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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT BRISEÑO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CONAGRA FOODS, INC.,

Defendant.

Case No.

CV11-05379 MMM(AGP)

CLASS ACTION

COMPLAINT FOR:

- (1) Violation of California Business & Professions Code § 17500 *et seq.*;
- (2) Violation of California Business & Professions Code § 17200 *et seq.*;
- (3) Violation of California Civil Code §1750 *et seq.*; and
- (4) Breach of Express Warranty

DEMAND FOR JURY TRIAL

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CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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1 Plaintiff Robert Briseño (“Plaintiff”), individually and on behalf of all others
 2 similarly situated, alleges the following upon personal knowledge as to his own
 3 acts and, as to all other allegations, upon information and belief, and investigation
 4 by counsel.

5 NATURE OF ACTION AND SUMMARY OF ALLEGATIONS

6 1. Plaintiff brings this class action on behalf of himself and a class of
 7 persons who purchased any of the following cooking oils sold under the Wesson
 8 brand name: Canola Oil, Vegetable Oil, Corn Oil, and Best Blend (collectively
 9 referred to herein as “Wesson Oils”). Wesson is a brand owned, developed,
 10 marketed, and sold by defendant ConAgra Foods, Inc. (“ConAgra” or
 11 “Defendant”).

12 2. ConAgra labels its Wesson Oils as “100% Natural.” This
 13 representation is central to ConAgra’s marketing of Wesson Oils, and is displayed
 14 prominently on the product label itself, the Wesson website, and all Wesson Oils’
 15 advertisements.

16 3. But Wesson Oils are not “100% natural.” The oils are made from
 17 genetically modified plants (“GM”) or genetically modified organisms (“GMO”).

18 4. Monsanto Company, a global agricultural company that pioneered
 19 GM seeds, defines GMO on its website as food with “*genetic makeup altered to*
 20 *exhibit traits that are not naturally theirs*. In general, genes are taken (copied)
 21 from one organism that shows a desired trait and transferred into the genetic code
 22 of another organism.” Monsanto, [http://www.monsanto.com/newsviews/Pages/](http://www.monsanto.com/newsviews/Pages/glossary.aspx#g)
 23 [glossary.aspx#g](http://www.monsanto.com/newsviews/Pages/glossary.aspx#g) (last visited June 24, 2011) (emphasis added). As more fully
 24 alleged below, “unnatural” is a recognized defining characteristic of genetically
 25 modified foods.

1 5. The reasonable consumer assumes that “seeds created by swapping
2 genetic material across species to exhibit traits not naturally theirs” are not “100%
3 natural.” Wesson Oils’ advertising is very likely to deceive consumers.

4 6. Plaintiff was damaged, in an amount to be determined at trial, because
5 he did not get the “100% natural” oil that was advertised and that he paid for.

6 7. Defendant’s violations of California law and wrongful conduct
7 designed to mislead and deceive consumers into purchasing its product by labeling
8 it as natural when it is made up of GM ingredients, violate California false
9 advertising and unfair competition laws, California Business & Professions Code
10 § 17500 and § 17200, and the Consumers Legal Remedies Act (the “CLRA”),
11 California Civil Code § 1750, and constitute a breach of express warranty.

12 **JURISDICTION AND VENUE**

13 8. The Court has jurisdiction over the state law claims pursuant to 28
14 U.S.C. § 1332(d), because there are at least 100 Class Members in the proposed
15 Class, the combined claims of proposed Class Members exceed \$5,000,000
16 exclusive of interest and costs, and at least one Class Member is a citizen of a state
17 other than Defendant’s state of citizenship.

18 9. ConAgra purposefully avails itself of the California consumer market
19 and sells Wesson Oils in at least hundreds of locations within this District.
20 ConAgra’s Wesson Oils are sold at thousands of retail locations throughout
21 California and purchased by thousands of consumers in California every day,
22 including many in this District.

23 10. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial
24 part of the events giving rise to the claims asserted occurred in this District, and
25 Plaintiff dealt with Defendant, who is located in and/or does business in this
26 District. Venue is proper pursuant to 28 U.S.C. § 1391(c) because Defendant
27 conducts substantial business in this District, has sufficient minimum contacts with
28

1 this District, and otherwise purposely avails itself of the markets in this District,
 2 through the promotion, sale, and marketing of its products in this District.

