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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 KATRINA AND BENJAMIN NECAISE,)
12 *individually and on behalf of all those*)
13 *similarly situated,*)

14 *Plaintiffs,*)

15 v.)

16 GENERAL MILLS, INC., *a Delaware*)
17 *corporation,*)

18 *Defendant.*)

No. **'24CV0367 TWR VET**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

19 Katrina and Benjamin Necaïse (“Plaintiffs”), individually and on behalf of all other
20 consumers similarly situated, by and through their undersigned counsel, hereby bring this action
21 against General Mills, Inc. (“Defendant”) alleging that the company manufactured, marketed,
22 and distributed oat based cereal products under the brand name “Cheerios” (“Products”) that
23 contain dangerous levels of the chemical pesticide chlormequat chloride (“chlormequat”). Upon
24 information and belief and investigation of counsel Plaintiffs allege as follows:
25

26 **PARTIES**

27 1. Plaintiffs Katrina and Benjamin Necaïse are a married couple residing in San
28 Marcos, California. They are citizens of the state of California.

1 into this district through wires and mails, both directly and through electronic and print
2 publications that are directed to commercial and individual consumers in this district; and
3 operating an e-commerce web site that offers the Products for sale to commercial and individual
4 consumers in this district, as well as offering the Products for sale through third-party e-
5 commerce websites, through both of which commercial and individual consumers including
6 Plaintiff have purchased the Products.
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8 10. Defendant knowingly directs electronic activity and ships the Products into this
9 district with the intent to engage in business interactions for profit, and it has in fact engaged in
10 such interactions, including the sale of the Products to Plaintiffs.
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12 11. Defendant also sells the Products to retailers and wholesalers in this district for
13 the purpose of making the Products available for purchase by individual consumers in this
14 district.
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16 12. In the alternative, this Court has diversity jurisdiction pursuant to 28 U.S.C. §
17 1332(a). The amount in controversy exceeds \$75,000 exclusive of interest and costs.
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19 13. Plaintiffs' losses and those of other Class members were sustained in this district.
20

21 14. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of
22 the events or omissions giving rise to Plaintiff's claims occurred within this district.
23

24 15. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court
25 maintains personal jurisdiction over Defendant.
26

27 **FACTUAL ALLEGATIONS**
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16. General Mills is a leading producer, manufacturer, marketer, and seller of cereal
foods, including the iconic Cheerios brand of breakfast cereals, which is among the most famous
food brands in the world.

1 17. Cheerios consists of pulverized oats shaped into a ring. Besides the original
2 unflavored Cheerios, the brand has produced and sells a number of flavored Cheerios lines,
3 including Honey Nut Cheerios.

4 18. Generations of children and adults internationally and in the U.S. have enjoyed
5 Cheerios for the past 75 years, making it one of the most popular and recognizable foods brands
6 in the world. The brand is especially popular among families, reflecting its image among
7 consumers as a healthy, nutritious breakfast food. Cheerios are often used by parents to
8 transition their infants to solid food, and to assist in their fine motor skills development.
9

10 19. Unfortunately for consumers, Cheerios contain dangerously high levels of
11 chlormequat, a pesticide that has been linked to disruption of fetal growth and harm to the
12 nervous system.
13

14 20. Specifically, independent laboratory testing has revealed that the following
15 Cheerios products have tested positive for the presence of chlormequat: regular Cheerios, Honey
16 Nut Cheerios, Frosted Cheerios, and Oat Crunch Oats N' Honey Cheerios. The Products have
17 tested out at levels of between 40 to more than 100 parts per billion of chlormequat.
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19 21. Chlormequat is a plant growth pesticide that is used to control plant size by
20 blocking hormones that stimulate growth prior to bloom. When applied to growing oat and grain
21 crops, it stops them from bending over, which impedes the harvesting process.

