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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>
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**[PROPOSED] FINAL ORDER APPROVING CLASS ACTION
SETTLEMENT**

This matter came on for hearing upon the Plaintiffs’ application for the approval of the Settlement as set forth in the Settlement Agreement.

On the _____ day of _____, 2023, 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 final judgment should be entered, dismissing the Action as to Defendant, on the merits and with prejudice, and to determine whether

1 the release by Class Members of the Released Claims, as set forth in the Settlement
2 Agreement, should be provided; (4) whether the Court should approve Class
3 Counsel's application for an award of attorneys' expenses and costs; (5) whether the
4 Court should approve any motion for service awards for the Class Representatives;
5 and (6) such other matters as the Court may deem appropriate.

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

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

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

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

28 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court
[PROPOSED ORDER]

1 hereby finally certifies this action as a class action on behalf of the following Classes:

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

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

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

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

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

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

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

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

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

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

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

11 5. Excluded from the Classes are (a) governmental entities; (b) Conagra,
12 and its affiliates, subsidiaries, employees, current and former officers, directors,
13 agents, and representatives; (c) the members of the Court and its staff; and (d) the
14 persons who requested exclusion as listed on Exhibit 1 attached hereto.

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

- 17 a. Robert Briseño and Michele Andrade for the California Class;
- 18 b. Jill Crouch for the Colorado Class;
- 19 c. Julie Palmer for the Florida Class;
- 20 d. Pauline Michael for the Illinois Class;
- 21 e. Cheri Shafstall for the Indiana Class;
- 22 f. Dee Hooper-Kercheval for the Nebraska Class;
- 23 g. Kelly McFadden and Necla Musat for the New York Class;
- 24 h. Maureen Towey for the Ohio Class;
- 25 i. Erika Heins for the Oregon Class;
- 26 j. Rona Johnston for the South Dakota Class; and
- 27 k. Anita Willman for the Texas Class.

28 7. Class Notice. As established by the Settlement Administrator’s
[PROPOSED ORDER]

1 Declaration, filed on March 3, 2023, the Settlement Administrator caused the
2 Publication Notice to be published in the manner required by the Order Directing
3 Notice and caused the Posted Notice and the Claim Form, also in the forms approved
4 by the Order Directing Notice, to be made available to Class Members on the
5 Settlement Website and upon their request.

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

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

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

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

26 12. Gross Settlement Proceeds. The Settlement Administrator has processed
27 all Claim Forms submitted and has determined there are ____ Valid Claim Forms
28 representing a recovery for ____ units. The Settlement Administrator is directed to
[PROPOSED ORDER]

1 commence paying out Valid Claims Forms from the Settlement Fund 30 days after
2 the Final Effective Date, as set forth in the Settlement Agreement.

3 13. Released Claims and Covenants Not to Sue

4 a. In consideration of the benefits described and the provisions
5 contained in the Settlement Agreement, all Class Members (regardless of whether a
6 Class Member submits a Claim Form) shall be deemed to have, as of the Final
7 Effective Date and by operation of the Final Approval Order, fully and irrevocably
8 released and forever discharged the Released Parties (as defined in the Settlement
9 Agreement) from any liability for all claims of any nature whatsoever in law or in
10 equity, past and present, and whether known or unknown, suspected or claimed,
11 relating to or arising under any federal, state, local, or international statute, regulation,
12 or law (including state consumer fraud, warranty, unjust enrichment laws, codal law,
13 adjudication, quasi-adjudication, tort claims, contract claims, actions, causes of
14 action, declaratory judgment actions, cross-claims, counterclaims, third-party claims,
15 demands, and claims for damages, compensatory damages, liquidated damages,
16 punitive damages, exemplary damages, multiple damages, and other non-
17 compensatory damages or penalties of any kind, fines, equitable relief, injunctive
18 relief, conditional or other payments or interest of any type, debts, liens, costs,
19 expenses and/or attorneys' fees, interest, or liabilities) that have been or could have
20 been brought in connection with Conagra's distribution, labeling, packaging,
21 marketing, advertising, and/or sale of the Wesson Oil Products as "Natural" during
22 the applicable Class Period, subject only to the express exceptions listed in the
23 Reservation of Claims and Rights below. Specifically excluded from this release is
24 any claim for bodily injury allegedly suffered in connection with the Wesson Oil
25 Products. Conagra shall be deemed to have fully and irrevocably released and forever
26 discharged Class Representatives and Class Members from any liability that was or
27 could have been asserted arising out of or relating in any way to the institution,
28 prosecution, or settlement of the Action ("Released Defendant's Claims").

