

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MARGARET LEE, On Behalf of Herself)
and All Others Similarly Situated)
)
Plaintiff,)
)
v.)
)
CONAGRA BRANDS, INC., ROCHE BROS.)
SUPERMARKETS, INC., ROCHE BROS.)
INC., ROCHE BROS. SUPERMARKETS,)
LLC AND THE STOP & SHOP)
SUPERMARKET COMPANY LLC,)
)
Defendants.)
_____)

CIVIL ACTION FILE
NO. 1:17-cv-11042

NOTICE OF REMOVAL¹

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, 1446, 1453, Rule 81.1 of the Local Rules for the United States District Court, District of Massachusetts, and the provisions of the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119, Stat. 4 (2005), Defendant Conagra Brands, Inc., incorrectly sued as ConAgra Foods, Inc. (“Conagra”), by and through its attorneys, and with the consent of all named defendants, hereby removes the above-captioned action, currently pending in the Superior Court of the Commonwealth of Massachusetts in and for Suffolk County, Case No. 17-1278, to the United States District Court for the District of Massachusetts. In support thereof, Conagra states as follows:

1. On April 26, 2017, Plaintiff Margaret Lee (“Plaintiff”) individually and on behalf of a purported class of similarly situated consumers, filed a Class Action Complaint in the

¹ Conagra has filed concurrently herewith its Motion for Leave to File the Declaration of Irman Webb and Corresponding References in the Notice of Removal Under Seal (the “Motion”). Conagra has also provided the Court and Plaintiff’s counsel with an unredacted copy of the Notice of Removal and Declaration of Irman Webb. Because the Notice of Removal was the initiating document in this Court, Conagra was unable to file its Motion previously as Local Rule 7.2(d) generally requires.

Superior Court for Suffolk County, Commonwealth of Massachusetts, bearing the Case No. 17-1278 (the “State Court Action”).

2. On May 8, 2017, counsel for Conagra agreed to accept service of the State Court Action.

3. Upon information and belief, Defendants Roche Bros. Supermarkets, Inc., Roche Bros., Inc., and Roche Bros. Supermarkets, LLC (“collectively “Roche Bros.”) were served on May 11, 2017.

4. Upon information and belief, Defendant The Stop & Shop Supermarket Company, LLC (“Stop & Shop”) was served on May 15, 2017.

5. This Notice of Removal is being filed within thirty (30) days of Conagra’s acceptance of service of the State Court Action Complaint, and is therefore timely under 28 U.S.C. §§ 1446(b) and 1453(b).

6. Pursuant to 28, U.S.C. § 1446(a), a true and correct copy of all process documents and pleadings filed in the State Court Action, are attached hereto as Exhibit A.

7. In accordance with 28 U.S.C. § 1446(d), Conagra has given contemporaneous written notice of the Notice of Removal to Plaintiff and the Clerk of the Superior Court of the Commonwealth of Massachusetts in and for Suffolk County. *See* Exhibit B, attached hereto.

8. Conagra is removing this case to the federal district court embracing the place where the state court action was filed, as required by 28 U.S.C. § 1441(a).

THE PARTIES

9. Upon information and belief, and as stated in Plaintiff’s Complaint, Plaintiff is a resident of the State of Massachusetts. (Compl. ¶ 6.)

10. Conagra is a Delaware Corporation with its corporate headquarters and principal place of business in Chicago, Illinois. (Compl. ¶ 7.)

11. Defendants Roche Bros. Supermarkets, Inc., and Roche Bros., Inc., are Massachusetts Corporations with their principal places of business in Wellesley, Massachusetts. (Compl. ¶¶ 8-9.)

12. Defendants Roche Bros. Supermarkets, LLC, and The Stop & Shop Supermarket Company, LLC, are limited liability companies, organized under the laws of Delaware with their principal places of business in Massachusetts. (Compl. ¶¶ 10-12.)

PLAINTIFF'S ALLEGATIONS

13. Plaintiff's Complaint alleges, in short, that Conagra packaged, marketed, and distributed various types of Wesson® Brand Cooking Oils ("Wesson Oil") with labeling that is deceptive, false, and misleading. (*See, e.g.*, Compl. ¶¶ 2, 3-5.) Specifically, Plaintiff alleges Wesson Oil products are not "100% Natural" as stated on the products' labeling, because Wesson Oil allegedly contains genetically modified organisms. (*Id.*)

14. With respect to the other defendants, Plaintiff asserts that Roche Bros. and Stop & Shop "sell bottles of Wesson Oil" bearing the challenged labels. (Compl. ¶ 18.)

15. Plaintiff seeks to represent a putative class consisting of "all persons who have purchased Wesson Oil products in Massachusetts that were labeled '100% Natural'" ("the Class"). (Compl. ¶ 31.) Notably, Plaintiff's Class definition does not include a relevant time period. Nor is the class limited to persons who bought Wesson Oil products at Roche Bros. or Stop & Shop.

16. Plaintiff seeks damages for alleged violations of Massachusetts Consumer Protection Laws and General Regulations of the Massachusetts Attorney General. (Compl. ¶¶

42-47.) Plaintiff quantifies her damages as “up to three times the damages that Plaintiff and the Class incurred or at the very least the statutory minimum award of \$25 per purchase of a Wesson Oil product [. . .] together with all related court costs, attorneys’ fees and interest.” (Compl. ¶ 50.)

REMOVAL IS PROPER UNDER CAFA, 28 U.S.C. §§ 1332(d), 1453

17. As set forth in more detail below, this Court has jurisdiction over this matter and it is properly removed pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

18. The Class Action Fairness Act of 2005 (“CAFA”), Pub. L. 109-2, 119 Stat. 4 (partially codified at 28 U.S.C. § 1332(d)), vests the federal district courts with original, diversity jurisdiction over any (1) purported class action in which (2) any member of a class of plaintiffs is a citizen of a State different from any defendant, (3) the proposed class contains at least 100 members, and (4) the amount in controversy exceeds \$5 million in the aggregate, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2), (5) & (6). As pleaded by Plaintiff, this case satisfies each of the aforementioned requirements.

A. This is a Class Action Consisting of More than 100 Plaintiffs.

19. This action was filed by one Plaintiff, alleging common questions of law and fact, on behalf of a class of plaintiffs. (Compl. ¶ 31 (defining the Class as “all persons who have purchased Wesson Oil products in Massachusetts that were labeled ‘100% Natural’” during an unspecified period of time).)

20. Because the Complaint does not provide an estimated number of plaintiffs in the putative class, it is Conagra’s burden as the removing party to demonstrate with “reasonable probability” that the class contains more than 100 members. *See Amоче v. Guar. Trust Life Ins.*

Co., 556 F.3d 41, 49, 51 (1st Cir. 2009). “[T]he reasonable probability standard is for all practical purposes identical to the preponderance standard adopted by several circuits.” *Id.* at 50.

21. To meet its burden, Conagra attaches hereto as Exhibit C, the sworn Declaration of Irman Webb of Conagra. In his Declaration, Mr. Webb explains [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. Given the tremendous volume of Wesson Oil unit sales in the state of Massachusetts between 2011 and 2017, it is more likely than not that the putative class Plaintiff purports to represent far exceeds 100 individuals. *Khath v. Midland Funding, LLC*, No. CV 14-14184-MLW, 2016 WL 1267387, at *5 (D. Mass. Jan. 7, 2016), *report and recommendation adopted as modified*, No. CV 14-14184-MLW, 2016 WL 1275606 (D. Mass. Mar. 30, 2016) (recognizing that a defendant can satisfy its burden to establish CAFA’s jurisdictional minimums by a reasonable probability by alleging facts in its notice of removal and/or by submitting summary judgment type evidence); *see also Amoche*, 556 F.3d at 49 n.3 (“A party may meet this burden by amending the pleadings or by submitting affidavits.”).

