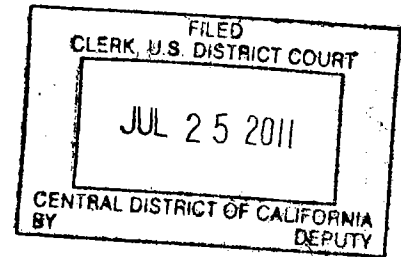


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15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA

18 CHRISTI TOOMER, individually and on )  
19 behalf of all others similarly situated, )

21 Plaintiff, )

22 v. )

23 CONAGRA FOODS, INC., )

24 Defendant. )  
25 )  
26 )  
27 )  
28 )

**LACV11-6127** DMG  
CABR

Case No.

CLASS ACTION COMPLAINT

**ACTION FILED: 7/25/11**

JURY TRIAL DEMANDED

1 Christi Toomer (“Plaintiff”), individually and on behalf of all others similarly situated (the  
2 “Class” and “California Subclass,” as defined below), by her undersigned counsel, brings this  
3 action against defendant ConAgra Foods, Inc., (“ConAgra” or “Defendant”), and makes the  
4 following allegations pertaining to Plaintiff upon personal knowledge, and makes all other  
5 allegations upon information and belief and investigation by counsel:

6 **NATURE OF THE ACTION**

7 1. This action alleges that ConAgra deceptively and misleadingly markets its Wesson  
8 brand of cooking oils, including Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil,  
9 and Wesson Best Blend (collectively, “Wesson Oils”), as “100% Natural” when in fact,  
10 ConAgra’s Wesson Oils are made from unnatural, genetically-modified organisms or plants,  
11 including genetically-modified canola (a/k/a rapeseed), soybeans, and/or corn.

12 2. ConAgra repeats is deceptive and misleading “100% Natural” marketing message  
13 on its Wesson Oils website, in print advertisements and on Wesson Oil packaging such that any  
14 United States consumer who purchases Wesson Oils is exposed to ConAgra’s “100% Natural”  
15 marketing message. Indeed, ConAgra’s “100% Natural” claim is the central feature of ConAgra’s  
16 advertising and marketing of Wesson Oils.

17 3. But Wesson Oils, and the genetically-modified organisms or plants from which  
18 Wesson Oils are derived, are not “100% Natural.”

19 4. Genetically-modified plants are plants that have been unnaturally altered by  
20 engineers and scientists to exhibit genetic traits that are not naturally their own. As more fully  
21 described below, “unnatural” is a recognized defining characteristic of genetically-modified plants  
22 and the food products derived from them.

23 5. ConAgra’s marketing of Wesson Oils as being “100% Natural,” therefore, misleads  
24 and deceives reasonable consumers regarding the properties and qualities of those products.

25 6. Consumers are injured when they purchase Wesson Oils because they do not get  
26 the “100% Natural” product that they paid for.

27 7. Plaintiff brings this lawsuit against ConAgra individually and on behalf of a  
28 nationwide Class and a California Subclass of all other similarly situated purchasers of Wesson

1 Oils for ConAgra's false marketing of Wesson Oils as "100% Natural," alleging claims for  
2 violations of the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, untrue and misleading  
3 advertising under California Business & Professions Code § 17500 *et seq.*, unfair competition  
4 under California Business & Professions Code § 17200 *et seq.*, unfair and deceptive business  
5 practices under the Consumers Legal Remedies Act (the "CLRA"), California Civil Code § 1750  
6 *et seq.*, and for breach of express warranty.

7 **PARTIES**

8 **A. Plaintiff**

9 8. Christi Toomer is a resident of San Diego, California. During the time period  
10 relevant to this action, Ms. Toomer purchased Wesson Canola Oil at WalMart, for her and her  
11 family's personal consumption. Plaintiff was exposed to ConAgra's claim that and Wesson Oils  
12 were "100% Natural" and reasonably believed Defendant's representation. Plaintiff would not  
13 have purchased Wesson Oil, but-for Defendant's misleading statements about the product being  
14 "100% Natural." Plaintiff was injured in fact and lost money as a result of Defendant's conduct of  
15 misleadingly and deceptively advertising and marketing Wesson Oils as "100% Natural." Plaintiff  
16 paid for a "100% Natural" product, but did not receive a product that was 100 percent natural.  
17 Instead, Plaintiff received a product that was made from unnatural plants that were genetically  
18 engineered in a laboratory and had their genetic code artificially altered to exhibit unnatural  
19 qualities.