3 **THE PARTIES**

4 11. Plaintiff Robert Briseño (“Plaintiff”), is a consumer residing in
 5 Vallejo, California. Briseño regularly purchased Wesson Canola Oil for his own
 6 and his family’s consumption, most recently in May 2011. Plaintiff believed
 7 Defendant’s representation that Wesson Canola Oil was 100% natural. Plaintiff
 8 would not have purchased Wesson Canola Oil, but for Defendant’s misleading
 9 statements about the product being 100% natural. Plaintiff was injured in fact and
 10 lost money as a result of Defendant’s conduct of improperly describing Wesson
 11 Oils as “natural.” Plaintiff paid for a 100% natural product, but did not receive a
 12 product that was 100% natural. Plaintiff received a product that was genetically
 13 engineered in a laboratory, and had its genetic code artificially altered to exhibit
 14 not “natural” qualities.

15 12. Defendant ConAgra is a Delaware corporation located in Omaha,
 16 Nebraska. It markets and distributes Wesson Oils.

17 **FACTUAL ALLEGATIONS**

18 **ConAgra Advertises Wesson Oils As “100% Natural”**

19 13. ConAgra sells four types of widely used cooking and food preparation
 20 oils under the Wesson brand. All Wesson Oils are sold with a label on the front of
 21 the bottle that states prominently “100% Natural.”

22 14. In addition to appearing on the product label, “100% Natural” appears
 23 on Wesson Oils online and print advertisements. For example, the Wesson website
 24 describes the four oils as follows:

25 (a) “Pure Wesson 100% Natural Canola Oil is the most versatile
 26 type of vegetable oil and it provides the best nutritional balance of all popular
 27 cooking oils.” See Exhibit A.

1 (b) “Pure Wesson 100% Natural Oil is the perfect all-
2 purpose cooking and baking vegetable oil.” *See* Exhibit B.

3 (c) “Pure Wesson 100% Natural Corn Oil is the best oil to ensure a
4 crispy [*sic*] coating on your fried foods while retaining moistness on the inside.”
5 *See* Exhibit C.

6 (d) “Pure Wesson 100% Natural Best Blend Oil is highly versatile.
7 Wesson Best Blend Oil is a perfect combination of two great oils [Canola oil and
8 Soybean oil] that makes it just right for everything from grilling and frying to salad
9 dressings.” *See* Exhibit D.

10 15. The “100% Natural” statement is, like much of the label on Wesson
11 Oils, displayed in vibrant green. The “Wesson” name is haloed by the image of the
12 sun, and the Canola Oil features a picture of a green heart. The Wesson Oils labels
13 obviously are intended to evoke a natural, wholesome product.

14 16. The claim that Wesson Oils are “natural” is highly material to the
15 average consumer, which is why ConAgra places “100% natural” on the front
16 product label and Wesson Oils product advertisements.

17 **Wesson Oils Are From Genetically Modified Organisms**

18 17. Wesson Oils are derived from plants grown from GMO seeds that are
19 engineered to, among other things, allow for greater yield and to be resistant to
20 pesticides.

21 18. ConAgra, on the Conagra.com corporate site (but not on the Wesson
22 site that consumers are more likely to visit), at the end of a pro-biotechnology
23 piece, indirectly acknowledges that its Wesson Oils are genetically engineered.
24 The page that displays this information requires numerous click-throughs to reach.¹

25 ¹ To reach the page from the ConAgra.com home page, a consumer would have to
26 scroll to the bottom of the page, and under the “our commitment” column select
27 the “corporate responsibility” link from more than a dozen other links. After that,
28 the consumer would have to select the “good for you” link, which is one of more
than a dozen total links on that page. From there, the consumer would have to
select the “biotechnology” link from among the more than a dozen links on that

1 The piece extols the benefits of biotechnology. In the last sentence of the last
2 paragraph the letters “GMO” appear, without being defined, as follows:

3 Biotechnology

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

10 As such, ConAgra Foods only purchases and uses ingredients that
11 comply with the U.S. Department of Agriculture and Food and Drug
12 Administration (FDA) regulations for food safety and nutrition. Both
13 the U.S. Environmental Protection Agency and the FDA have
14 concluded that biotech foods that are approved for human
15 consumption are as safe and nutritious as other foods that are
16 developed through more conventional methods.

17 However, we understand the field of food biotechnology is constantly
18 shifting as advancements are made in the world of science, and will
19 continue to reevaluate our internal policies, relying heavily on
20 evolving science, consumer and customer expectations, and regulatory
21 decisions.

22 *Ultimately, consumers will decide what is acceptable in the*
23 *marketplace based on the best science and public information*
24 *available.* We will continue to listen carefully to our customers and
25 consumers on biotechnology *and provide alternatives for those who*
26

27 page. The navigation to this page is not intuitive or even logical. Plaintiff did not
28 visit the ConAgra site.