23. Further, to determine whether a defendant seeking removal under CAFA has met its burden, “the Court examines the submissions of the parties, taking into account which party

² In light of Plaintiff’s silence regarding a designated class period, Conagra includes data regarding the number of units sold in the state of Massachusetts for the last five (5) years. Conagra recognizes that the statute of limitations for a consumer protection claim under Massachusetts law is four years. Mass. Gen. Laws ch. 260, § 5A. But even under the applicable statute of limitations, CAFA jurisdiction is still satisfied.

has better access to the relevant information.” *Mack v. Wells Fargo Bank, N.A.*, No. 11-40020-FDS, 2011 WL 1344194, at *3 (D. Mass. Apr. 8, 2011).

24. Given the Complaint’s silence on the issue of class numerosity and Conagra’s submission of affirmative evidence, the requirement that the number of members of the proposed class in the aggregate be greater than 100 is satisfied. *See* 28 U.S.C. § 1332(d)(5)(B).

B. The Minimal Diversity of Citizenship Requirement is Satisfied.

25. CAFA eliminates the requirement of complete diversity. Rather, in actions covered by CAFA, the requisite diversity of citizenship is satisfied so long as there is “minimal diversity” – *i.e.*, the citizenship of any plaintiff differs from that of at least one defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

26. Plaintiff is a resident of Massachusetts. (*See* Compl. ¶6.) Accordingly, for purposes of establishing the diversity of the parties, Plaintiff is a Massachusetts citizen.

27. Conagra is a Delaware Corporation with its corporate headquarters and principal place of business in Chicago, Illinois. (Compl. ¶ 7.) Accordingly, for purposes of establishing diversity of the parties, Conagra is a citizen of both Delaware and Illinois.

28. Accordingly, minimal diversity of citizenship existed at the time of the filing of the Complaint and at the time of removal because the Plaintiff (citizen of Massachusetts) is a citizen of a different state than Defendant Conagra (citizen of Delaware and Illinois).

C. The Amount in Controversy Requirement is Satisfied.

29. Under 28 U.S.C. § 1332(d) a class action is removable if the aggregate amount in controversy is greater than \$5 million, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2).

30. Establishing that the amount in controversy exceeds the jurisdictional minimum requires a removing party to show a “reasonable probability” that more than \$5 million is in controversy at the time of removal. *Amoche*, 556 F.3d at 50.

31. In the instant case, Plaintiff seeks to certify a class consisting of “all persons who have purchased Wesson Oil products in Massachusetts that were labeled ‘100% Natural’” without time limitations. (Compl. ¶ 31.)

32. Among other things, Plaintiff requests this Court award monetary damages “up to three times the damages that Plaintiff and the Class incurred or at the very least the statutory minimum award of \$25 *per purchase of a Wesson Oil product.*” (Compl. ¶ 50 (emphasis added).) This request alone will bring the amount in controversy in excess of \$5 million.

33. As set forth in the attached Declaration of Irman Webb of Conagra, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. Even a conservative calculation of Plaintiff’s requested award of \$25 per unit of Wesson Oil sold, results in [REDACTED]

[REDACTED]

35. In addition, a court may “double or treble damages if the court finds the act or practice was a willing or knowing violation of chapter 93A.” *Angiodynamics, Inc. v. Biolitec AG*, 991 F. Supp. 2d 299, 306 (D. Mass. 2014).

³ See footnote 2 above.

36. When viewed as a whole, the claims asserted by Plaintiff yield an amount in controversy over and above the CAFA jurisdictional limit. Accordingly, the jurisdictional amount set forth in CAFA is “more likely than not” satisfied. *See Manson v. GMAC Mortg., LLC*, 602 F. Supp. 2d 289, 294 (D. Mass. 2009) (defendant satisfied its burden in demonstrating to a reasonable probability that the amount in controversy exceeded \$5 million); *Perry v. Equity Residential Mgmt., L.L.C.*, No. 12-10779-RWZ, 2014 WL 4198850 (D. Mass. Aug. 26, 2014) (*citing Amoche*, 556 F.3d at 43 (same)).

D. Jurisdiction is Mandatory Under CAFA, and None of the CAFA Exceptions Apply

37. Recognized exceptions to CAFA jurisdiction (both discretionary and mandatory) are not triggered here because the primary defendant—Conagra—is not a citizen of the state in which the action was brought. *See* 28 U.S.C. § 1332(d)(3) – (4)(B).

38. Here, Conagra is undeniably the primary defendant because Plaintiff’s claims pertain solely to the labeling of Wesson Oil. (*See* Compl. ¶ 17 (“Conagra systematically labels and markets every bottle of Wesson Oil as ‘Pure and 100% Natural’ in product packaging, print advertisements, in television commercials and on the Wesson Oils website (www.wessonoil.com)”).)

39. The only allegation applicable to Roche Bros. and Stop & Shop, the retailer defendants, is that they “sell bottles of Wesson Oil bearing such labels in stores.” (Compl. ¶ 18.) Plaintiff does not allege that Roche Bros. or Stop & Shop was in any way involved in the labeling of Wesson Oil—the crux of Plaintiff’s claims. Therefore, Roche Bros. and Stop & Shop cannot be considered primary defendants.

40. Because Conagra—the primary target of this litigation—is not a citizen of Massachusetts, the state in which this action was originally filed, jurisdiction under CAFA is

mandatory. *See Manson*, 602 F. Supp. 2d at 297 (denying plaintiff's motion for remand based on the home-state and local controversy exceptions because the primary defendant was not a citizen of the state in which the original class action was filed).

NO PREJUDICE OR WAIVER OF DEFENSES

41. By filing this Notice of Removal, Conagra expressly preserves and does not waive any defenses that may be available to it. Moreover, by seeking to establish that the amount in controversy is greater than the jurisdictional amount, Conagra does not concede any liability or that the jurisdictional amount is recoverable. Rather, Conagra denies that any amount is recoverable by Plaintiff or the putative class.

42. WHEREFORE, Defendant Conagra Brands, Inc. respectfully requests that the above-captioned action now pending in the Superior Court of the Commonwealth of Massachusetts in and for Suffolk County, be removed to the United States District Court for the District of Massachusetts, and that said District Court assume jurisdiction of this action and enter such other and further orders as may be necessary to accomplish the request for removal and promote the ends of justice.

This 7th day of June, 2017.

Respectfully submitted,

/s/ Kevin M. Duddleston

Kevin M. Duddleston, BBO #680624

MCGUIREWOODS LLP

2000 McKinney Ave., Suite 1400

allas, Texas 75201

Telephone: 214.932.6419

Facsimile: 214.273.7484

Counsel for Conagra Brands, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2017, the foregoing document electronically filed with the Clerk of the Court using the CM/ECF System, which sent notification of such filing to all counsel of record.