20 **B. Defendant**

21 9. ConAgra is a Delaware corporation with its headquarters located in Omaha,  
22 Nebraska. Among other activities, ConAgra manufactured, markets, distributes, and sells Wesson  
23 Oils. The Wesson brand is part of ConAgra's Consumer Foods segment. ConAgra owns  
24 consumer foods manufacturing facilities in thirty-nine states, including California, and is  
25 registered as an active corporation with the California Secretary of State. ConAgra claims that its  
26 products are in 96 percent of American households and reported over \$12 billion in net sales for  
27 fiscal year 2010, with an operating profit of over \$1.6 billion.



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15. ConAgra repeats its “100% Natural” claim in numerous locations throughout the website for Wesson Oils – [www.wessonoil.com](http://www.wessonoil.com) – including by stating “Wesson | Pure, 100% Natural Oils” in the title bar for of its website.

16. ConAgra further advertises and markets its Wesson Oils as being “100% Natural” on its website, stating:

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

1 cooking oils . . . Pure Wesson 100 percent Natural Canola Oil is good for  
2 your heart.” at [http://www.wessonoil.com/canola\\_oil.jsp](http://www.wessonoil.com/canola_oil.jsp);

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

5 c. “Pure Wesson 100% Natural Corn Oil is the best oil to ensure a crispy [sic]  
6 coating on your fried foods while retaining moistness on the inside.” at  
7 [http://www.wessonoil.com/corn\\_oil.jsp](http://www.wessonoil.com/corn_oil.jsp); and

8 d. “Pure Wesson 100% Natural Best Blend Oil is highly versatile.” at  
9 [http://www.wessonoil.com/best\\_blend.jsp](http://www.wessonoil.com/best_blend.jsp).

10 17. Thus, ConAgra has repeatedly and consistently advertised its Wesson Oils as being  
11 “100% Natural” in such a manner that all consumers purchasing Wesson Oils are exposed to  
12 ConAgra’s “100% Natural” marketing and advertising message.

13 **B. Genetically-Modified Plants and Genetically-Modified Organisms Are Not  
14 Natural**

15 18. Genetically-modified plants are not natural, let alone “100% Natural.”

16 19. Agricultural biotechnology companies like Monsanto develop and sell Genetically  
17 Engineered Organisms or Genetically Modified Organisms such as genetically engineered or  
18 modified Canola, Soybean and Corn. Monsanto’s “biotechnology work is concentrated on but not  
19 limited to corn, cotton, soybeans and canola.” Monsanto, *Biotechnology*, at  
20 <http://www.monsanto.com/products/Pages/biotechnology.aspx> (last visited July 20, 2011).

21 20. Monsanto defines “Genetically Modified Organisms (GMO)” as “Plants or animals  
22 that **have had their genetic makeup altered to exhibit traits that are not naturally theirs**. In  
23 general, genes are taken (copied) from one organism that shows a desired trait and transferred into  
24 the genetic code of another organism.” Monsanto Glossary,  
25 <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited July 20, 2011)  
(emphasis added).

26 21. The World Health Organization defines genetically-modified organisms as  
27 “organisms in which the genetic material (DNA) **has been altered in a way that does not occur**  
28 **naturally**. The technology is often called ‘modern biotechnology’ or ‘gene technology’,

1 sometimes also ‘recombinant DNA technology’ or ‘genetic engineering’. It allows selected  
2 individual genes to be transferred from one organism into another, also between non-related  
3 species. Such methods are used to create GM plants – which are then used to grow GM food  
4 crops.” World Health Organization, *20 Questions on Genetically Modified (GM) Foods* at  
5 [http://www.who.int/foodsafety/publications/biotech/en/20questions\\_en.pdf](http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf) (last visited July 20,  
6 2011).