22 22. Chlormequat is dangerous to human health if ingested, even at very low levels.
23 Toxicological studies suggest that exposure to chlormequat can reduce fertility and harm
24 developing fetus at doses lower than those used by regulatory agencies to set allowable daily
25 intake levels. Chlormequat has also been shown to delay puberty and impair the reproductive
26 functions in mammals.
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1 23. The packaging and labelling for Defendant’s Products do not list chlormequat in
2 the ingredient section, nor do they warn about the inclusion or potential inclusion of chlormequat
3 in the Products

4 24. The Environmental Working Group (“EWG”), a nonprofit run by scientists
5 dedicated to protecting public health, recommends a health benchmark of 30 parts per billion
6 per day for chlormequat. The levels of chlormequat found in Cheerios far exceeds this
7 recommended threshold amount.

8 25. Plaintiffs Katrina and Benjamin Necaise are a married couple with four children,
9 all of them 13 or younger. They buy Cheerios regularly and have for many years, in reliance on
10 the brand’s image among consumers as a healthy, safe food product. The Necaisses attempt to
11 purchase only safe and healthy foods for their family and are particularly focused on avoiding
12 foods with unnecessary chemicals and synthetic additives.

13 26. The Necaisses purchased Honey Nut Cheerios on June 12, 2023 for \$7.49 from
14 Albertsons.com, but they have purchased other Cheerios products including regular Cheerios,
15 at multiple times throughout the Class period.

16 27. Consumers including the Plaintiffs reasonably relied on the label and ingredients
17 list of Cheerios to accurately inform them of the components and ingredients of the Products.
18 Consumers including Plaintiffs would not have purchased the Products had their labels
19 accurately disclosed the presence of chlormequat in Cheerios.

20 28. In the alternative, because of failure to disclose the presence of chlormequat in
21 Cheerios, Defendant was enabled to charge a premium for the Products relative to key
22 competitors’ products, or relative to the average price charged in the marketplace.

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1 36. Certification of Plaintiffs' claims for class-wide treatment is appropriate because
2 Plaintiffs can prove the elements of the claims on a class-wide basis using the same evidence as
3 individual Class members would use to prove those elements in individual actions alleging the
4 same claims.

5 37. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all
6 Class members is impracticable. Plaintiffs believe and aver there are thousands of Class
7 members geographically dispersed throughout the state of California.

8 38. **Existence and Predominance of Common Questions of Law and Fact – Rule**
9 **23(a)(2), (b)(3):** There are questions of law and fact common to the Class. These questions
10 predominate over any questions that affect only individual Class members. Common legal and
11 factual questions and issues include but are not limited to:
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- 14 a. Whether the marketing, advertising, packaging, labeling, and other promotional
 - 15 materials for Defendant's Products is misleading and deceptive;
 - 16 b. Whether a reasonable consumer would understand Defendant's label to indicate
 - 17 that the Products did not contain dangerous levels of pesticides;
 - 18 c. Whether Defendant was unjustly enriched at the expense of the Plaintiffs and
 - 19 Class members;
 - 20 d. the proper amount of disgorgement or restitution;
 - 21 e. the proper scope of injunctive relief; and
 - 22 f. the proper amount of attorneys' fees.
- 23

24 39. Defendant engaged in a common course of conduct in contravention of the laws
25 Plaintiffs seek to enforce individually and on behalf of the Class. Similar or identical violations
26 of law, business practices, and injuries are involved. Individual questions, if any, pale by
27 comparison, in both quality and quantity, to the numerous common questions that predominate
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1 this action. The common questions will yield common answers that will substantially advance
2 the resolution of the case.

3 40. In short, these common questions of fact and law predominate over questions that
4 affect only individual Class members.

5 41. **Typicality – Rule 23(a)(3):** Plaintiffs’ claims are typical of the claims of the Class
6 members because they are based on the same underlying facts, events, and circumstances
7 relating to Defendant’s conduct.

8 42. Specifically, all Class members, including Plaintiffs, were harmed in the same
9 way due to Defendant’s uniform misconduct described herein; all Class members suffered
10 similar economic injury due to Defendant’s misrepresentations; and Plaintiffs seek the same
11 relief as the Class members.

12 43. There are no defenses available to Defendant that are unique to the named
13 Plaintiffs.

14 44. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff are fair and adequate
15 representative of the Class because their interests do not conflict with the Class members’
16 interests. Plaintiffs will prosecute this action vigorously and is highly motivated to seek redress
17 against Defendant.