/s/ Kevin M. Duddlesten _____

Kevin M. Duddlesten

CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MARGARET LEE

(b) County of Residence of First Listed Plaintiff Suffolk (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas G. Shapiro and Ian J. McLoughlin Shapiro Haber & Urmy LLP, Seaport East, Two Seaport Lane, Floor 6 Boston, MA 02210; 617-439-3939 (Telephone)

DEFENDANTS

CONAGRA BRANDS, INC.; ROCHE BROS. SUPERMARKETS, INC.; ROCHE BROS., INC.; ROCHE BROS. SUPERMARKETS LLC; AND THE STOP & SHOP SUPERMARKET COMPANY, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Kevin M. Duddlesten, McGuireWoods LLP, 2000 McKinney Avenue Suite 1400, Dallas, TX 75201, 214-932-6419 (Telephone)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Foreign Nation, etc.)

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES

V. 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, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332, 1441, 1446, 1453

Brief description of cause:

Plaintiff alleges deceptive, false, and misleading labeling on various types of Wesson Brand Cooking Oils

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/07/2017

SIGNATURE OF ATTORNEY OF RECORD

Kevin M. Duddlesten

Digitally signed by Kevin M. Duddlesten DN: cn=Kevin M. Duddlesten, o=McGuireWoods LLP, ou, email=kduddlesten@mcguirewoods.com, c=US Date: 2017.06.07 13:56:36 -0400

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

MARGARET LEE, On Behalf of
Herself and All Others Similarly Situated,

Plaintiff,

v.

CONAGRA FOODS, INC., ROCHE BROS.
SUPERMARKETS, INC., ROCHE BROS. INC.,
ROCHE BROS. SUPERMARKETS, LLC and
THE STOP & SHOP SUPERMARKET
COMPANY LLC,

Defendants.

Civ. Action No.

17-1278

RECEIVED
2017 APR 26 PM 12:05
SUFFOLK SUPERIOR COURT
CLERK / REGISTRAR

COMPLAINT

Plaintiff Margaret Lee alleges for her complaint the following.

Preliminary Statement

1. Plaintiff brings this action on behalf of herself and all others similarly situated to obtain monetary and other appropriate relief for herself and members of the Class (defined below) as a result of the unlawful acts of Defendants.

2. Defendant ConAgra Foods, Inc. (“ConAgra”) manufactures and distributes packaged food products, including Wesson brand cooking oils such as Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil and Wesson Best Blend (“Wesson Oil”). Defendants Roche Bros. Supermarkets, Inc., Roche Bros. Inc., Roche Bros. Supermarkets, LLC (collectively, “Roche Bros.”) and The Stop & Shop Supermarket Company LLC (“Stop & Shop”) sell Wesson Oil in stores. Plaintiff purchased bottles of Wesson Oil that were manufactured by ConAgra and sold by

Roche Bros. and Stop & Shop at stores in Massachusetts. The label on the front of the bottles of Wesson Oil represented that it was “Pure & 100% Natural.” Contrary to the representations in large print on the front of the bottle, however, the product contained unnatural ingredients and therefore it was not “100% Natural.”

3. Specifically, Wesson Oil is made from plants, the DNA of which had been deliberately altered by the forced introduction of DNA from other species. The plants therefore had specific traits, such as resistance to certain herbicides, which they do not possess in nature or through traditional cross-breeding methods. Plants and other life forms that are products of this process of unnatural DNA alteration are commonly referred to as genetically modified organisms, or “GMOs.” Accordingly, contrary to Defendants’ representations, Wesson Oil is not “100% Natural.”

4. Defendants have thus been misrepresenting Wesson Oil and deceiving their customers, including Plaintiff and numerous other consumers. Defendants have injured Plaintiff and other consumers in Massachusetts by inducing them to purchase and consume unnatural products with GMOs on the false premise that such products are “100% Natural.”

5. Defendants’ conduct constitutes unfair and deceptive acts and practices in the conduct of trade and commerce and violates Massachusetts General Laws Chapter 93A. Accordingly, Plaintiff seeks, on behalf of herself and other Massachusetts consumers, to recover damages, including statutory and multiple damages, interest, attorneys’ fees, costs, and any and all other relief permitted by law.

Parties

6. Plaintiff Margaret Lee is a resident of Brookline, Massachusetts.

7. Defendant ConAgra is a Delaware corporation with its principal place of business in Chicago, Illinois.

8. Defendant Roche Bros. Supermarkets, Inc. is a Massachusetts corporation with its principal place of business in Wellesley, Massachusetts.

9. Defendant Roche Bros. Inc. is a Massachusetts corporation with its principal place of business in Wellesley, Massachusetts.

10. Defendant Roche Bros. Supermarkets, LLC is a Delaware corporation with its principal place of business in Wellesley, Massachusetts.

11. Collectively, Defendants Roche Bros. Supermarkets, Inc., Roche Bros. Inc. and Roche Bros. Supermarkets, LLC are referred to as “Roche Bros.” Roche Bros. operates 20 stores.

12. Defendant Stop & Shop is a Delaware corporation with its principal place of business in Quincy, Massachusetts that operates numerous stores throughout New England, including in Massachusetts.

Jurisdiction

13. The exercise of personal jurisdiction over Defendants is proper pursuant to Mass. Gen. Laws Ch. 223A, § 3 because, *inter alia*, Plaintiff's claims arise out of Defendants' regular transaction of business in Massachusetts.

Factual Allegations

14. ConAgra is a packaged food company that manufactures and distributes products such as Wesson Oil throughout the United States, including through grocery stores in Massachusetts such as Roche Bros. and Stop & Shop stores.

15. Plaintiff purchased bottles of Wesson Vegetable Oil from Roche Bros. and Stop & Shop stores in Massachusetts on multiple occasions.

16. The bottles stated prominently in large print on the front of the label, as well as on the back of the label, that they were “Pure and 100% Natural.” Nowhere did the labels disclose that Wesson Oil contains GMOs. A picture of one of the bottles purchased by Plaintiff is below.



17. ConAgra systematically labels and markets every bottle of Wesson Oil as “Pure and 100% Natural” in product packaging, print advertisements, in television commercials, and on the Wesson Oils website (www.wessonoil.com).

18. Roche Bros. and Stop & Shop sell bottles of Wesson Oil bearing such labels in stores.

19. Imagery on the labels of bottles of Wesson Oil, such as a picture of the sun surrounding the word “Wesson,” serves to reinforce the message that Wesson Oil is purportedly 100% Natural.

20. Whether products such as Wesson Oil are in fact “100% Natural,” and whether such products contain unnatural GMOs, is important to a reasonable consumer.

21. The importance to a reasonable consumer of a claim that a product such as Wesson Oil is “100% Natural” is demonstrated, *inter alia*, by Defendants’ extensive effort to label, market and sell Wesson Oil as “100% Natural.”

22. Plaintiff read the front label of the bottles and believed that Wesson Oil was in fact 100% Natural.

23. After using Wesson Oil, Plaintiff learned that, contrary to the representations in large print on the front of the bottle, the product contains unnatural ingredients and therefore it is not “100% Natural.”

24. Specifically, Plaintiff learned that Wesson Oil is made from plants, the DNA of which had been deliberately altered by the forced introduction of DNA from other species. The plants therefore had specific traits, such as resistance to certain herbicides, which they do not possess in nature or through traditional cross-breeding methods. Plants and other life forms that are products of this process of unnatural DNA alteration are commonly referred to as genetically modified organisms, or “GMOs.”