1 *demand products without biotechnology ingredients.* Two choices
 2 are our Lightlife brand, which is manufactured using non-GMO soy
 3 seeds, and our organic foods, which also do not use biotech
 4 ingredients.

5 ConAgra, [http://company.conagrafoods.com/phoenix.zhtml?c=202310&p=corp](http://company.conagrafoods.com/phoenix.zhtml?c=202310&p=corp_consumers#FoodSafetyQuality)
 6 [_consumers#FoodSafetyQuality](http://company.conagrafoods.com/phoenix.zhtml?c=202310&p=corp_consumers#FoodSafetyQuality) (last visited June 24, 2011) (emphasis added).

7 19. Although ConAgra nobly says that “consumers will decide what is
 8 acceptable in the marketplace,” ConAgra’s Wesson Oils’ advertising robs
 9 consumers of the ability to make an *informed* decision because they are told that
 10 Wesson Oils are “100% Natural.” Further, reasonable consumers told that Wesson
 11 Oils are “100% Natural” have no reason to “demand products *without*
 12 *biotechnology ingredients*”—the “natural” designation represents to consumers
 13 that they are getting biotech-free food.

14 **Genetically Modified Organisms Are Not “100% Natural”**

15 20. Monsanto Company is one of the world’s biggest sellers of GMO
 16 seeds and an avid GMO-proponent. On its website, Monsanto defines GMO as
 17 follows:

18 Genetically Modified Organisms (GMO) – Plants or animals that have
 19 had their *genetic makeup altered to exhibit traits that are not*
 20 *naturally theirs.* In general, genes are taken (copied) from one
 21 organism that shows a desired trait and transferred into the genetic
 22 code of another organism.

23 Monsanto, <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last
 24 visited June 24, 2011) (emphasis added).

25 21. The World Health Organization (“WHO”), which is the United
 26 Nations’ directing and coordinating authority for health, defines GMO as follows:

1 Genetically modified organisms (GMOs) can be defined as organisms
 2 in which *the genetic material (DNA) has been altered in a way that*
 3 *does not occur naturally*. The technology is often called “modern
 4 biotechnology” or “gene technology”, sometimes also “recombinant
 5 DNA technology” or “genetic engineering”. It allows selected
 6 individual genes to be transferred from one organism into another,
 7 also between non-related species.

8 Such methods are used to create GM plants—which are then used to grow
 9 GM food crops.

10 WHO, <http://www.who.int/foodsafety/publications/biotech/20questions/en/> (last
 11 visited June 27, 2011) (emphasis added).

12 22. Romer Labs, a company that provides diagnostic solutions to the
 13 agricultural industry, defines GMO as follows:

14 Agriculturally important plants are often genetically modified by the
 15 insertion of DNA material from outside the organism into the plant's
 16 DNA sequence, allowing the plant to *express novel traits that*
 17 *normally would not appear in nature*, such as herbicide or insect
 18 resistance. Seed harvested from GMO plants will also contain these
 19 [sic] modification.

20 Romer Labs, [http://www.romerlabs.com/en/analytes/genetically-modified-](http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html)
 21 [organisms.html](http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html) (last visited June 27, 2011) (emphasis added).

22 23. As demonstrated by the above definitions, genetically modified
 23 organisms are “created” artificially in a laboratory through genetic engineering.
 24 ConAgra’s Wesson Oils are not natural, much less “100% Natural.” Advertising
 25 Wesson Oils as natural is deceptive and likely to mislead the public.

CLASS ALLEGATIONS

24. Plaintiff brings this action on his own behalf and as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks certification of the following Class:

All persons in the United States who have purchased Wesson Oils from June 27, 2007 through the final disposition of this and any and all related actions (the "Class Period").

25. Plaintiff and the members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impractical, based on Defendant's national marketing and advertising campaigns that target consumers across the country.

26. This action involves questions of law and fact common to Plaintiff and all members of the Class, which include the following:

(a) Whether Defendant violated California Business & Professions Code Section 17500;

(b) Whether Defendant violated California Business & Professions Code Section 17200;

(c) Whether Defendant violated the CLRA, California Civil Code Section 1750;

(d) Whether Defendant's conduct constituted a breach of express warranty; and

(e) Whether Plaintiff and Class Members sustained damages resulting from Defendant's conduct and, if so, the proper measure of damages, restitution, equitable, or other relief, and the amount and nature of such relief.

27. Plaintiff understands and is willing to undertake the responsibilities of acting in a representative capacity on behalf of the proposed Class. Plaintiff will

1 fairly and adequately protect the interests of the Class and has no interests adverse
2 to, or which directly conflict with, the interests of the other members of the Class.

