

JS-6

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

IN RE CONAGRA FOODS, INC.

Case No.: CV 11-05379-CJC(AGR_x)

MDL No. 2291

**ROBERT BRISEÑO, et al., individually
and on behalf of all others similarly
situated,**

**ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT [Dkt. 660] AND
DENYING MOTION TO STRIKE [Dkt.
684]**

Plaintiffs,

v.

CONAGRA FOODS, INC.,

Defendants.

I. INTRODUCTION

In this 2011 class-action lawsuit, Plaintiffs challenge Defendant ConAgra Foods,

Inc.'s allegedly deceptive marketing of its Western Oil products as "100% Natural."

1 After years of investigation and litigation, including extensive mediation efforts with two
2 separate judges, the parties reached a settlement, which this court preliminarily approved.
3 (Dkt. 654.) Plaintiffs now ask the court to grant final approval of the settlement and the
4 requested attorney fees, costs, and incentive awards. For the following reasons, the
5 motion is **GRANTED**.

6 7 **II. BACKGROUND**

8
9 For over ten years, bottles of ConAgra’s Wesson Oil had a label calling the product
10 “100% Natural.”¹ Plaintiffs sued in 2011, alleging that the “natural” claim was false and
11 misleading because the oil contains genetically modified organisms (GMOs), and that
12 they paid more for the oil because of that false and misleading claim. After another judge
13 of this court certified eleven consumer classes and the Ninth Circuit affirmed, *see Briseño*
14 *v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017); *Briseño v. ConAgra Foods, Inc.*,
15 674 F. App’x 654 (9th Cir. 2017), the parties conducted extensive settlement negotiations
16 before both retired Judge Edward A. Infante and Magistrate Judge Douglas McCormick.
17 (Dkt. 652 [Joint Declaration of Henry J. Kelston & Adam J. Levitt, hereinafter
18 “Kelston/Levitt Decl.”] ¶¶ 51–65.)

19
20 The resulting settlement—reached after a mediator’s proposal from Judge
21 McCormick—provided that Defendant will not label, advertise, or market Wesson Oils as
22 “natural,” absent future legislation or regulation. (Dkt. 652, Ex. 1 [Settlement Agreement
23 and Release, hereinafter “Settlement Agreement”] ¶ 3.3.) It also provided class members
24 the following monetary benefits:

- 1 (a) \$0.15 for each unit of Wesson Oils purchased to households submitting
2 valid claim forms (to a maximum of thirty units without proof of
3 purchase, and unlimited units with proof of purchase),
4 (b) an additional fund of \$575,000 to be allocated to New York and Oregon
5 class members submitting valid claim forms, as compensation for
6 statutory damages under those states' consumer protection laws, and
7 (c) an additional fund of \$10,000 to compensate those in all classes
8 submitting valid proof of purchase receipts for more than thirty
9 purchases, at \$0.15 for each such purchase above thirty, with Class
10 Counsel paying any non-funded claims (i.e. claims above the \$10,000
11 provided by ConAgra) from any attorney fees awarded in this case.

12 (*Id.* ¶ 3.1.)
13

14 After the parties reached a settlement in principle, ConAgra sold the Wesson brand
15 to Richardson International. The parties thus revised the terms of the agreed injunctive
16 relief to apply to ConAgra only in the event it reacquires the Wesson brand. Plaintiffs'
17 counsel represents, however, that "pursuant to industry custom and related facts," "it is
18 virtually certain that Richardson will not restore the allegedly false '100% Natural' claim
19 to the Wesson Oil packaging." (Mot. at 4; *see* Dkt. 661-1 [Declaration of Larry
20 Kopald].)
21

22 The Court granted preliminary approval of the Settlement Agreement on April 4,
23 2019, and appointed JND Legal Administration ("JND") as settlement administrator.
24 (Dkt. 654.) JND provided notice calculated to reach the class in all eleven states via print
25 and digital publications, a press release, and a hotline, as outlined in the Settlement
26 Agreement. (Dkt. 661-2 [July 23, 2019 Declaration of Jennifer M. Keough Regarding
27 Settlement Administration and Notice Plan, hereinafter "Keough 7/19 Decl.,"] ¶¶ 8–16;
28 Ex. B. II.) JND received 97,880 timely claims for 2,702,704 units, and one untimely