25. GMOs are not natural at all, let alone “100% Natural.” In a May 2014 article on “Food Safety” entitled “Frequently asked questions on genetically modified foods,” for example, the World Health Organization stated as follows:

Genetically modified organisms (GMOs) can be defined as organisms (i.e. plants, animals or microorganisms) in which the genetic material (DNA) has been altered in a way *that does not occur naturally by mating* and/or natural recombination. The technology is often called “modern biotechnology” or “gene technology”, sometimes also “recombinant DNA technology” or “genetic engineering”. It allows selected individual genes to be transferred from one organism into another, also between nonrelated species. Foods produced from or using GM organisms are often referred to as GM foods.

http://www.who.int/foodsafety/areas_work/food-technology/faq-genetically-modified-food/en/
(emphasis added) (last visited April 4, 2017).

26. Numerous sources confirm that GMOs are not “natural” and do not occur naturally. See, e.g., European Commission, “Genetically Modified Organisms,” last updated April 4, 2017, http://ec.europa.eu/food/plant/gmo_en (distinguishing between “naturally occurring variations” in plant and animal genetic makeup with genetic material that is “modified artificially”); G. Tyler Miller and Scott Spoolman, Cengage Learning, *Environmental Science*, Fifteenth Edition, 2016. (“Engineers use a process called gene splicing to alter an organism’s genetic material through adding, deleting, or changing segments of its DNA. The goal of this process is to add desirable traits or to eliminate undesirable ones by enabling scientists to transfer genes between different species that would not normally interbreed in nature. The resulting organisms are called genetically modified organisms (GMOs).”); and Chelsea Powell, Harvard University Graduate School of Arts and Sciences, “Special Edition on GMOs: How to Make a GMO,” August 9, 2015, <http://sitn.hms.harvard.edu/flash/2015/how-to-make-a-gmo/> (“Genetically modified organisms (GMOs) are organisms that have been altered using genetic engineering methods The key steps involved in genetic engineering are identifying a trait of interest, isolating that trait, inserting that trait into a desired organism, and then propagating that organism Genetic engineering is a term used to describe biotechnological methods used by scientists to directly manipulate an organism’s genome.”).

27. Wesson Oils are made from GMOs, including genetically modified rapeseed (canola oil), soybeans and corn.

28. The prominent labeling on the front of the bottle representing the product was “100% Natural” is therefore false and misleading.

29. Plaintiff has been injured, economically and otherwise, by the misrepresentations that the oil she purchased was 100% Natural, including because she paid for but did not receive a product that was actually 100% Natural. Plaintiff would not have purchased Wesson Oil had she known it contained GMOs and was not 100% Natural.

Class Action Allegations

30. Plaintiff re-alleges and incorporates the allegations contained in the paragraphs above.

31. Plaintiff brings this action pursuant to Massachusetts Rule of Civil Procedure 23 and Chapter 93A, Section 9(2) on behalf of herself and a Class consisting of:

All persons who have purchased Wesson Oil products in Massachusetts that were labeled "100% Natural."

32. Plaintiff reserves the right to amend the definition of the Class.

33. This action is properly maintainable as a class action.

34. The members of the Class are thus so numerous that joinder of all members is impractical.

35. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether Wesson Oil products were sold with the label "100% Natural";
- (b) Whether the products so labeled in fact were 100% Natural;
- (c) Whether, how, and when Defendants disclosed that Wesson Oil contained GMOs.
- (d) Whether Defendants' conduct alleged herein constituted unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Chapter 93A, Section 2; and
- (e) The proper measure of damages.

36. Plaintiff's claims are typical of the claims of the members of the Class because, like Plaintiff, each Class member purchased Wesson Oil products that were mislabeled as alleged herein.

37. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel who have extensive experience prosecuting consumer class actions and who, with Plaintiff, are fully capable of, and intent upon, vigorously pursuing this action. Plaintiff does not have any interest adverse to the Class.

38. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Furthermore, the damage that has been suffered by any individual Class member is likely not substantial, and the expense and burden of individual litigation would make it impracticable for all members of the Class to redress the wrongs done to them individually. There will be no difficulty in the management of this action as a class action.

39. The prosecution of separate actions against Defendants would create a risk of inconsistent or varying adjudications with respect to the individual Class members which could establish incompatible standards of conduct for Defendants. In addition, adjudications with respect to individual members of the Class could, as a practical matter, be dispositive of the interests of the other members of the Class not parties to such adjudications, or could substantially impede or impair their ability to protect their interests.

40. The members of the Class are readily identifiable through Defendants' and other records, and Plaintiff is a member of the Class.

41. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

COUNT I

(Violation of Chapter 93A)

42. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

43. At all relevant times, Defendants were engaged in trade or commerce within the Commonwealth of Massachusetts, including the trade or commerce of selling, or causing to be sold, the Wesson Oil products at issue within the Commonwealth of Massachusetts.

44. By conducting the unfair and deceptive branding efforts described above, Defendants have engaged in unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Chapter 93A, Section 2.

45. Moreover, by engaging in the conduct described above, Defendants violated at least the following General Regulations of the Massachusetts Attorney General:

a. 940 C.M.R. 3.02(2), which states:

No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

b. 940 C.M.R. 3.05(1), which states:

No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part thereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.

c. 940 C.M.R. 3.16(1)-(2), which make any act or practice a violation of Chapter 93A, Section 2 (and thus Section 9) if:

(1) It is oppressive or otherwise unconscionable in any respect; or

(2) Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction

d. 940 C.M.R. 6.03(2), which states:

Sellers shall not use advertisements which are untrue, misleading, deceptive, fraudulent, falsely disparaging of competitors, or insincere offers to sell.¹

e. 940 C.M.R. 6.04(1)-(2), which state:

(1) Misleading Representations. It is an unfair or deceptive act for a seller to make any material representation of fact in an advertisement if the seller knows or should know that the material representation is false or misleading or has the tendency or capacity to be misleading, or if the seller does not have sufficient information upon which a reasonable belief in the truth of the material representation could be based.

(2) Disclosure of Material Representations. It is an unfair or deceptive act for a seller to fail to clearly and conspicuously disclose in any advertisement any material representation, the omission of which would have the tendency or capacity to mislead reasonable buyers or prospective buyers

46. Further, Defendants' violation of the regulations enumerated above constitute violations of Chapter 93A, Section 2(a) because regulations promulgated by the Massachusetts Attorney General under Chapter 93A, Section 2(c) provide that any act or practice violates Chapter 93A, Section 2 if "[i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection" 940 C.M.R. 3.16(3).

47. The violations of Chapter 93A by Defendants as described herein were done willfully, knowingly, and in bad faith.

¹ "An unfair or deceptive representation may result not only from direct representations and the reasonable inferences they create, but from the seller's omitting or obscuring a material fact." 940 C.M.R. 6.03(4).

48. As a direct and proximate result of Defendants' conduct, Plaintiff and the members of the Class were harmed.

49. Plaintiff sent Defendant ConAgra written demand for relief pursuant to Chapter 93A, Section 9, identifying the claimant and reasonably describing the unfair acts or practices relied upon and the injuries suffered, on February 16, 2017 and sent the same type of written demand to Defendants Roche Bros. and Stop & Shop on February 21, 2017. None of the Defendants responded to Plaintiff's demand.