18 45. Furthermore, Plaintiffs has selected competent counsel who are experienced in
19 class action and other complex litigation. Plaintiffs and Plaintiffs’ counsel are committed to
20 prosecuting this action vigorously on behalf of the Class and have the resources to do so.

21 46. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other
22 available means for the fair and efficient adjudication of this controversy for at least the
23 following reasons:

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- 1 a. the damages individual Class members suffered are small compared to the burden
2 and expense of individual prosecution of the complex and extensive litigation
3 needed to address Defendant’s conduct such that it would be virtually impossible
4 for the Class members individually to redress the wrongs done to them. In fact,
5 they would have little incentive to do so given the amount of damage each member
6 has suffered when weighed against the costs and burdens of litigation;
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8 b. the class procedure presents fewer management difficulties than individual
9 litigation and provides the benefits of single adjudication, economies of scale, and
10 supervision by a single Court;
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12 c. the prosecution of separate actions by individual Class members would create a
13 risk of inconsistent or varying adjudications, which would establish incompatible
14 standards of conduct for Defendant; and
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16 d. the prosecution of separate actions by individual Class members would create a
17 risk of adjudications with respect to them that would be dispositive of the interests
18 of other Class members or would substantively impair or impede their ability to
19 protect their interests.

20 47. Unless the Class is certified, Defendant will retain monies received as a result of
21 its unlawful and deceptive conduct alleged herein.

22 48. Unless a class-wide injunction is issued, Defendant will likely continue to
23 advertise, market, promote, and sell its Products in an unlawful and misleading manner, as
24 described throughout this Complaint, and members of the Class will continue to be misled,
25 harmed, and denied their rights under the law. Plaintiffs will be unable to rely on the Products’
26 advertising or labeling in the future, and so will not purchase the Products although they would
27 like to.
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- 1 c. Defendant’s acts and practices constitute the advertisement of goods, without the
- 2 intent to sell them as advertised;
- 3 d. Defendant’s acts and practices fail to represent that transactions involving its
- 4 Products involve actions that are prohibited by law; and
- 5 e. Defendant’s acts and practices constitute representations that its Products have
- 6 been supplied in accordance with previous representations when they were not.

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8 57. By reason of the foregoing, Plaintiffs and the Class have been irreparably harmed,
9 entitling them to injunctive relief, disgorgement, and restitution.

10 58. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin
11 publication of misleading and deceptive nutritional labels on Defendant’s Products and to
12 recover reasonable attorneys’ fees and costs.

13 59. Pursuant to Cal. Civ. Code § 1782(d), Plaintiffs intend to amend their Complaint
14 to add a claim for damages pursuant to the CLRA not less than 30 days after commencement of
15 this action and compliance with relevant notice requirements under Section 1782(a).

16
17 **COUNT 2**
18 **UNJUST ENRICHMENT UNDER CALIFORNIA LAW**

19 60. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and plead
20 this cause of action if necessary in the alternative.

21 61. Defendant, through its marketing and labeling of the Products, misrepresented and
22 deceived consumers regarding the presence of chlormequat in the Products.

23 62. Defendant did so for the purpose of enriching itself and it in fact enriched itself
24 by doing so.

25 63. Consumers conferred a benefit on Defendant by purchasing the Products,
26 including an effective premium above their true value. Defendant appreciated, accepted, and
27 retained the benefit to the detriment of consumers.
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- a. Certifying the Class;
- b. Declaring that Defendant violated the CLRA and/or was unjustly enriched and or breached an implied warranty;
- c. Awarding actual, special, exemplary, and punitive damages to the extent permitted by law or equity;
- d. Ordering disgorgement of Defendant’s ill-gotten gains and restitution of Defendant’s wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed appropriate by the Court;
- e. Ordering an awarding of injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;
- f. Ordering Defendant to pay attorneys’ fees and litigation costs;
- g. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and
- h. Such other relief as the Court may deem just and proper.

TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

Respectfully submitted,
/s/ Charles C. Weller
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February 23, 2024