

1 **MILBERG LLP**  
DAVID E. AZAR (SBN 218319)  
2 One California Plaza  
300 South Grand Avenue, Suite 3900  
3 Los Angeles, California 90071  
Telephone: (213) 617-1200  
4 Facsimile: (213) 617-1975  
dazar@milberg.com  
5

6 **GRANT & EISENHOFER, P.A.**  
ADAM J. LEVITT (pro hac vice)  
7 EDMUND S. ARONOWITZ (pro hac vice)  
30 North LaSalle Street, Suite 1200  
8 Chicago, Illinois 60602  
Telephone: (312) 214-0000  
9 Facsimile: (312) 214-0001  
alevitt@gelaw.com  
10 earonowitz@gelaw.com

11 Plaintiffs' Interim Class Counsel  
12 [Additional Counsel on Signature Page]

13  
14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16 WESTERN DIVISION

17 IN RE CONAGRA FOODS, INC. ) Case No. CV 11-05379-MMM  
18 ) (AGRx)MDL NO. 2291  
19 ) CLASS ACTION  
20 ) **NOTICE OF AMENDED MOTION**  
21 ) **AND AMENDED MOTION FOR**  
22 ) **CLASS CERTIFICATION AND**  
23 ) **APPOINTMENT OF CLASS**  
24 ) **COUNSEL**  
25 ) DATE: November 17, 2014  
26 ) TIME: 10:00 a.m.  
27 ) CTRM.: 780  
28 ) JUDGE: Hon. Margaret M. Morrow

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 17, 2014, at 10:00 a.m., or as  
3 soon thereafter as they may be heard, in Courtroom 780 of the United States  
4 District Court for the Central District of California, 225 East Temple Street, Los  
5 Angeles, CA 90012, Plaintiffs Robert Briseño, Michele Andrade, Jill Crouch, Julie  
6 Palmer, Pauline Michael, Cheri Shafstall, Dee Hopper-Kercheval, Kelly  
7 McFadden, Necla Musat, Maureen Towey, Erika Heins, Rona Johnston, and Anita  
8 Willman (collectively “Plaintiffs”) will, and hereby do, respectfully move this  
9 Honorable Court to certify this action as a class action against Defendant, ConAgra  
10 Foods, Inc. (“ConAgra”), and enter an Order defining the classes, appointing class  
11 counsel, and also finding:

- 12 1. That the prerequisites and requirements for certification of a class  
13 action under Rules 23(a), 23(b)(2), 23(b)(3), and (alternatively)  
14 23(c)(4) of the Federal Rules of Civil Procedure have been satisfied  
15 on the following bases:
- 16 a. The number of Class Members is so numerous that joinder of  
17 all members thereof is impracticable;
  - 18 b. There are questions of law and fact common to each of the  
19 Classes;
  - 20 c. The claims of the Class Representatives are typical of the  
21 claims of each of the Classes they seek to represent;
  - 22 d. The Class Representatives will fairly and adequately represent  
23 the interests of each of the Classes they respectively seek to  
24 represent;
  - 25 e. The questions of law and fact common to the members of each  
26 of the Classes predominate over any questions affecting only  
27 individual members of each of the Classes;
- 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- f. A class action is superior to other available methods for the fair and efficient adjudication of the controversy;
  - g. ConAgra has acted or refused to act on grounds that apply generally to the Classes, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to each of the Classes as a whole;
  - h. Alternatively, certifying the Classes with respect to particular issues is appropriate pursuant to Federal Rule of Civil Procedure 23(c)(4); and
  - i. The law firms of Milberg LLP and Grant & Eisenhofer P.A. will fairly and adequately represent the interests of each Class as Class Counsel and are adequate Class Counsel under all of the factors set forth in Federal Rule of Civil Procedure 23(g)(1) and (4).
2. That the following Classes are certified by the Court:
- a. Robert Briseño and Michele Andrade as class representatives for a class consisting of all persons in California who purchased Wesson brand cooking oils, including Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil, and Wesson Best Blend (collectively, “Wesson Oils”) between June 28, 2007, and the present (the “California Class”).
  - b. Jill Crouch as class representative for a class consisting of all persons in Colorado who purchased Wesson Oils between January 12, 2009, and the present (the “Colorado Class”).
  - c. Julie Palmer as class representative for a class consisting of all persons in Florida who purchased Wesson Oils between January 12, 2008, and the present (the “Florida Class”).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- d. Pauline Michael as class representative for a class consisting of all persons in Illinois who purchased Wesson Oils between January 12, 2007, and the present (the “Illinois Class”).
- e. Cheri Shafstall as class representative for a class consisting of all persons in Indiana who purchased Wesson Oils between January 12, 2006, and the present (the “Indiana Class”).
- f. Dee Hopper-Kercheval as class representative for a class consisting of all persons in Nebraska who purchased Wesson Oils between January 12, 2008, and the present (the “Nebraska Class”).
- g. Kelly McFadden and Necla Musat as class representatives for a class consisting of all persons in New York who purchased Wesson Oils between January 12, 2006, and the present (the “New York Class”).
- h. Maureen Towey as class representative for a class consisting of all persons in Ohio who purchased Wesson Oils between January 12, 2006, and the present (the “Ohio Class”).
- i. Erika Heins as class representative for a class consisting of all persons in Oregon who purchased Wesson Oils between January 12, 2006, and the present (the “Oregon Class”).
- j. Rona Johnston as class representative for a class consisting of all persons in South Dakota who purchased Wesson Oils between January 12, 2006, and the present (the “South Dakota Class”).
- k. Anita Willman as class representative for a class consisting of all persons in Texas who purchased Wesson Oils between January 12, 2010, and the present (the “Texas Class”).