50. As a result of Defendants' violation of Chapter 93A, Defendants are liable to Plaintiff and the Class for up to three times the damages that Plaintiff and the Class incurred, or at the very least the statutory minimum award of \$25 per purchase of a Wesson Oil product as alleged herein, together with all related court costs, attorneys' fees, and interest.

Prayers for Relief

WHEREFORE, Plaintiff prays for relief in the form of an order as follows:

1. Allowing this action to proceed as a class action under Massachusetts Rule of Civil Procedure 23 and Chapter 93A, Section 9(2);
2. Awarding Plaintiff and members of the Class monetary damages;
3. Awarding Plaintiff and members of the Class up to three times their damages, or in the alternative statutory damages, together with interest and costs;
4. Awarding counsel for the Plaintiff and the Class their reasonable attorneys' fees and expenses;
5. Enjoining Defendants from using false and deceptive marketing, branding, and labeling as described herein; and
6. Awarding such other and further relief which the Court finds just and proper.

Jury Demand

Plaintiff demands a trial by jury on all claims so triable.

Dated: April 26, 2017

By her attorneys,



Thomas G. Shapiro (BBO # 454680)

Ian J. McLoughlin (BBO # 647203)

SHAPIRO HABER & URMY LLP

Seaport East

Two Seaport Lane, Floor 6

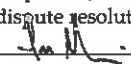
Boston, MA 02210

(617) 439-3939 – Telephone

(617) 439-0134 – Facsimile

tshapiro@shulaw.com

imcloughlin@shulaw.com

CIVIL ACTION COVER SHEET	DOCKET NO(S) B.L.S. 17-1278	Trial Court Of Massachusetts Superior Court Department County: SUFFOLK
PLAINTIFF(S) Margaret Lee, On behalf of herself and all others similarly situated.		DEFENDANT(S) ConAgra Foods, Inc., Roche Bros. Supermarkets, Inc., Roche Bros. Inc., Roche Bros. Supermarkets, LLC and The Stop & Shop Supermarket Company LLC.
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Board of Bar Overseers number Ian J. McLoughlin, Esq. BBO # 647203 Shapiro Haber & Urmy LLP Seaport East, 2 Seaport Lane, Boston, MA 02210 (617) 439-3939		ATTORNEY (if known)
Origin Code Original Complaint		
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side) CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE? _____ _____ (B) <input checked="" type="checkbox"/> Yes () No Code No: BH2; BK 1 Type of Action: Unfair trade practices involving complex issues; Consumer matters involving complex issues		
The following is a full and detailed statement of the facts on which plaintiff relies to determine eligibility in to The Business Litigation Session.		
<p>This case warrants inclusion into the Business Litigation Session because it falls within two categories of cases accepted into the BLS: Claims of unfair trade practices and consumer matters involving complex issues.</p> <p>This case is a consumer class action against ConAgra Foods, Inc. ("ConAgra"); Roche Bros. Supermarkets, Inc., Roche Bros. Inc., and Roche Bros. Supermarkets, LLC (collectively, "Roche Bros."); and The Stop & Shop Supermarket Company LLC ("Stop & Shop") on behalf of Margaret Lee and other persons who purchased Wesson Oil products in Massachusetts. Defendant ConAgra manufactures and distributes packaged food products, including Wesson brand cooking oils such as Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil, and Wesson Best Blend ("Wesson Oil"). Defendants Roche Bros. and Stop & Shop sell Wesson Oil in stores across Massachusetts. Ms. Lee claims that Defendants have committed unfair and deceptive acts and practices in the conduct of trade and commerce in violation of Massachusetts General Laws Chapter 93A by deceiving their customers, including Ms. Lee and numerous other consumers in Massachusetts, by mislabeling its Wesson Oil products.</p> <p>Specifically, the label on the front of the bottles of Wesson Oil represents that it is "Pure and 100% Natural." Contrary to the representations in large print on the front of the bottle, however, the product contains unnatural ingredients and therefore is not "100% Natural." In particular, Wesson Oil is made from plants, the DNA of which had been deliberately altered by the forced introduction of DNA from other species. The plants therefore had specific traits, such as resistance to certain herbicides, which they do not possess in nature or through traditional cross-breeding methods. Plants and other life forms that are products of this process of unnatural DNA alteration are referred to as genetically modified organisms, or "GMOs." Accordingly, contrary to Defendants' representations, Wesson Oil is not "100% Natural."</p> <p>Defendants have been misrepresenting Wesson Oil and deceiving their customers, including Ms. Lee and numerous other consumers. Defendants have injured Plaintiff and other consumers in Massachusetts by inducing them to purchase and consume unnatural products on the false premise that such products are "100% Natural." Defendants conduct constitutes unfair and deceptive acts and practices in the conduct of trade and commerce and violates Massachusetts General Laws Chapter 93A.</p>		
* A Special Tracking Order shall be created by the Presiding Justice of the Business Litigation Session at the Rule 16 Conference.		
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT.		
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods." Signature of Attorney of Record  DATE: <u>4/26/17</u>		

Notice

**Commonwealth of Massachusetts
County of Suffolk
The Superior Court**

CIVIL DOCKET#: **SUCV2017-01278-BLS2**

Case: Lee v. ConAgra Foods, Inc. et al.

NOTICE OF ACCEPTANCE INTO BUSINESS LITIGATION SESSION

This matter has been accepted into the Suffolk Business Litigation Session. It has been assigned to **BLS2**.

Hereafter, as shown above, all parties must include the initials "BLS2" at the end of the docket number on all filings.

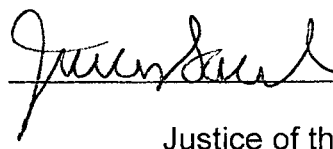
Counsel for the plaintiff(s) is hereby advised that within seven (7) days of the filing of an appearance, answer, motion or other response to the complaint by or on behalf of the defendant(s) which has been served with process within the time limitation of Mass. R. Civ. P. 4(j), or such other time as may be modified by the Court, he or she shall send notice thereof to the appropriate BLS Session Clerk at Suffolk Superior Court, Three Pemberton Square, Boston, MA 02108.

Upon receipt of such notice, the Court will issue a Notice of Initial Rule 16 Conference for purposes of meeting with all counsel. Before the Rule 16 Conference, counsel shall discuss with their clients and with opposing counsel whether the parties will participate in the BLS Project on Discovery (counsel are directed to <http://www.mass.gov/courts/court-info/trial-court/sc/sc-bls-gen.html> for description of the Project). Counsel may indicate their respective client's participation by completing, filing and serving the attached form. If by the date of the initial Rule 16 Conference, not all parties have given notice of their participation, counsel shall be prepared to discuss at that conference whether their clients will participate in the Project.

The Court requests that plaintiff's counsel serve on opposing parties a copy of this notice and the attached form.

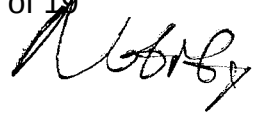
Dated: 4/27/17

*Notice Sent
05.01.17
EM
TGS
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(mo)*



Janet L. Sanders

Justice of the Superior Court &
Administrative Justice of the Business Litigation Session



**Commonwealth of Massachusetts
County of Suffolk
The Superior Court**

CIVIL DOCKET#: _____

Case: _____

As you may know, the Business Litigation Session began implementing a Discovery Project in January, 2010. This project is available on a voluntary basis for all new cases accepted into the BLS and for cases which have not previously had an initial case management conference. Counsel should be prepared to discuss the project with the Court at the initial case management conference. For a detailed copy of the BLS Discovery Project, counsel are directed to the Trial Court home page at:
<http://www.mass.gov/courts/court-info/trial-court/sc/sc-bls-gen.html>)

If a party is willing to participate in the project, that party's counsel should so indicate below and return this form to the appropriate session clerk.