7 22. Furthermore, the Environmental Protection Agency has distinguished conventional  
8 breeding of plants “through natural methods, such as cross-pollination” from genetic engineering  
9 using modern scientific techniques. See United States Environmental Protection Agency,  
10 Prevention, Pesticides and Toxic Substances, *Questions & Answers Biotechnology: Final Plant-*  
11 *Pesticide/Plant Incorporated Protectants (PIPs) Rules* (Jul. 19, 2001) at  
12 <http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf> (“**Conventional breeding** is a method in  
13 which genes for pesticidal traits are introduced into a plant **through natural methods**, such as  
14 cross-pollination . . . **Genetically engineered** plant-incorporated protectants are created through a  
15 process that utilizes several different modern scientific techniques to introduce a specific  
16 pesticide-producing gene into a plant’s DNA genetic material.”) (emphasis of “through natural  
17 methods” added; remaining emphasis in original).

18 23. Thus, in accord with the definitions listed above and in accord with the  
19 understanding of reasonable consumers, Genetically Engineered or Genetically Modified  
20 Organisms or Plants, including genetically modified Canola, Soybeans and Corn, are not “100%  
21 natural.”

22 **C. ConAgra’s Wesson Oil Marketing Claims Are False Because Wesson Oils Are**  
23 **Made From Unnatural Genetically Modified Plants**

24 24. The only ingredients in Wesson Oils are Canola Oil, Soybean Oil and Corn Oil,  
25 made respectively from canola, soybean and corn plants, respectively.

26 25. On information and belief, Wesson Oils are derived from genetically modified  
27 plants or organisms, including genetically modified canola, soybeans, and corn.

28 26. In the following statement on “Biotechnology” from ConAgra’s corporate website,  
ConAgra impliedly admits that it uses genetically-modified plants, referred to by ConAgra as

1 “biotech foods,” to make its food products. ConAgra states that its food products not made from  
2 genetically-modified plants are limited to ConAgra’s “Lightlife” brand and ConAgra’s food  
3 products specifically labeled “organic”:

4 **Biotechnology**

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

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

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

20 **Ultimately, consumers will decide what is acceptable in the marketplace based**  
21 **on the best science and public information available. We will continue to listen**  
22 **carefully to our customers and consumers on biotechnology and provide**  
23 **alternatives for those who demand products without biotechnology**  
24 **ingredients. Two choices are our Lightlife brand, which is manufactured using**  
25 **non-GMO soy seeds, and our organic foods, which also do not use biotech**  
26 **ingredients.**

27 <http://company.conagrafoods.com/phoenix.zhtml?c=202310&p=biotechnology> (emphasis added)

28 27. Consumers have requested that ConAgra clearly state whether or not its Wesson  
Oils are made from genetically-modified plants. Instead of admitting that Wesson Oils are made  
from genetically-modified plants, however, ConAgra has evaded answering consumers’ questions  
by asserting ConAgra’s compliance with FDA regulations. See Topic: *ConAgra makers of*  
*Wesson Oil* discussion thread at  
<http://www.facebook.com/topic.php?uid=97259066994&topic=13119> (last visited July 20, 2011).

**D. ConAgra Deceptively Markets Wesson Oils as “100% Natural” to Boost Sales**



1 28. ConAgra markets and advertises its Wesson Oils as being “100% Natural” to  
2 bolster ConAgra’s sales of Wesson Oils for its own substantial financial gain.

3 29. ConAgra recognizes that consumers rely on “trusted seals, standards and symbols  
4 of higher quality” when making food product shopping decisions, and further recognizes that  
5 “Natural” is among the top eight trustmarks consumers look for when making purchases. For  
6 example, in a News Release dated May 18, 2011, ConAgra states as follows:

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

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

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

24 ConAgra Foods, News release, ConAgra Foods Survey – Seals & Standards of Quality Give  
25 Grocery Shoppers Confidence (May 18, 2011),  
26 [http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-](http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle_pf&ID=1008637&highlight)  
27 [newsArticle\\_pf&ID=1008637&highlight](http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle_pf&ID=1008637&highlight) (emphasis added, footnotes omitted).