3 28. Plaintiff has engaged the services of counsel who are experienced in
4 complex class litigation, who will adequately prosecute this action, and who will
5 assert and protect the rights of and otherwise represent Plaintiff and the absent
6 Class Members.

7 29. Plaintiff's claims are typical of those of the absent Class Members
8 because Plaintiff and the Class Members each sustained damages arising from
9 Defendant's wrongful conduct, as alleged more fully herein.

10 30. This action is brought under Rule 23 because Defendant has acted on
11 grounds generally applicable to all members of the Class and/or because questions
12 of law or fact common to Class Members predominate over any questions affecting
13 only individual members.

14 31. Judicial determination of the common legal and factual issues
15 essential to this case would be far more efficient and economical as a class action
16 than piecemeal individual determinations.

17 32. Plaintiff knows of no difficulty that will be encountered in the
18 management of this litigation that would preclude maintenance as a class action.

19 **COUNT I**
20 **Violation of California Business & Professions Code § 17500 *et seq.***

21 33. Plaintiff incorporates the above allegations by reference as though
22 fully set forth herein.

23 34. Plaintiff brings this claim individually and on behalf of the Class.

24 35. Throughout the Class Period, Defendant engaged in a public
25 advertising and marketing campaign representing that Wesson Oils are "100%
26 Natural."
27
28

36. Wesson Oils are in fact made from genetically modified organisms that are not natural. Defendant's advertisements and marketing representations are, therefore, misleading, untrue, and likely to deceive the public.

37. Defendant engaged in its advertising and marketing campaign with intent to directly induce customers to purchase Wesson Oils based on false claims.

38. In making and disseminating the statements alleged herein, Defendant knew or should have known that the statements were untrue or misleading.

39. Plaintiff believed Defendant's representation that Wesson Oils were 100% natural. Plaintiff would not have purchased Wesson Oils, but for Defendant's misleading statements about the product being 100% natural. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of improperly describing Wesson Oils as "natural." Plaintiff paid for a 100% natural product, but did not receive a product that was 100% natural. Plaintiff received a product that was genetically engineered in a laboratory, and had its genetic code artificially altered to exhibit un-natural qualities.

40. Plaintiff and Class Members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief, enjoining Defendant from continuing to disseminate its untrue and misleading statements, and other relief allowable under California Business & Professions Code Section 17535.

COUNT II
Violation of California Business & Professions Code § 17200 *et seq.*

41. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

42. Plaintiff brings this claim individually and on behalf of the Class.

43. The circumstances giving rise to Plaintiff's allegations include Defendant's corporate policies regarding the sale and marketing of Wesson Oils.

1 44. By engaging in the acts and practices described above, Defendant
 2 committed one or more acts of “unfair competition” within the meaning of
 3 Business & Professions Code § 17200. “Unfair competition” is defined to include
 4 any “unlawful, unfair or fraudulent business act or practice and unfair, deceptive,
 5 untrue or misleading advertising and any act prohibited by [Business & Professions
 6 Code § 17500 *et seq.*].”

7 45. Defendant committed “unlawful” business acts or practices by, among
 8 other things, violating California Business & Professions Code § 17500.

9 46. Defendant committed “unfair” business acts or practices by, among
 10 other things:

11 (a) engaging in conduct where the utility of such conduct, if any, is
 12 outweighed by the gravity of the consequences to Plaintiff and Class Members;

13 (b) engaging in conduct that is immoral, unethical, oppressive,
 14 unscrupulous, or substantially injurious to Plaintiff and Class Members; and

15 (c) engaging in conduct that undermines or violates the spirit or
 16 intent of the consumer protection laws alleged in this Complaint.

17 47. Defendant committed “fraudulent” business acts or practices by,
 18 among other things, engaging in conduct Defendant knew or should have known
 19 was likely to and did deceive the public, including Plaintiff and other Class
 20 Members.

21 48. As detailed above, Defendant’s unlawful, unfair, and/or fraudulent
 22 practices include making false and/or misleading representations that Wesson Oils
 23 is “100% natural.”

24 49. Plaintiff believed Defendant’s representation that Wesson Oils were
 25 100% natural. Plaintiff would not have purchased Wesson Oils, but for
 26 Defendant’s misleading statements about the product being 100% natural. Plaintiff
 27 was injured in fact and lost money as a result of Defendant’s conduct of
 28

1 improperly describing Wesson Oils as “natural.” Plaintiff paid for a 100% natural
 2 product, but did not receive a product that was 100% natural. Plaintiff received a
 3 product that was genetically engineered in a laboratory, and had its genetic code
 4 artificially altered to exhibit qualities that are not natural.

