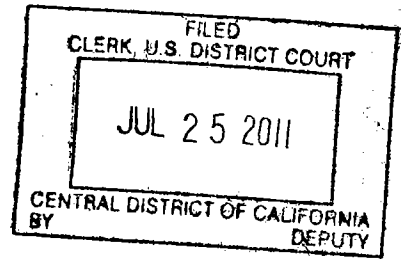


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15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA

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

20 )  
 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 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