1 claim for 10 units. (Dkt. 688-1 [September 24, 2019 Declaration of Jennifer M. Keough
2 Regarding Settlement Administration and Notice Plan, hereinafter “Keough 9/19 Decl.”]
3 ¶ 10.) One plaintiff opted-out, and one plaintiff objected. (*Id.* ¶¶ 7, 9; Dkt. 666.)
4

5 Plaintiffs now move for final approval of the Settlement Agreement, attorney fees
6 and costs, and incentive awards. (Dkts. 660–661 [hereinafter “Mot.”]; Dkt. 662
7 [hereinafter “Fee Mot.”].)
8

9 **III. DISCUSSION**

11 **A. Motion to Strike**

12
13 As a preliminary matter, Objector M. Todd Henderson moves to strike two expert
14 declarations from Colin B. Weir filed in support of Plaintiffs’ motion (Dkts. 652-4 and
15 674-1). (Dkt. 684 [Motion to Strike Declaration of Mr. Colin Weir Under *Daubert*,
16 hereinafter “Strike Mot.”].) Henderson argues these declarations fail to meet the
17 standards for admissible expert opinions because they “do not hinge on any scientific
18 methods or data,” but rather are “based on an *ipse dixit*,” “false assumption,” and
19 “methodology [that] unscientifically and impermissibly gerrymanders data to avoid
20 risking falsification of his hypothesis.” (Strike Mot. at 1, 6.)
21

22 Specifically, Henderson contends that Weir’s opinion rests on the “false
23 assumption” that the injunction prohibits anyone from advertising Wesson Oils as natural
24 in the future. (Strike Mot. at 3–5.) He maintains this assumption is false because the
25 Settlement Agreement binds only ConAgra, and since ConAgra no longer owns Wesson
26 Oil, “[t]he injunction is no more meaningful than an injunction against Ford Motor on the
27 marketing of the Edsel.” (*Id.* at 3.) Without a meaningful prospective prohibition on
28

1 labeling Wesson Oil as natural, Henderson argues, consumers receive no benefit
2 whatsoever from the injunction. (*Id.* at 4.)

3
4 The Court is not persuaded that it should strike Weir’s declarations. Henderson’s
5 contention that Weir’s declarations “cannot help the Court,” (*id.* at 6), is simply incorrect.
6 Indeed, it is difficult for courts to “judge with confidence the value of the terms of a
7 settlement agreement, especially one in which, as here, the settlement provides for
8 injunctive relief.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). Having one
9 expert’s opinion—however purportedly flawed—on the value of that injunction helps the
10 Court develop its own view. Similarly, the arguments presented in the motion to strike
11 help the Court determine how much weight to give Weir’s opinions. The Court thus
12 **DENIES** the motion to strike.

13
14 **B. Fairness of the Settlement**

15
16 The Court now evaluates the fairness of the settlement. Although there is a “strong
17 judicial policy that favors settlements, particularly where complex class action litigation
18 is concerned,” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998), a
19 settlement of class claims requires court approval. Fed. R. Civ. P. 23(e). This is because
20 “[i]ncentives inhere in class-action settlement negotiations that can, unless checked
21 through careful district court review of the resulting settlement, result in a decree in
22 which the rights of class members, including the named plaintiffs, may not be given due
23 regard by the negotiating parties.” *Staton*, 327 F.3d at 959 (alterations and quotations
24 omitted).

25
26 Under Federal Rule of Civil Procedure 23, the Court must “determine whether a
27 proposed settlement is fundamentally fair, adequate, and reasonable.” *Staton*, 327 F.3d at
28 959 (citation and quotation marks omitted). In considering whether this standard is met

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