Yes, _____ is willing to participate in the Discovery Project.
(Party's Name)

Case Name _____

Docket Number CIVIL DOCKET#: _____

Counsel For _____

Date _____

Firm Name and Address:

Please complete this form and return it to:

Helen Foley, Asst. Clerk **OR**
BLS1, Room 1309
3 Pemberton Square
Boston, MA 02108

Richard V. Muscato, Jr., Asst. Clerk
BLS2, Room 1017
3 Pemberton Square
Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT, SUFFOLK COUNTY

MARGARET LEE, On Behalf of Herself)
and All Others Similarly Situated,)

Plaintiff,)

v.)

CONAGRA FOODS, INC., ROCHE BROS.)
SUPERMARKETS, INC., ROCHE BROS.)
INC., ROCHE BROS. SUPERMARKETS,)
LLC AND THE STOP & SHOP)
SUPERMARKET COMPANY LLC,)

Defendants.)

Civil Action No. 17-1278



**STIPULATION AND [PROPOSED] ORDER REGARDING
TIME FOR DEFENDANTS TO RESPOND TO COMPLAINT**

It is hereby stipulated, subject to the approval of the Court, as follows:

WHEREAS, Plaintiff Margaret Lee filed her Complaint on April 26, 2017;

WHEREAS, the undersigned counsel for Defendant Conagra Brands, Inc., agreed to accept service only on behalf of Conagra Brands, Inc., on May 8, 2017 upon express agreement with plaintiff counsel that parties would agree to a coordinated schedule for Conagra Brands, Inc. to answer or otherwise respond to the Complaint following service of the codefendants;

WHEREAS, Defendants Roche Bros. Supermarkets, Inc., Roche Bros. Inc., Roche Bros. Supermarkets LLC (collectively "Roche Bros.") were served with process on May 11, 2017;

WHEREAS, Defendant The Stop & Shop Supermarket Company LLC, was served with process on May 15, 2017;

WHEREAS, this request for an enlargement of time to answer or otherwise respond to the Complaint is made before the expiration of the period originally prescribed for any defendant to respond;

WHEREAS, counsel for the parties have agreed upon a schedule for Defendants Conagra Brands, Inc., Roche Bros., and The Stop and Shop Supermarket Company LLC (collectively "Defendants") to answer or otherwise respond to the Complaint;

NOW THEREFORE, it is agreed, subject to the Court's approval, that:

1. The deadline for all Defendants to answer or otherwise respond to the Complaint is June 9, 2017.

Dated: May 31, 2017



Ian J. McLoughlin, BBO# 647203
SHAPIRO HABER & URMY, LLP
2 Seaport Lane
Boston, MA 02210
Telephone: (617) 439-3939
Facsimile: (617) 439-0134
imcloughlin@shulaw.com

Counsel for Plaintiffs



Kevin M. Duddlesten, BBO# 680624
McGUIREWOODS LLP
2000 McKinney Avenue, Suite 1400
Dallas, TX 75201
Telephone: (214) 932-6419
Facsimile: (214) 273-7484
kduddlesten@mcguirewoods.com

Counsel for Defendants

IT IS SO ORDERED:

Associate Justice of the Superior Court

Dated: _____

NOTIFY

Notice sent
06.02.17

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT, SUFFOLK COUNTY

TGS MARGARET LEE, On Behalf of Herself)
 Im and All Others Similarly Situated,)
 SHtup Plaintiff,)
)
 (m) v.)
)
 CONAGRA FOODS, INC., ROCHE BROS.)
 SUPERMARKETS, INC., ROCHE BROS.)
 INC., ROCHE BROS. SUPERMARKETS,)
 LLC AND THE STOP & SHOP)
 SUPERMARKET COMPANY LLC,)
)
 Defendants.)

Civil Action No. 17-1278

**STIPULATION AND [PROPOSED] ORDER REGARDING
TIME FOR DEFENDANTS TO RESPOND TO COMPLAINT**

It is hereby stipulated, subject to the approval of the Court, as follows:

WHEREAS, Plaintiff Margaret Lee filed her Complaint on April 26, 2017;

WHEREAS, the undersigned counsel for Defendant Conagra Brands, Inc., agreed to accept service only on behalf of Conagra Brands, Inc., on May 8, 2017 upon express agreement with plaintiff counsel that parties would agree to a coordinated schedule for Conagra Brands, Inc. to answer or otherwise respond to the Complaint following service of the codefendants;

WHEREAS, Defendants Roche Bros. Supermarkets, Inc., Roche Bros. Inc., Roche Bros. Supermarkets LLC (collectively "Roche Bros.") were served with process on May 11, 2017;

WHEREAS, Defendant The Stop & Shop Supermarket Company LLC, was served with process on May 15, 2017;

Amalinder
1 June 2017

Approved

2017 JUN 11 PM 8:11

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

MARGARET LEE, On Behalf of Herself)
 and All Others Similarly Situated,)
)
 Plaintiff,)
)
 v.)
)
 CONAGRA FOODS, INC., ROCHE BROS.)
 SUPERMARKETS, INC., ROCHE BROS.)
 INC., ROCHE BROS. SUPERMARKETS,)
 LLC AND THE STOP & SHOP)
 SUPERMARKET COMPANY LLC,)
)
 Defendants.)
 _____)

Civil Action No. 17-1278

NOTICE OF FILING OF NOTICE OF REMOVAL TO FEDERAL COURT

PLEASE TAKE NOTICE that on June 7, 2017, Defendant Conagra Brands, Inc., incorrectly sued as ConAgra Foods, Inc., filed a *Notice of Removal* of this action, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453 in the United States District Court for the District of Massachusetts. Pursuant to 28 U.S.C. § 1446(d), “the State court shall proceed no further unless and until the case is remanded.” A copy of the *Notice of Removal*, without exhibits, is attached hereto as Exhibit A.

This 7th day of June, 2017.

Kevin M. Duddleston, BBO# 680624
 McGuireWoods LLP
 2000 McKinney Avenue, Suite 1400
 Dallas, TX 75201
 Telephone:(214) 932-6419
 Facsimile: (214) 273-7484
kduddleston@mcguirewoods.com

Counsel for Defendant Conagra Brands, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF FILING OF REMOVAL TO FEDERAL COURT** has been filed with the Clerk of the Court and a true and correct copy served this day upon the parties to this action via United States Mail and email PDF, addressed to the following:

Ian J. McLoughlin
SHAPIRO HABER & URMY LLP
Seaport East
Two Seaport Lane
Boston, MA 02210
imcloughlin@shulaw.com



Kevin M. Duddlesten

EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MARGARET LEE, On Behalf of Herself)
and All Others Similarly Situated)
))
Plaintiff,)
))
v.)
))
CONAGRA BRANDS, INC., ROCHE BROS.)
SUPERMARKETS, INC., ROCHE BROS.)
INC., ROCHE BROS. SUPERMARKETS,)
LLC AND THE STOP & SHOP)
SUPERMARKET COMPANY LLC,)
))
Defendants.)
_____)