5 50. Plaintiff and Class Members seek declaratory relief, restitution for
 6 monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits,
 7 and injunctive relief, and other relief allowable under California Business &
 8 Professions Code Section 17203, including, but not limited to, enjoining Defendant
 9 from continuing to engage in its unfair, unlawful and/or fraudulent conduct as
 10 alleged.

11 **COUNT III**
 12 **Violation of the California Consumers Legal Remedies Act –**
 13 **Cal. Civ. Code § 1750 *et seq.* (Injunctive Relief Only)**

14 51. Plaintiff hereby incorporates by reference the allegations contained in
 15 all of the preceding paragraphs of this complaint.

16 52. Plaintiff brings this claim individually and on behalf of the Class.

17 53. This cause of action is brought pursuant to the California Consumers
 18 Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (the “CLRA”). This cause of
 19 action does not seek monetary damages at this point, but is limited solely to
 20 injunctive relief. Plaintiff will amend this Class Action Complaint to seek
 21 damages in accordance with the CLRA after providing Defendant with notice
 22 pursuant to California Civil Code § 1782.²

23 54. Defendant’s actions, representations, and conduct have violated, and
 24 continue to violate, the CLRA because they extend to transactions that are intended
 25 to result, or that have resulted, in the sale of goods to consumers.

26
 27 ² A copy of Plaintiff’s notice and demand letter sent to Defendant is attached
 28 hereto as Exhibit E.

1 55. Plaintiff and all members of the Class are “consumers” as that term is
2 defined by the CLRA in California Civil Code § 1761(d).

3 56. Defendant sold to Plaintiff and other Class members its Wesson Oils,
4 which are “goods” within the meaning of California Civil Code § 1761(a).

5 57. By engaging in the actions, misrepresentations, and misconduct set
6 forth in this Class Action Complaint, Defendant violated, and continues to violate,
7 Civil Code § 1770(a)(5) by misrepresenting that Wesson Oils are natural and has
8 particular qualities that it does not have, namely, that it is 100% natural when it is
9 not.

10 58. By engaging in the actions, misrepresentations, and misconduct set
11 forth in this complaint, Defendant violated, and continues to violate, Civil Code
12 § 1770(a)(9), by advertising Wesson Oils with intent not to sell it as advertised.

13 59. By engaging in the actions, misrepresentations, and misconduct set
14 forth in this complaint, Defendant violated, and continues to violate, § 1770(a)(16)
15 by misrepresenting that a subject of a transaction has been supplied in accordance
16 with a previous representation when it has not.

17 60. Defendant violated the CLRA by representing through its
18 advertisements Wesson Oils as described above when they knew, or should have
19 known, that the representations and advertisements were unsubstantiated, false,
20 and misleading.

21 61. Plaintiff believed Defendant’s representation that Wesson Oils were
22 100% natural. Plaintiff would not have purchased Wesson Oils, but for
23 Defendant’s misleading statements about the products being 100% natural.
24 Plaintiff was injured in fact and lost money as a result of Defendant’s conduct of
25 improperly describing Wesson Oils as “natural.” Plaintiff paid for a 100% natural
26 product but did not receive a product that was 100% natural. Plaintiff received a
27
28

1 product that was genetically engineered in a laboratory, and had its genetic code
2 artificially altered to exhibit qualities that are not natural.

3 62. Plaintiff requests that this Court enjoin Defendant from continuing to
4 employ the unlawful methods, acts, and practices alleged herein pursuant to
5 California Civil Code § 1780(a)(2). If Defendant is not restrained from engaging
6 in these types of practices in the future, Plaintiff and the Class will continue to
7 suffer harm.

8 **COUNT IV**
9 **Breach of Express Warranty**

10 63. Plaintiff incorporates the above allegations by reference as though
11 fully set forth herein.

12 64. Plaintiff brings this claim individually and on behalf of the Class.

13 65. Plaintiff, and each member of the Class, formed a contract with
14 Defendant at the time Plaintiff and the other Class Members purchased Wesson
15 Oils. The terms of that contract include the promises and affirmations of fact made
16 by Defendant on Wesson Oils' packaging and through marketing and advertising,
17 as described above. This marketing and advertising constitute express warranties
18 and became part of the basis of the bargain, and are part of the standardized
19 contract between Plaintiff and the members of the Class and Defendant.

20 66. Defendant purports through its advertising to create express
21 warranties of Wesson Oils as natural by making the affirmation of fact, and
22 promising, that Wesson Oils are "100% Natural."