28 30. Given the importance of trustmarks to consumers, ConAgra’s labeling of its  
Wesson Oils as being “100% Natural” is an intentional business practice by ConAgra to bolster its  
sales and corporate profits.

31. As detailed in the allegations above, however, because Wesson Oils are made from  
genetically-modified plants, ConAgra’s “100% Natural” representations are false, deceptive,

1 misleading, and unfair to consumers who are injured when they purchase a product that is not  
2 “100% Natural” as claimed by ConAgra.

### 3 CLASS ACTION ALLEGATIONS

4 32. Plaintiff brings this action on behalf of herself and as a class action, pursuant to the  
5 provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a  
6 class defined as:

7 All persons in the United States who have purchased Wesson Oils from June 27,  
8 2007 through the final disposition of this and any and all related actions (the  
9 “Class”).

10 Excluded from the Class are ConAgra and its subsidiaries and affiliates; all persons who make a  
11 timely election to be excluded from the Class; governmental entities; and the judges to whom this  
12 case is assigned and any immediate family members thereof.

13 33. Plaintiff further seeks to represent a subclass defined as:

14 All persons who reside in the State of California who have purchased Wesson Oils  
15 from June 27, 2007 through the final disposition of this and any and all related  
16 actions (the “California Subclass”).

17 34. Certification of Plaintiff’s claims for class-wide treatment is appropriate because  
18 Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as  
19 would be used to prove those elements in individual actions alleging the same claims.

20 35. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the  
21 Class and California Subclass are so numerous that individual joinder of all Class members is  
22 impracticable. There are millions of individual purchasers of Wesson Oils. The precise number  
23 of Class and California Subclass members and their addresses are unknown to Plaintiff, but may  
24 be ascertained from ConAgra’s books and records. Class and California Subclass members may  
25 be notified of the pendency of this action by recognized, Court-approved notice dissemination  
26 methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

27 36. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**  
28 **and 23(b)(3).** This action involves common questions of law or fact, which predominate over any  
questions affecting individual Class or California Subclass members. All Class and California  
Subclass members were inextricably exposed to ConAgra’s deceptive and misleading advertising  
and marketing claim that Wesson Oils are “100% Natural” because that claim was on the label of

1 every container of Wesson Oil sold. Furthermore, common questions of law or fact include:

- 2 a. whether ConAgra engaged in the conduct as alleged herein;
- 3 b. whether ConAgra's practices violate applicable law;
- 4 c. whether Plaintiff and the other members of the Class and California
- 5 Subclass are entitled to actual, statutory, or other forms of damages, and
- 6 other monetary relief; and
- 7
- 8 d. whether Plaintiff and the other members of the Class and California
- 9 Subclass are entitled to equitable relief, including but not limited to
- 10 injunctive relief and restitution.

11 37. ConAgra engaged in a common course of conduct giving rise to the legal rights

12 sought to be enforced by Plaintiff individually and on behalf of the other Class and California

13 Subclass members. Similar or identical statutory and common law violations, business practices,

14 and injuries are involved. Individual questions, if any, pale by comparison, in both quality and

15 quantity, to the numerous common questions that dominate this action.

16 38. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are

17 typical of the claims of the other Class and California Subclass members because, among other

18 things, all Class and California Subclass members were comparably injured through the uniform

19 misconduct described above, were subject to ConAgra's false, deceptive, misleading and unfair

20 advertising and marketing practices, including the false claim that Wesson Oils are "100%

21 Natural" found on every container of Wesson Oil sold. Further, there are no defenses available to

22 ConAgra that are unique to Plaintiff.

23 39. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**

24 Plaintiff is an adequate Class and California Subclass representative because her interests do

25 not conflict with the interests of the other Class and California Subclass members he seeks to

26 represent; he has retained counsel competent and experienced in complex class action litigation;

27 and Plaintiff will prosecute this action vigorously. The Class's and California Subclass's interests

28 will be fairly and adequately protected by Plaintiff and her counsel.