- 1           3.     That governmental entities; ConAgra, and its affiliates, subsidiaries,  
2           employees, current and former officers, directors, agents, and  
3           representatives; and the members of this Court and its staff are  
4           excluded from the Classes;
- 5           4.     That Milberg LLP and Grant & Eisenhofer P.A. are appointed Class  
6           Counsel for each of the aforementioned Classes; and
- 7           5.     That the Court will direct the form of notice to the Classes pursuant to  
8           Federal Rule of Civil Procedure 23(c)(2) by separate Order.

9           As indicated in the accompanying Memorandum of Points and Authorities,  
10          the following are the specific claims as to each of the Classes for which Plaintiffs  
11          seek certification:

- 12           1.     California Class: California Consumer Legal Remedies Act, Cal. Civ.  
13           Code §§ 1750, *et seq.*; California's Unfair Competition Law, Cal. Bus.  
14           & Prof Code §§ 17200, *et seq.*; and Cal. Bus. & Prof. Code §§ 17500,  
15           *et seq.*; Breach of Express Warranty, Cal. Com. Code § 2313; and  
16           Breach of Implied Warranty, Cal. Com. Code § 2314.
- 17           2.     Colorado Class: Colorado Consumer Protection Act, Colo. Rev. Stat.  
18           §§ 6-1-101, *et seq.*; Breach of Express Warranty, Colo. Rev. Stat. § 4-  
19           2-313; Breach of Implied Warranty, Colo. Rev. Stat. § 4-2-314; and  
20           Unjust Enrichment.
- 21           3.     Florida Class: Florida Deceptive and Unfair Trade Practices Act, Fla.  
22           Stat. Ann. §§ 501.201, *et seq.*; and Unjust Enrichment.
- 23           4.     Illinois Class: Illinois Consumer Fraud and Deceptive Business  
24           Practices Act, 815 ILCS §§ 505/1, *et seq.*; and Unjust Enrichment.
- 25           5.     Indiana Class: Breach of Express Warranty, Ind. Code § 26-1-2-313;  
26           Breach of Implied Warranty, Ind. Code § 26-1-2-314; and Unjust  
27           Enrichment.
- 28

- 1           6.     Nebraska Class: Nebraska Consumer Protection Act, Neb. Rev. Stat.  
2                 §§ 59-1601, *et seq.*; Breach of Express Warranty, Neb. Rev. Stat. § 2-  
3                 313; Breach of Implied Warranty, Neb. Rev. Stat. § 2-314; and Unjust  
4                 Enrichment.
- 5           7.     New York Class: New York Deceptive Acts and Practices Act, N.Y.  
6                 Gen. Bus. Law §§ 349, *et seq.*; Breach of Express Warranty, N.Y.  
7                 U.C.C. Law § 2-313; and Unjust Enrichment.
- 8           8.     Ohio Class: Ohio Consumer Sales Practices Act, Ohio Rev. Code §§  
9                 1345.01, *et seq.*; and Unjust Enrichment.
- 10          9.     Oregon Class: Oregon Unfair Trade Practices Act, Or. Rev. Stat §§  
11                 646.605, *et seq.*; Breach of Express Warranty, Or. Rev. Stat. §  
12                 72.3130; and Unjust Enrichment.
- 13          10.    South Dakota Class: South Dakota Deceptive Trade Practices and  
14                 Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;  
15                 Breach of Express Warranty, S.D. Codified Laws. § 57A-2-313;  
16                 Breach of Implied Warranty, S.D. Cod. Laws. § 57A-2-314; and  
17                 Unjust Enrichment.
- 18          11.    Texas Class: Texas Deceptive Trade Practices - Consumer Protection  
19                 Act, Tex. Bus. & Corn. Code §§ 17.41, *et seq.*; and Unjust  
20                 Enrichment.