23 67. All conditions precedent to Defendant's liability under this contract
24 have been performed by Plaintiff and the Class, when they purchased the product
25 and used it as directed.

26 68. Despite express warranties about the "100% natural" nature of
27 Wesson Oils, Wesson Oils are composed of GMOs and are, in fact, not as they are
28 found in nature.

69. Defendant breached express warranties about Wesson Oils and their qualities, because the product does not conform to Defendant's affirmations and promises to be natural and provide such benefits described above.

70. As a result of Defendant's breach of express warranty, Plaintiff and the Class were harmed in the amount of the purchase price of Wesson Oils.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, pray for judgment against Defendant as follows:

A. An order certifying this case as a class action and appointing Plaintiff and his counsel to represent the Class Members;

B. An order declaring that the acts and practices of Defendant constitute violations of California Business & Professions Code § 17500 and § 17200 *et seq.*, and California Civil Code § 1750 *et seq.*, and constitute breaches of express warranties;

C. For damages pursuant to California law in an amount to be determined at trial, including interest, except as to the CLRA claim, which seeks only injunctive relief;

D. For restitution for monies wrongfully obtained and/or disgorgement of ill-gotten revenues and/or profits;

E. A permanent injunction enjoining Defendant from continuing to harm Plaintiff and the members of the Class and violating California law;

F. An order requiring Defendant to adopt and enforce a policy that requires appropriate disclosure of GM ingredients and/or removal of misleading natural claims, which complies with California law;

G. Reasonable attorneys' fees and the costs of the suit; and

H. Such other relief as this Court may deem just and proper.

1
2
3 **DEMAND FOR JURY TRIAL**
4

5 Plaintiff hereby demands trial of his claims by jury to the extent authorized
6 by law.

7 DATED: June 28, 2011

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24 Attorneys for Plaintiff
25
26
27
28

EXHIBIT A

[HOME](#)[THE FOUR OILS](#)[HEALTHY TIPS](#)[RECIPES](#)[RETROSPECTIVE](#)[Canola Oil](#) [Vegetable Oil](#) [Corn Oil](#) [Best Blend](#)

Good for your Heart

Pure Wesson 100% Natural Canola Oil is the most versatile type of vegetable oil and it provides the best nutritional balance of all popular cooking oils.

Wesson Canola's light, delicate taste makes it the perfect oil to be used in every recipe that calls for vegetable oil.

- Pure Wesson 100 percent Natural Canola Oil is good for your heart.
- Wesson's canola oil has the same health benefits as olive oil without the strong taste allowing for the food's taste to come through in cooking.
- Canola oil provides a source for healthy fat (monounsaturated fat) that is essential for everyday diet.
- According to the U.S. Food & Drug Administration (USDA), Wesson Canola Oil now comes with a **qualified health claim** on its ability to reduce the risk of coronary heart disease (CHD) due to its unsaturated fat content.

- Available in 24oz, 48oz, 64oz and 1 gal sizes in retail outlets - grocery, club and convenience stores



Citrus Stir Fry

NUTRITION FACTS
Serving Size 1 tbsp (15mL)
Servings Per Container about 95

Amount Per Serving

Calories 120

Calories from Fat 120

% Daily Value*

Total Fat 14g	22%
Saturated Fat 1g	5%
Trans Fat 0g	
Polysaturated Fat 4g	
Monounsaturated Fat 9g	

Cholesterol 0mg	0%
Sodium 0mg	0%
Total Carbohydrate 0g	0%
Protein 0g	

Not a significant source of dietary fiber, sugars, vitamin A, vitamin C, Calcium, and iron.

* Percent Daily Values are based on a 2,000 calorie diet.

INGREDIENT: CANOLA OIL

Usage Tips:

- **Stir Frying** - Perfect for sautéing fresh vegetables and lean meats
- **Marinades & Vinaigrettes**
 - Allows spices and herbs to shine through
- **Baking** - Substitute for melted butter, margarine or shortening
- Also available in 5QT (160oz) jugs in the club channel



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EXHIBIT B



[HOME](#)

[THE FOUR OILS](#)

[HEALTHY TIPS](#)

[RECIPES](#)

[RETROSPECTIVE](#)

[Canola Oil](#) [Vegetable Oil](#) [Corn Oil](#) [Best Blend](#)



Crispy Fried Chicken

A great, versatile all-purpose oil

Pure Wesson 100% Natural Oil is the perfect all-purpose cooking and baking vegetable oil.

Wesson Vegetable Oil can be used for baking or frying and has a light taste that lets your cooking flavors shine through.