1           **40. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**  
2 ConAgra has acted or refused to act on grounds generally applicable to Plaintiff and the other  
3 Class and California Subclass members, thereby making appropriate final injunctive relief and  
4 declaratory relief, as described below, with respect to the members of the Class and California  
5 Subclass as a whole.

6           **41. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is  
7 superior to any other available means for the fair and efficient adjudication of this controversy,  
8 and no unusual difficulties are likely to be encountered in the management of this class action.  
9 The damages or other financial detriment suffered by Plaintiff and the other Class and California  
10 Subclass members are relatively small compared to the burden and expense that would be required  
11 to individually litigate their claims against ConAgra, so it would be impracticable for Class and  
12 California Subclass members to individually seek redress for ConAgra’s wrongful conduct. Even  
13 if the Class and California Subclass members could afford individual litigation, the court system  
14 could not. Individualized litigation creates a potential for inconsistent or contradictory judgments,  
15 and increases the delay and expense to all parties and the court system. By contrast, the class  
16 action device presents far fewer management difficulties and provides the benefits of single  
17 adjudication, economy of scale, and comprehensive supervision by a single court. Given the  
18 similar nature of the Class and California Subclass members’ claims and the absence of material  
19 differences in the statutes and common laws upon which the Class and California Subclass  
20 members’ claims are based, a nationwide class and California only subclass will be easily  
21 managed by the Court and the parties.

22   **CLAIMS FOR RELIEF**

23   **COUNT I**

24           **Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.**

- 25           42. Plaintiff incorporates each of the foregoing allegations as if fully set forth herein  
26           43. Plaintiff brings this claim individually and on behalf of the class.  
27           44. Wesson Oils are consumer products within the meaning of the Magnuson-Moss  
28 Warranty Act, 15 U.S.C. § 2301(1).

1 45. Plaintiff and Class members are “consumers” within the meaning of the Magnuson-  
2 Moss Warranty Act, 15 U.S.C. § 2301(3)

3 46. ConAgra is both a “supplier” and “warrantor” within the meaning of the  
4 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4) and (5).

5 47. ConAgra’s written statements that Wesson Oils are “100% Natural” as alleged  
6 herein are made in connection with the sale of Wesson Oils that relate to the nature of Wesson  
7 Oils and affirm and promise that such Wesson Oils are defect free, and as such are “written  
8 warranties” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6)(A).

9 48. As alleged herein, ConAgra has breached this written warranty by selling  
10 consumers Wesson Oils that are not in fact 100% Natural as warranted and thus do not conform to  
11 ConAgra’s written warranty, violating the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et*  
12 *seq.*, and causing Plaintiff and the other Class members injury and damage.

13 **COUNT II**

14 **Violation of the California Business & Professions Code § 17500 *et seq.***

15 49. Plaintiff incorporates each of the foregoing allegations as if fully set forth herein

16 50. Plaintiff brings this claim individually and on behalf of the California Subclass.

17 51. Defendant has stated through advertisements online and through labels affixed to  
18 product packaging and otherwise that Wesson Oils are “100% Natural” when Defendant knew or  
19 should have known that such statements are untrue or misleading because Wesson Oils are derived  
20 from genetically modified plants or organisms that are not 100% Natural.

21 52. Defendant made these untrue or misleading statements with the intent of inducing  
22 consumers to purchase Wesson Oils.

23 53. Plaintiff would not have purchased Wesson Oils, or in the alternative would not  
24 have paid as much to purchase Wesson Oils, but for Defendants untrue or misleading statements  
25 and was thus injured in fact and lost money as a result of Defendant’s untrue or misleading  
26 statements.