21           This Amended Motion is based on this Notice, the accompanying  
22 Memorandum of Points and Authorities, the accompanying Declarations of Colin  
23 Weir, Elizabeth Howlett, David E. Azar, and Plaintiffs Robert Briseño, Jill Crouch,  
24 Julie Palmer, Pauline Michael, Dee Hopper-Kercheval, Kelly McFadden, Maureen  
25 Towey, Rona Johnston, and Anita Willman (submitted under the caption,  
26 Declarations of Named Plaintiffs in Support of Plaintiffs' Amended Motion for  
27 Class Certification), all other pleadings and papers on file in this action, including  
28 the Court's Order, dated August 1, 2014 (Dkt. 350), permitting Plaintiffs to file this

1 Amended Motion, and such oral and documentary evidence and argument as may  
2 be presented at the time of hearing.

3 This Amended Motion is made pursuant to the Court’s Order, dated August  
4 1, 2014 (Dkt. 350), and pursuant to Civil Local Rule 7-3, the original motion for  
5 class certification was made following conferences of counsel as identified in the  
6 original notice of motion.

7  
8 DATED: September 8, 2014

**MILBERG LLP**  
DAVID E. AZAR

*/s/ David E. Azar*

\_\_\_\_\_  
DAVID E. AZAR

12 One California Plaza  
13 300 South Grand Avenue, Suite 3900  
14 Los Angeles, California 90071  
15 Telephone: (213) 617-1200  
16 Facsimile: (213) 617-1975  
17 dazar@milberg.com

**MILBERG LLP**  
18 ARIANA J. TADLER (pro hac vice)  
19 HENRY J. KELSTON  
20 One Pennsylvania Plaza  
21 New York, New York 11030  
22 Telephone: (212) 594-5300  
23 Facsimile: (212) 868-1229  
24 atadler@milberg.com  
25 hkelston@milberg.com  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**GRANT & EISENHOFER P.A.**  
ADAM J. LEVITT (pro hac vice)  
EDMUND S. ARONOWITZ (pro hac vice)  
30 North LaSalle Street, Suite 1200  
Chicago, Illinois 60602  
Telephone: (312) 214-0000  
Facsimile: (312) 214-0001  
alevitt@gelaw.com  
earonowitz@gelaw.com

**GRANT & EISENHOFER P.A.**  
MARY S. THOMAS (SBN 175110)  
123 Justison Street, 7<sup>th</sup> Floor  
Wilmington, Delaware 19317  
Telephone: (302) 622-7000  
Facsimile: (302) 622-7100  
mthomas@gelaw.com

*Plaintiffs' Interim Class Counsel*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

IN RE CONAGRA FOODS, INC.

) Case No. CV 11-05379-MMM  
) (AGRx)MDL NO. 2291

) CLASS ACTION

) **[PROPOSED] ORDER GRANTING  
) PLAINTIFFS' AMENDED MOTION  
) FOR CLASS CERTIFICATION  
) AND APPOINTMENT OF CLASS  
) COUNSEL**

1 The Court, having considered the papers and arguments submitted in support  
2 of, and in opposition to, Plaintiffs' Amended Motion for Class Certification and  
3 Appointment of Class Counsel, finds that the prerequisites and requirements for  
4 certification of a class action under Rules 23(a), 23(b)(2), 23(b)(3) (and/or  
5 alternatively, Rule 23(c)(4)) of the Federal Rules of Civil Procedure have been  
6 satisfied in that:

- 7 1. The number of Class members is so numerous that joinder of all  
8 members thereof is impracticable;
- 9 2. There are questions of law and fact common to each of the Classes;
- 10 3. The claims of the Class Representatives are typical of the claims of  
11 each of the Classes they seek to represent;
- 12 4. The Class Representatives will fairly and adequately represent the  
13 interests of each of the Classes;
- 14 5. The questions of law and fact common to the members of each of the  
15 Classes predominate over any questions affecting only individual  
16 members of each of the Classes;
- 17 6. A class action is superior to other available methods for the fair and  
18 efficient adjudication of the controversy;
- 19 7. Defendant has acted or refused to act on grounds that apply generally  
20 to the Classes, so that final injunctive relief or corresponding  
21 declaratory relief is appropriate respecting each of the Classes as a  
22 whole;
- 23 8. [In the alternative to Rule 23(b)(2) and/or Rule 23(b)(3) class  
24 certification, a class action with respect to particular issues is  
25 appropriate pursuant to Federal Rule of Civil Procedure 23(c)(4)]; and
- 26 9. The law firms of Milberg LLP and Grant & Eisenhofer P.A. will fairly  
27 and adequately represent the interests of each of the proposed Classes  
28

1 as Class Counsel and are adequate Class Counsel under all of the  
2 factors set forth in Federal Rule of Civil Procedure 23(g)(1) and (4).

3 Good cause appearing therefor,

4 IT IS HEREBY ORDERED THAT:

5 The Plaintiffs' Amended Motion for Class Certification and Appointment of  
6 Class Counsel is hereby GRANTED.

- 7 1. The Court grants the certification of the following Classes:
- 8 a. Robert Briseño and Michele Andrade as class representatives  
9 for a class consisting of all persons in California who purchased  
10 Wesson brand cooking oils, including Wesson Vegetable Oil,  
11 Wesson Canola Oil, Wesson Corn Oil, and Wesson Best Blend  
12 (collectively, "Wesson Oils") between June 28, 2007, and the  
13 present (the "California Class").
  - 14 b. Jill Crouch as class representative for a class consisting of all  
15 persons in Colorado who purchased Wesson Oils between  
16 January 12, 2009, and the present (the "Colorado Class").
  - 17 c. Julie Palmer as class representative for a class consisting of all  
18 persons in Florida who purchased Wesson Oils between  
19 January 12, 2008, and the present (the "Florida Class").
  - 20 d. Pauline Michael as class representative for a class consisting of  
21 all persons in Illinois who purchased Wesson Oils between  
22 January 12, 2007, and the present (the "Illinois Class").
  - 23 e. Cheri Shafstall as class representative for a class consisting of  
24 all persons in Indiana who purchased Wesson Oils between  
25 January 12, 2006, and the present (the "Indiana Class").
  - 26 f. Dee Hopper-Kercheval as class representative for a class  
27 consisting of all persons in Nebraska who purchased Wesson  
28

1 Oils between January 12, 2008, and the present (the “Nebraska  
2 Class”).

3 g. Kelly McFadden and Necla Musat as class representatives for a  
4 class consisting of all persons in New York who purchased  
5 Wesson Oils between January 12, 2006, and the present (the  
6 “New York Class”).

7 h. Maureen Towey as class representative for a class consisting of  
8 all persons in Ohio who purchased Wesson Oils between  
9 January 12, 2006, and the present (the “Ohio Class”).

10 i. Erika Heins as class representative for a class consisting of all  
11 persons in Oregon who purchased Wesson Oils between  
12 January 12, 2006, and the present (the “Oregon Class”).

13 j. Rona Johnston as class representative for a class consisting of  
14 all persons in South Dakota who purchased Wesson Oils  
15 between January 12, 2006, and the present (the “South Dakota  
16 Class”).

17 k. Anita Willman as class representative for a class consisting of  
18 all persons in Texas who purchased Wesson Oils between  
19 January 12, 2010, and the present (the “Texas Class”).

20 2. Excluded from the Classes, as defined above, are governmental  
21 entities, Defendant ConAgra Foods, Inc. and its affiliates,  
22 subsidiaries, employees, current and former officers, directors, agents,  
23 and representatives, along with the members of this Court and its  
24 staff.

25 3. Milberg LLP and Grant & Eisenhofer P.A. are appointed Class  
26 Counsel for each of the aforementioned Classes.

27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. The Court will direct the form of notice to the Classes pursuant to Federal Rule of Civil Procedure 23(c)(2) by separate Order.

**IT IS SO ORDERED.**

DATED:

\_\_\_\_\_  
THE HONORABLE MARGARET M. MORROW