- Available in 16oz, 24oz, 48oz, 64oz and 1 gal sizes in retail outlets – grocery, club and convenience stores
- Also available in 5QT (160oz) jugs in the club channel

NUTRITION FACTS
Serving Size 1 tbsp (15mL)
Servings Per Container about 95

Amount Per Serving
Calories 120
Calories from Fat 120

% Daily Value*	
Total Fat 14g	22 %
Saturated Fat 2g	10 %
Trans Fat 0g	
Polyunsaturated Fat 8g	
Monounsaturated Fat 4g	

Cholesterol 0mg	0 %
Sodium 0mg	0 %
Total Carbohydrate 0g	0 %
Protein 0g	

Not a significant source of dietary fiber, sugars, vitamin A, vitamin C, Calcium, and iron.

* Percent Daily Values are based on a 2,000 calorie diet.

INGREDIENT: SOYBEAN OIL

Usage Tips:

- **Baking** - Substitute for melted butter, margarine or shortening
- **Frying** - Perfect for pan frying
- **Sauteing** - Chicken, meats, fish and vegetables



EXHIBIT C



[HOME](#)

[THE FOUR OILS](#)

[HEALTHY TIPS](#)

[RECIPES](#)

[RETROSPECTIVE](#)

[Canola Oil](#) [Vegetable Oil](#) [Corn Oil](#) [Best Blend](#)



Mexican Quesadilla

The ideal oil for crisp tender fried foods

Pure Wesson 100% Natural Corn Oil is the best oil to ensure a crispy coating on your fried foods while retaining moistness on the inside.

Wesson Corn Oil brings out a natural rich flavor in fried foods and in flavorful ethnic dishes.

- Available in 48oz and 1 gal sizes in retail outlets – grocery and convenience stores

NUTRITION FACTS
Serving Size 1 tbsp (15mL)
Servings Per Container about 95

Amount Per Serving
Calories 120
Calories from Fat 120

% Daily Value*	
Total Fat 14g	22 %
Saturated Fat 2g	10 %
Trans Fat 0g	
Polyunsaturated Fat 8g	
Monounsaturated Fat 4g	

Cholesterol 0mg	0 %
Sodium 0mg	0 %
Total Carbohydrate 0g	0 %
Protein 0g	

Vitamin E 10%

Not a significant source of dietary fiber, sugars, vitamin A, vitamin C, Calcium, and iron.

* Percent Daily Values are based on a 2,000 calorie diet.

INGREDIENT: CORN OIL

Usage Tips:

- **Deep Frying** - Chicken, French fries, fried fish, fried appetizers
- **Ethnic Foods** - Mexican and Southwestern foods
- **Baking** - Substitute for melted butter, margarine or shortening



EXHIBIT D



[HOME](#) [THE FOUR OILS](#) [HEALTHY TIPS](#) [RECIPES](#) [RETROSPECTIVE](#)

[Canola Oil](#) [Vegetable Oil](#) [Corn Oil](#) [Best Blend](#)



**Spring Greens with
Crispy Chicken Tenders**

**A great oil for frying with the added benefits of
Canola oil**

Pure Wesson 100% Natural Best Blend Oil is highly versatile.

Wesson Best Blend Oil is a perfect combination of two great oils that makes it just right for everything from grilling and frying to salad dressings.

- Available in 48oz in retail outlets – grocery and convenience stores

NUTRITION FACTS
Serving Size 1 tbsp (15mL)
Servings Per Container about 95

Amount Per Serving
Calories 120
Calories from Fat 120

% Daily Value*	
Total Fat 14g	22 %
Saturated Fat 2g	10 %
Trans Fat 0g	
Polyunsaturated Fat 6g	
Monounsaturated Fat 6g	

Cholesterol 0mg	0 %
Sodium 0mg	0 %
Total Carbohydrate 0g	0 %
Protein 0g	

Not a significant source of dietary fiber, sugars, vitamin A, vitamin C, Calcium, and iron.

* Percent Daily Values are based on a 2,000 calorie diet.

INGREDIENT: SOYBEAN AND CANOLA OIL

Usage Tips:

- **Grilling, Broiling and Frying**
- **Marinades and Dressings**
 - Allows spices and herbs to shine through
- **Baking** - Substitute for melted butter, margarine or shortening



[F.](#) | [Legal Policy](#) | [Privacy](#) | © ConAgra Foods, Inc.
All Rights Reserved.