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

14 c. IN ADDITION, EACH CLASS MEMBER SHALL BE
15 DEEMED TO HAVE FULLY AND IRREVOCABLY WAIVED AND RELEASED,
16 UPON THE FINAL EFFECTIVE DATE, ANY AND ALL PROVISIONS, RIGHTS,
17 AND BENEFITS CONFERRED BY § 1542 OF THE CALIFORNIA CIVIL CODE
18 OR ANY OTHER STATUTE, LAW OR PRINCIPLE OF COMMON LAW,
19 WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO § 1542 OF THE
20 CALIFORNIA CIVIL CODE, WHICH READS:

21 SECTION 1542. GENERAL RELEASE; EXTENT. A
22 GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
23 THAT THE CREDITOR DOES NOT KNOW OR SUSPECT
24 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
25 EXECUTING THE RELEASE, AND THAT, IF KNOWN BY
26 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED
27 HIS OR HER SETTLEMENT WITH THE DEBTOR OR THE
28 RELEASED PARTY.

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

16 14. Reservation of Claims and Rights

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

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

1 Final and effective substantially in accordance with its terms.

2 c. If the Final Effective Dates does not occur, then the Action, for all
3 purposes, shall revert to its status as of the date before the execution of the Settlement
4 Agreement. Conagra shall also be entitled to a refund of any money paid to the
5 Settlement Fund that remains after all Administrative Costs are paid from the
6 Settlement Fund (which are not subject to refund), including any Expense Award it
7 has paid to Class Counsel and/or any Service Awards paid to the Class
8 Representatives.

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

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

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

24 18. Dismissal of Action. The Action is hereby dismissed with prejudice on
25 the merits.

26 19. Attorneys' Expenses and Service Awards. Having considered Class
27 Counsel's Expense Application, the Court hereby awards attorneys' expenses to Class
28 Counsel in the amount of \$ _____, which the Court finds to be fair and

1 reasonable to compensate Class Counsel for their time incurred and expenses
2 advanced. This award shall be paid to Class Counsel as provided in the Settlement
3 Agreement. Class Counsel shall allocate the attorneys' expenses amongst Class
4 Counsel and other counsel representing plaintiffs in the Action in a manner in which
5 they in good faith believe reflects the contributions of such counsel to the prosecution
6 and settlement of the Action with Defendant. Defendant shall have no liability or other
7 responsibility for allocation of any such attorneys' costs and expenses awarded. This
8 Court shall retain jurisdiction over any disputes among plaintiffs' counsel relating to
9 the award, allocation, or entitlement to any costs or expenses.

10 20. In making this award of attorneys' expenses, the Court has considered
11 and found that:

- 12 a. Class Counsel achieved a favorable result for the Classes;
- 13 b. The Settlement created a benefit with a substantial value to the
14 Classes;
- 15 c. After reaching agreement in principle regarding monetary relief to
16 Class Members, the parties entered into arm's length negotiations regarding
17 attorneys' expenses for Class Counsel. Conagra took no position with respect to the
18 Expense Application submitted by Class Counsel;
- 19 d. Notice was disseminated to the Classes indicating that Class
20 Counsel were moving for reimbursement of their expenses, as well as service awards
21 of (a) up to \$3,000 for each of the six Class Representatives who were deposed
22 (Robert Briseño, Michele Andrade, Jill Crouch, Pauline Michael, Necla Musat, and
23 Maureen Towey) and (b) up to \$1,000 for each of the seven who were not deposed
24 (Julie Palmer, Cheri Shafstall, Dee Hooper-Kercheval, Kelly McFadden, Erika Heins,
25 Rona Johnston, and Anita Willman);
- 26 e. The action involves complex factual and legal issues and was
27 actively prosecuted over eleven years and, in the absence of a settlement, would
28 involve further lengthy proceedings with uncertain resolution of the complex factual

1 and legal issues;

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

4 g. Class Counsel have conducted the litigation and achieved the
5 Settlement with skill, perseverance, and diligent advocacy;

6 h. Class Counsel devoted substantial effort to pre-and post-filing
7 investigation, legal analysis, and litigation;

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

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

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

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

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

28 24. The Settlement Administrator shall pay from the Settlement Fund the
[PROPOSED ORDER]

1 expense award to Class Counsel and the service awards to the Class Representatives
2 30 days after the Final Effective Date, in accordance with the terms of the Settlement
3 Agreement.

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

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

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

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

19 29. There is no just reason for delay in the entry of this Final Approval Order
20 and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule
21 54 (b) of the Federal Rules of Civil Procedure.

22

23 SO ORDERED this _____ day of _____, 2023.

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Hon. Cormac J. Carney
United States District Court Judge

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