20, 2017; Reply Declaration submitted on January 5, 2018.

United States District Court, Northern District of California, San Francisco Division, *Martin Schneider, Sarah Deigert, Laurie Reese, Theresa Gamage, Tiffanie Zangwill, and Nadia Parikka, Individually and on Behalf of All Others Similarly Situated, v. Chipotle Mexican Grill, Inc.*, Case No. 3:16-cv-02200-HSG, on behalf of Kaplan Fox & Kilsheimer LLP, Declaration submitted August 11, 2017; Deposition on September 22, 2017.

United States District Court, Southern District of Ohio, *Tom Kondash, on behalf of himself and all others similarly situated, v. Kia Motors America, Inc., and Kia Motors Corporation*, Case No. 1:15-cv-00506-SJD, on behalf of Gibbs Law Group, LLP, Declaration submitted July 10, 2017, Deposition on November 29, 2017.

United States District Court, Northern District of Illinois, Eastern Division, *Ryan Porter and Haarin Kwon, individually and on behalf of all others similarly situated, v. NBTY, Inc., United States Nutrition Inc., Healthwatchers (DE), Inc., and MET-RX Nutrition, Inc.*, Case No. 15-cv-11459, on behalf of Bursor & Fisher, P.A., Settlement Declaration submitted June 22, 2017; Declaration submitted on August 15, 2018; Deposition on October 12, 2018.

United States District Court, Northern District of California, *Sandra McMillion, Jessica Adekoya And Ignacio Perez, on Behalf of Themselves and all Others Similarly Situated, v. Rash Curtis & Associates*, Case No. 16-cv-03396-YGR, on behalf of Bursor & Fisher, P.A., Declaration submitted May 30, 2017, Declaration submitted August 25, 2017, Declaration submitted on October 16, 2017; Declaration submitted on August 10, 2018; Declaration submitted on November 6, 2018; Declaration submitted on November 12, 2018; Deposition on December 11, 2018.

United States District Court, Northern District of California, *Vincent D. Mullins, et al., v. Premier Nutrition Corporation*, Case No. 13-cv-01271-RS, on behalf of Blood, Hurst, & O'Reardon, LLP, Reply Declaration submitted May 19, 2017; Deposition on July 20, 2017.

United States District Court, Southern District of California, Preston Jones and Shirin Delalat, on behalf of themselves, all others similarly situated, and the general public, v. Nutiva Inc., Case No. 16-cv-00711 HSG, on behalf of Law Offices of Jack Fitzgerald, PC, Declaration submitted May 9, 2016; Deposition on August 23, 2017; Reply Declaration submitted January 12, 2018; Reply Declaration submitted March 2, 2018.

United States District Court, Central District of California, Southern Division, Billy Glenn, Kathy Warburton, Kim Fama, and Corinne Kane, on behalf of themselves and all others similarly situated, v. Hyundai Motor America And Hyundai Motor Company, Case No. 15-cv-02052-DOC-KES, on behalf of Gibbs Law Group, LLP, Declaration submitted May 1, 2017; Deposition on July 27, 2017; Reply Declaration submitted on October 2, 2017; Reply Declaration submitted on October 6, 2017; Declaration submitted on March 23, 2018.

United States District Court, Southern District of California, Sherry Hunter, on behalf of herself, all others similarly situated, and the general public, v. Nature's Way Products, LLC, and Schwabe North America, Inc., Case No. 3:16-cv-00532-WQH-BLM, on behalf of Law offices of Jack Fitzgerald, PC, Declaration submitted March 24, 2017; Reply Declaration submitted May 26, 2017; Reply Declaration submitted on July 11, 2017.

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Mr. Weir has served as a consultative expert in numerous proceedings that did not result in testimony, and has contributed research and analysis to numerous additional publications and testimony at the state, federal, and international levels.