EXHIBIT E



NEW YORK
LOS ANGELES
TAMPA
DETROIT

Andrei Rado
Telephone: 212-594-5300
arado@milberg.com

June 27, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ConAgra Foods, Inc.
One ConAgra Drive
Omaha, Nebraska
68102

Re: Demand for Action Pursuant to California Civil Code § 1782

To Whom It May Concern:

We represent Robert Briseño, a purchaser of ConAgra Foods, Inc. ("ConAgra") Wesson oils (referred to herein collectively as "Wesson Oils" and including Canola Oil, Vegetable Oil, Corn Oil and Best Blend). This letter serves as notice and demand for corrective action by ConAgra pursuant to Consumers Legal Remedies Act, California Civil Code § 1782 ("CLRA"). We hereby demand on behalf of Mr. Briseño and other consumers that you immediately discontinue the false and misleading advertising and marketing of Wesson Oils as "100% natural" and that you return the money you received as a result of your wrongful conduct to the purchasers of Wesson Oils.

Wesson Oils are marketed and advertised as "100% natural." The term "natural" conveys to reasonable consumers that Wesson Oils are made of natural ingredients. However, Wesson Oils are not "100% natural," but instead are made from genetically modified plants ("GM") or genetically modified organisms ("GMO").

Mr. Briseño, along with many other consumers, was enticed by Wesson Oils' "100% natural" claims. Mr. Briseño and others purchased Wesson Oils, unaware of the fact that the representations about its natural ingredients were not truthful. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is attached hereto and incorporated by reference.

June 27, 2011

Page 2

These representations and omissions are false and misleading and constitute unfair methods of competition and unlawful, unfair, and/or fraudulent acts or practices, undertaken by ConAgra with the intent to result in the sale of Wesson Oils to the consuming public.

ConAgra's practices involving its marketing, advertising and sale of Wesson Oils constitute violations of the CLRA § 1750 *et seq.* Specifically, ConAgra's practices violate CLRA § 1770(a) under, *inter alia*, as described with respect to the following subdivisions:

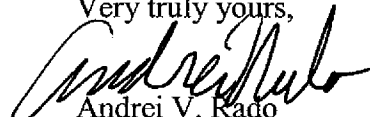
- (9) advertising Wesson Oils with intent not to sell it as advertised;
- (16) misrepresenting that a subject of a transaction has been supplied in accordance with a previous representation when it has not.

As detailed in the attached Complaint, ConAgra's practices also violate California Business & Professions Code §17200 and §17500 *et seq.* and constitute a breach of warranty.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code § 1782, we hereby demand on behalf of our client and all others similarly situated that ConAgra immediately correct and rectify these violations by ceasing the misleading marketing and advertising campaign for Wesson Oils, and initiating a corrective advertising campaign to re-educate consumers regarding the truth about Wesson Oils. In addition, ConAgra must offer to refund the purchase price of all Wesson Oils, plus provide reimbursement for interest.

We await your response.

Very truly yours,



Andrei V. Rado

MILBERG LLP

cc:

MILBERG LLP

Jessica J. Sleater
One Pennsylvania Plaza
New York, New York 10119

MILBERG LLP

Jeff S. Westerman
One California Plaza
300 S. Grand Avenue, Suite 3900
Los Angeles, CA 90071

MILBERG LLP

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Margaret M. Morrow and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

CV11- 5379 MMM (AGR~~x~~)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

Milberg LLP

JEFF S. WESTERMAN (SBN 94559)

jwesterman@milberg.com

300 S. Grand Avenue, Suite 3900

Los Angeles, CA 90071

Telephone: (213) 617-1200 Facsimile: (213) 617-1975

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIAROBERT BRISEÑO, individually and on behalf of all
others similarly situated,

PLAINTIFF(S)

v.

CONAGRA FOODS, INC.,

DEFENDANT(S).

CASE NUMBER

CV11-05379 MMM (AGP*)

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Jeff S. Westerman, whose address is Milberg LLP, 300 South Grand Avenue, Suite 3900, Los Angeles, CA 90071. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JUN 28 2011

Clerk, U.S. District Court

JULIE PRADO

Dated: _____

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> ROBERT BRISEÑO, individually and on behalf of all others similarly situated,	DEFENDANTS CONAGRA FOODS, INC.,
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Milberg LLP 300 S. Grand Avenue, Suite 3900, Los Angeles, CA 90071 Telephone: (213) 617-1200	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:35%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:45%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): _____ <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ _____
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VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Violation of California Business & Professions Code § 17500 and § 17200, California Civil Code § 1750, and breach of express warranty
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VII. NATURE OF SUIT (Place an X in one box only.) <table style="width:100%; border: none;"> <tr> <td style="width:16.6%; vertical-align: top;"> OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. 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CV11-05379

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Solano County

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Nebraska

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): *Jeffrey W. Turner / muf* Date June 28, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))