CIVIL ACTION FILE
NO. 1:17-cv-11042

NOTICE OF REMOVAL¹

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, 1446, 1453, Rule 81.1 of the Local Rules for the United States District Court, District of Massachusetts, and the provisions of the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119, Stat. 4 (2005), Defendant Conagra Brands, Inc., correctedly sued as ConAgra Foods, Inc. (“Conagra”), by and through its attorneys, and with the consent of all named defendants, hereby removes the above-captioned action, currently pending in the Superior Court of the Commonwealth of Massachusetts in and for Suffolk County, Case No. 17-1278, to the United States District Court for the District of Massachusetts. In support thereof, Conagra states as follows:

1. On April 26, 2017, Plaintiff Margaret Lee (“Plaintiff”) individually and on behalf of a purported class of similarly situated consumers, filed a Class Action Complaint in the

¹ Conagra has filed concurrently herewith its Motion for Leave to File the Declaration of Irman Webb and Corresponding References in the Notice of Removal Under Seal (the “Motion”). Conagra has also provided the Court and Plaintiff’s counsel with an unredacted copy of the Notice of Removal and Declaration of Irman Webb. Because the Notice of Removal was the initiating document in this Court, Conagra was unable to file its Motion previously as Local Rule 7.2(d) generally requires.

Superior Court for Suffolk County, Commonwealth of Massachusetts, bearing the Case No. 17-1278 (the “State Court Action”).

2. On May 8, 2017, counsel for Conagra agreed to accept service of the State Court Action.

3. Upon information and belief, Defendants Roche Bros. Supermarkets, Inc., Roche Bros., Inc., and Roche Bros. Supermarkets, LLC (“collectively “Roche Bros.”) were served on May 11, 2017.

4. Upon information and belief, Defendant The Stop & Shop Supermarket Company, LLC (“Stop & Shop”) was served on May 15, 2017.

5. This Notice of Removal is being filed within thirty (30) days of Conagra’s acceptance of service of the State Court Action Complaint, and is therefore timely under 28 U.S.C. §§ 1446(b) and 1453(b).

6. Pursuant to 28, U.S.C. § 1446(a), a true and correct copy of all process documents and pleadings filed in the State Court Action, are attached hereto as Exhibit A.

7. In accordance with 28 U.S.C. § 1446(d), Conagra has given contemporaneous written notice of the Notice of Removal to Plaintiff and the Clerk of the Superior Court of the Commonwealth of Massachusetts in and for Suffolk County. *See* Exhibit B, attached hereto.

8. Conagra is removing this case to the federal district court embracing the place where the state court action was filed, as required by 28 U.S.C. § 1441(a).

THE PARTIES

9. Upon information and belief, and as stated in Plaintiff’s Complaint, Plaintiff is a resident of the State of Massachusetts. (Compl. ¶ 6.)

10. Conagra is a Delaware Corporation with its corporate headquarters and principal place of business in Chicago, Illinois. (Compl. ¶ 7.)

11. Defendants Roche Bros. Supermarkets, Inc., and Roche Bros., Inc., are Massachusetts Corporations with their principal places of business in Wellesley, Massachusetts. (Compl. ¶¶ 8-9.)

12. Defendants Roche Bros. Supermarkets, LLC, and The Stop & Shop Supermarket Company, LLC, are limited liability companies, organized under the laws of Delaware with their principal places of business in Massachusetts. (Compl. ¶¶ 10-12.)

PLAINTIFF'S ALLEGATIONS

13. Plaintiff's Complaint alleges, in short, that Conagra packaged, marketed, and distributed various types of Wesson® Brand Cooking Oils ("Wesson Oil") with labeling that is deceptive, false, and misleading. (*See, e.g.*, Compl. ¶¶ 2, 3-5.) Specifically, Plaintiff alleges Wesson Oil products are not "100% Natural" as stated on the products' labeling, because Wesson Oil allegedly contains genetically modified organisms. (*Id.*)

14. With respect to the other defendants, Plaintiff asserts that Roche Bros. and Stop & Shop "sell bottles of Wesson Oil" bearing the challenged labels. (Compl. ¶ 18.)

15. Plaintiff seeks to represent a putative class consisting of "all persons who have purchased Wesson Oil products in Massachusetts that were labeled '100% Natural'" ("the Class"). (Compl. ¶ 31.) Notably, Plaintiff's Class definition does not include a relevant time period. Nor is the class limited to persons who bought Wesson Oil products at Roche Bros. or Stop & Shop.

16. Plaintiff seeks damages for alleged violations of Massachusetts Consumer Protection Laws and General Regulations of the Massachusetts Attorney General. (Compl. ¶¶

42-47.) Plaintiff quantifies her damages as “up to three times the damages that Plaintiff and the Class incurred or at the very least the statutory minimum award of \$25 per purchase of a Wesson Oil product [. . .] together with all related court costs, attorneys’ fees and interest.” (Compl. ¶ 50.)

REMOVAL IS PROPER UNDER CAFA, 28 U.S.C. §§ 1332(d), 1453

17. As set forth in more detail below, this Court has jurisdiction over this matter and it is properly removed pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

18. The Class Action Fairness Act of 2005 (“CAFA”), Pub. L. 109-2, 119 Stat. 4 (partially codified at 28 U.S.C. § 1332(d)), vests the federal district courts with original, diversity jurisdiction over any (1) purported class action in which (2) any member of a class of plaintiffs is a citizen of a State different from any defendant, (3) the proposed class contains at least 100 members, and (4) the amount in controversy exceeds \$5 million in the aggregate, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2), (5) & (6). As pleaded by Plaintiff, this case satisfies each of the aforementioned requirements.

A. This is a Class Action Consisting of More than 100 Plaintiffs.

19. This action was filed by one Plaintiff, alleging common questions of law and fact, on behalf of a class of plaintiffs. (Compl. ¶ 31 (defining the Class as “all persons who have purchased Wesson Oil products in Massachusetts that were labeled ‘100% Natural’” during an unspecified period of time).)

20. Because the Complaint does not provide an estimated number of plaintiffs in the putative class, it is Conagra’s burden as the removing party to demonstrate with “reasonable probability” that the class contains more than 100 members. *See Amоче v. Guar. Trust Life Ins.*

Co., 556 F.3d 41, 49, 51 (1st Cir. 2009). “[T]he reasonable probability standard is for all practical purposes identical to the preponderance standard adopted by several circuits.” *Id.* at 50.

21. To meet its burden, Conagra attaches hereto as Exhibit C, the sworn Declaration of Irman Webb of Conagra. In his Declaration, Mr. Webb explains [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. Given the tremendous volume of Wesson Oil unit sales in the state of Massachusetts between 2011 and 2017, it is more likely than not that the putative class Plaintiff purports to represent far exceeds 100 individuals. *Khath v. Midland Funding, LLC*, No. CV 14-14184-MLW, 2016 WL 1267387, at *5 (D. Mass. Jan. 7, 2016), *report and recommendation adopted as modified*, No. CV 14-14184-MLW, 2016 WL 1275606 (D. Mass. Mar. 30, 2016) (recognizing that a defendant can satisfy its burden to establish CAFA’s jurisdictional minimums by a reasonable probability by alleging facts in its notice of removal and/or by submitting summary judgment type evidence); *see also Amoche*, 556 F.3d at 49 n.3 (“A party may meet this burden by amending the pleadings or by submitting affidavits.”).