27 54. Defendant has thus violated California Business & Professions Code § 17500 *et*  
28 *seq.*





1 a. ConAgra violated § 1770(a)(5) by representing that its goods or services  
2 have characteristics and benefits that they do not have;

3 b. ConAgra violated § 1770(a)(7) by representing that's its goods are of a  
4 particular standard, quality, or grade;

5 c. ConAgra violated § 1770(a)(9) by advertising its goods with intent not to  
6 sell them as advertised; and

7 d. ConAgra violated §1770(a)(16) by representing that the subject of a  
8 transaction has been supplied in accordance with a previous representation when it has not.

9 72. Plaintiff and the other California Subclass members have suffered harm as a direct  
10 and proximate result of ConAgra's violations of law and wrongful conduct.

11 73. Under Cal. Civ. Code § 1780(a) & (b), Plaintiff, individually and on behalf of the  
12 other California Subclass members, seeks injunctive relief requiring ConAgra to cease and desist  
13 from its illegal conduct described herein, and for any other appropriate remedy for ConAgra's  
14 CLRA violations. For the sake of clarity, Plaintiff disclaims any claim for damages under the  
15 CLRA at this time.

## 16 COUNT V

### 17 **Breach of Express Warranty**

18 74. Plaintiff incorporates each of the foregoing allegations as if fully set forth herein

19 75. Plaintiff brings this claim individually and on behalf of the California Subclass

20 76. Plaintiff, and each member of the California Subclass, formed a contract with  
21 Defendant at the time Plaintiff and the other California Subclass Members purchased Wesson  
22 Oils. The terms of that contract include the promises and affirmations of fact made by Defendant  
23 on Wesson Oils' packaging and through marketing and advertising, including Defendant's  
24 promise that Wesson Oils are "100% Natural," as described above. This marketing and  
25 advertising constitute express warranties and became part of the basis of the bargain, and are part  
26 of the standardized contract between Plaintiff and the members of the California Subclass and  
27 Defendant.

28



1 77. All conditions precedent to Defendant's liability under this contract have been  
2 performed by Plaintiff and the California Subclass, when they purchased the product and used it as  
3 directed.

4 78. Defendant has breached its express warranties about Wesson Oils because Wesson  
5 Oils are not "100% Natural" but are rather derived from genetically-modified organisms or plants  
6 that are not 100 percent natural.

7 79. As a result of Defendant's breach of express warranty, Plaintiff and the other  
8 California Subclass members were harmed in the amount of the purchase price they paid for  
9 Wesson Oils.

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf other members of the Class and  
12 California Subclass described in this Complaint, respectfully requests that:

13 A. the Court certify the Class and California Subclass pursuant to Fed. R. Civ. P.  
14 23(b)(2) and 23(b)(3), and adjudge Plaintiff and her counsel to be adequate representatives  
15 thereof;

16 B. the Court enter an Order requiring ConAgra to pay Plaintiff's and the other Class  
17 and California Subclass members' economic, monetary, actual damages (including multiple  
18 damages), consequential, compensatory or statutory damages, whichever is greater; and, if its  
19 conduct is proved willful, awarding Plaintiff and the other Class and California Subclass members  
20 exemplary damages;

21 C. the Court enter an Order awarding restitution and disgorgement of ConAgra's  
22 revenues arising from its conduct alleged above, or any other appropriate remedy in equity, to  
23 Plaintiff and the other Class and California Subclass members;

24 D. the Court enter an Order awarding declaratory and injunctive relief as permitted by  
25 law or equity, including: enjoining ConAgra from continuing the unlawful practices set forth  
26 above; directing ConAgra to cease its deceptive and misleading marketing campaign in which it  
27 describes Wesson Oils as "100% Natural", and to disgorge all monies ConAgra acquired by means  
28 of any act or practice declared by this Court to be wrongful;

1 E. the Court enter an Order awarding Plaintiff and the other Class and California  
2 Subclass members their expenses and costs of suit, including reasonable attorneys' fees and  
3 reimbursement of reasonable expenses, to the extent provided by law;

4 F. the Court enter an Order awarding to Plaintiff and the other Class and California  
5 Subclass members pre- and post-judgment interest, to the extent allowable; and

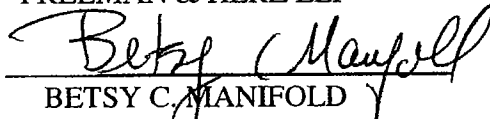
6 G. for such other and further relief as may be just and proper.

