

1 Milberg LLP  
JEFF S. WESTERMAN (SBN 94559)  
2 jwesterman@milberg.com  
One California Plaza  
3 300 S. Grand Avenue, Suite 3900  
Los Angeles, CA 90071  
4 Telephone: (213) 617-1200  
Facsimile: (213) 617-1975  
5

6 *Counsel for Plaintiff*

7 [Additional Counsel Listed on Signature Page]  
8

BY: \_\_\_\_\_  
11 JUN 28 PM 3:33  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 **CV11-05379** MMM(AGR)

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

14 Plaintiff,

15 v.

16 CONAGRA FOODS, INC.,

17 Defendant.  
18  
19  
20  
21

Case No.

**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**

TABLE OF CONTENTS

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

Page

NATURE OF ACTION AND SUMMARY OF ALLEGATIONS ..... 1

JURISDICTION AND VENUE..... 2

THE PARTIES ..... 3

FACTUAL ALLEGATIONS ..... 3

    ConAgra Advertises Wesson Oils As “100% Natural” ..... 3

    Wesson Oils Are From Genetically Modified Organisms ..... 4

    Genetically Modified Organisms Are Not “100% Natural” ..... 6

CLASS ALLEGATIONS ..... 8

COUNT I Violation of California Business & Professions Code § 17500 *et seq.*..... 9

COUNT II Violation of California Business & Professions Code § 17200 *et seq.*..... 10

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

COUNT IV Breach of Express Warranty..... 14

PRAYER FOR RELIEF ..... 15

DEMAND FOR JURY TRIAL ..... 16

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.

26  
27  
28

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.

28

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.