23. Further, to determine whether a defendant seeking removal under CAFA has met its burden, “the Court examines the submissions of the parties, taking into account which party

² In light of Plaintiff’s silence regarding a designated class period, Conagra includes data regarding the number of units sold in the state of Massachusetts for the last five (5) years. Conagra recognizes that the statute of limitations for a consumer protection claim under Massachusetts law is four years. Mass. Gen. Laws ch. 260, § 5A. But even under the applicable statute of limitations, CAFA jurisdiction is still satisfied.

has better access to the relevant information.” *Mack v. Wells Fargo Bank, N.A.*, No. 11-40020-FDS, 2011 WL 1344194, at *3 (D. Mass. Apr. 8, 2011).

24. Given the Complaint’s silence on the issue of class numerosity and Conagra’s submission of affirmative evidence, the requirement that the number of members of the proposed class in the aggregate be greater than 100 is satisfied. *See* 28 U.S.C. § 1332(d)(5)(B).

B. The Minimal Diversity of Citizenship Requirement is Satisfied.

25. CAFA eliminates the requirement of complete diversity. Rather, in actions covered by CAFA, the requisite diversity of citizenship is satisfied so long as there is “minimal diversity” – *i.e.*, the citizenship of any plaintiff differs from that of at least one defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

26. Plaintiff is a resident of Massachusetts. (*See* Compl. ¶6.) Accordingly, for purposes of establishing the diversity of the parties, Plaintiff is a Massachusetts citizen.

27. Conagra is a Delaware Corporation with its corporate headquarters and principal place of business in Chicago, Illinois. (Compl. ¶ 7.) Accordingly, for purposes of establishing diversity of the parties, Conagra is a citizen of both Delaware and Illinois.

28. Accordingly, minimal diversity of citizenship existed at the time of the filing of the Complaint and at the time of removal because the Plaintiff (citizen of Massachusetts) is a citizen of a different state than Defendant Conagra (citizen of Delaware and Illinois).

C. The Amount in Controversy Requirement is Satisfied.

29. Under 28 U.S.C. § 1332(d) a class action is removable if the aggregate amount in controversy is greater than \$5 million, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2).

30. Establishing that the amount in controversy exceeds the jurisdictional minimum requires a removing party to show a “reasonable probability” that more than \$5 million is in controversy at the time of removal. *Amoche*, 556 F.3d at 50.

31. In the instant case, Plaintiff seeks to certify a class consisting of “all persons who have purchased Wesson Oil products in Massachusetts that were labeled ‘100% Natural’” without time limitations. (Compl. ¶ 31.)

32. Among other things, Plaintiff requests this Court award monetary damages “up to three times the damages that Plaintiff and the Class incurred or at the very least the statutory minimum award of \$25 *per purchase of a Wesson Oil product.*” (Compl. ¶ 50 (emphasis added).) This request alone will bring the amount in controversy in excess of \$5 million.

33. As set forth in the attached Declaration of Irman Webb of Conagra, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. Even a conservative calculation of Plaintiff’s requested award of \$25 per unit of Wesson Oil sold, results in [REDACTED]

[REDACTED]

35. In addition, a court may “double or treble damages if the court finds the act or practice was a willing or knowing violation of chapter 93A.” *Angiodynamics, Inc. v. Biolitec AG*, 991 F. Supp. 2d 299, 306 (D. Mass. 2014).

³ See footnote 2 above.

36. When viewed as a whole, the claims asserted by Plaintiff yield an amount in controversy over and above the CAFA jurisdictional limit. Accordingly, the jurisdictional amount set forth in CAFA is “more likely than not” satisfied. *See Manson v. GMAC Mortg., LLC*, 602 F. Supp. 2d 289, 294 (D. Mass. 2009) (defendant satisfied its burden in demonstrating to a reasonable probability that the amount in controversy exceeded \$5 million); *Perry v. Equity Residential Mgmt., L.L.C.*, No. 12-10779-RWZ, 2014 WL 4198850 (D. Mass. Aug. 26, 2014) (*citing Amoche*, 556 F.3d at 43 (same)).

D. Jurisdiction is Mandatory Under CAFA, and None of the CAFA Exceptions Apply

37. Recognized exceptions to CAFA jurisdiction (both discretionary and mandatory) are not triggered here because the primary defendant—Conagra—is not a citizen of the state in which the action was brought. *See* 28 U.S.C. § 1332(d)(3) – (4)(B).

38. Here, Conagra is undeniably the primary defendant because Plaintiff’s claims pertain solely to the labeling of Wesson Oil. (*See* Compl. ¶ 17 (“Conagra systematically labels and markets every bottle of Wesson Oil as ‘Pure and 100% Natural’ in product packaging, print advertisements, in television commercials and on the Wesson Oils website (www.wessonoil.com)”).)

39. The only allegation applicable to Roche Bros. and Stop & Shop, the retailer defendants, is that they “sell bottles of Wesson Oil bearing such labels in stores.” (Compl. ¶ 18.) Plaintiff does not allege that Roche Bros. or Stop & Shop was in any way involved in the labeling of Wesson Oil—the crux of Plaintiff’s claims. Therefore, Roche Bros. and Stop & Shop cannot be considered primary defendants.

40. Because Conagra—the primary target of this litigation—is not a citizen of Massachusetts, the state in which this action was originally filed, jurisdiction under CAFA is

mandatory. *See Manson*, 602 F. Supp. 2d at 297 (denying plaintiff's motion for remand based on the home-state and local controversy exceptions because the primary defendant was not a citizen of the state in which the original class action was filed).

NO PREJUDICE OR WAIVER OF DEFENSES

41. By filing this Notice of Removal, Conagra expressly preserves and does not waive any defenses that may be available to it. Moreover, by seeking to establish that the amount in controversy is greater than the jurisdictional amount, Conagra does not concede any liability or that the jurisdictional amount is recoverable. Rather, Conagra denies that any amount is recoverable by Plaintiff or the putative class.

42. WHEREFORE, Defendant Conagra Brands, Inc. respectfully requests that the above-captioned action now pending in the Superior Court of the Commonwealth of Massachusetts in and for Suffolk County, be removed to the United States District Court for the District of Massachusetts, and that said District Court assume jurisdiction of this action and enter such other and further orders as may be necessary to accomplish the request for removal and promote the ends of justice.

This 7th day of June, 2017.

Respectfully submitted,

/s/ Kevin M. Duddleston

Kevin M. Duddleston, BBO #680624

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Counsel for Conagra Brands, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2017, the foregoing document electronically filed with the Clerk of the Court using the CM/ECF System, which sent notification of such filing to all counsel of record.

/s/ Kevin M. Duddlesten _____

Kevin M. Duddlesten

EXHIBIT C

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MARGARET LEE, On Behalf of Herself)
and All Others Similarly Situated)

Plaintiff,)

v.)

CIVIL ACTION FILE
NO. 1:17-cv-11042

CONAGRA BRANDS, INC., ROCHE BROS.)
SUPERMARKETS, INC., ROCHE BROS.)
INC., ROCHE BROS. SUPERMARKETS,)
LLC AND THE STOP & SHOP)
SUPERMARKET COMPANY LLC,)

Defendants.)

_____)

**DECLARATION OF IRMAN WEBB, IV IN SUPPORT OF DEFENDANT CONAGRA
BRANDS, INC.'S NOTICE OF REMOVAL**

(FILED UNDER SEAL)

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