7 **JURY DEMAND**

8 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all  
9 claims in this Complaint so triable.

10 Dated: July 25, 2011

11 WOLF HALDENSTEIN ADLER  
12 FREEMAN & HERZ LLP

13   
14 Betsy C. Manifold

15 FRANCIS M. GREGOREK  
16 BETSY C. MANIFOLD  
17 RACHELE R. RICKERT  
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27 WOLF HALDENSTEIN ADLER  
28 FREEMAN & HERZ LLC  
ADAM J. LEVITT (*pro hac vice application pending*)  
EDMUND S. ARONOWITZ (*pro hac vice application pending*)  
55 West Monroe Street, Suite 1111  
Chicago, Illinois 60603  
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Facsimile: 312/984-0001  
levitt@whafh.com  
aronowitz@whafh.com

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

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> Christi Toomer, individually and on behalf of all others similarly situated,	<b>DEFENDANTS</b> ConAgra Foods, Inc.
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Francis M. Gregorek, Betsy C. Manifold, Rachele R. Rickert, Patrick H. Moran Wolf Haldenstein Adler Freeman & Herz LLP 750 B Street, Ste. 2770, San Diego, CA 92101; Tel: 619-239-4599	Attorneys (If Known)

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input 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 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
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input 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 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																				

**IV. ORIGIN** (Place an X in one box only.)

1 Original Proceeding    
  2 Removed from State Court    
  3 Remanded from Appellate Court    
  4 Reinstated or Reopened    
  5 Transferred from another district (specify): \_\_\_\_\_    
  6 Multi-District Litigation    
  7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT:** **JURY DEMAND:**  Yes    No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION under F.R.C.P. 23:**  Yes    No     **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**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.)  
 Magnuson-Moss Act, 15 U.S.C. § 2301, et seq.

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <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 checked="" 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. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>PERPETUITY</b> <b>PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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LACV11-6127

**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): Briseno v. ConAgra, Case No: 11-cv-05379 MMM (AGRx)

**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
	Plaintiff: San Diego 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
	ConAgra Foods: 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): Betsy Campbell Date July 25, 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))

Francis M. Gregorek, Betsy C. Manifold, Rachele R. Rickert, Patrick H. Moran  
Wolf Haldenstein Adler Freeman & Herz LLP  
750 B Street, Ste. 2770  
San Diego, CA 92101  
Tel:619/239-4599; Fax: 619-234-4599

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

Christi Toomer, individually and on behalf of all others similarly situated,

PLAINTIFF(S)

v.

ConAgra Foods, Inc.

DEFENDANT(S).

CASE NUMBER

**LACV11-6127DMG (ABR)**

**SUMMONS**


TO: DEFENDANT(S): ConAgra Foods, Inc.

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, Betsy C. Manifold, whose address is Wolf Haldenstein Adler Freeman & Herz LLP, 750 B St, Ste 2770, San Diego, CA 92101. 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.

Clerk, U.S. District Court

Dated: JUL 25 2011

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)].

Francis M. Gregorek, Betsy C. Manifold, Rachele R. Rickert, Patrick H. Moran  
Wolf Haldenstein Adler Freeman & Herz LLP  
750 B Street, Ste. 2770  
San Diego, CA 92101  
Tel:619/239-4599; Fax: 619-234-4599

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Christi Toomer, individually and on behalf of all others similarly situated,

PLAINTIFF(S)

v.

ConAgra Foods, Inc.

DEFENDANT(S).

CASE NUMBER

LACV11-6127DM6(AGR)

SUMMONS

TO: DEFENDANT(S): ConAgra Foods, Inc.

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, Betsy C. Manifold, whose address is Wolf Haldenstein Adler Freeman & Herz LLP, 750 B St, Ste 2770, San Diego, CA 92101. 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.

Clerk, U.S. District Court

Dated: JUL 25 2011

By: SUSANA P. BUSTAMANTE  
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)].