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1 2 3 4 5 6 7	Charles C. Weller (SBN: 207034) legal@cweller.com CHARLES C. WELLER, APC 11412 Corley Court San Diego, California 92126 Tel: 858.414.7465 Fax: 858.300.5137 Attorney for Plaintiffs		
8 9	IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA		
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11 12	KATRINA AND BENJAMIN NECAISE, individually and on behalf of all those similarly situated,)))	
12	Plaintiffs,) No. '24CV0367 TWR VET	
13	V.) CLASS ACTION COMPLAINT	
15	GENERAL MILLS, INC., a Delaware) JURY TRIAL DEMANDED	
16	corporation,)	
17	Defendant.))	
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19	Katrina and Benjamin Necaise ("Plain	ntiffs"), individually and on behalf of all other	
20	consumers similarly situated, by and through th	eir 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:		
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26 27	PARTIES 1. Plaintiffs Katrina and Benjamin Necaise are a married couple residing in San		
27	Marcos, California. They are citizens of the state of California.		
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	CLASS ACTION COMPLAINT		

1	2. Defendant General Mills, Inc. is a Delaware corporation with its principal place		
2	of business in Golden Valley, Minnesota.		
3	JURISDICTION AND VENUE		
4	3. This Court has subject matter jurisdiction over this action pursuant to the Class		
5	Action Fairness Act, Pub. L. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the		
6	United States Code); specifically, under 28 U.S.C. § 1332(d), which provides for the original		
7	jurisdiction of the federal district courts over "any civil action in which the matter in controversy		
8 9	exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class		
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11	action in which any member of a class of plaintiffs is a citizen of a State different from any		
12	defendant." 28 U.S.C. § 1332(d)(2)(A).		
13	4. Plaintiff seeks to represent Class members who are citizens of states or countries		
14	different from the Defendant.		
15	5. The matter in controversy in this case exceeds \$5,000,000 in the aggregate,		
16	exclusive of interests and costs.		
17	6. In addition, "the number of members of all proposed plaintiff classes in the		
18	aggregate" is greater than 100. See 28 U.S.C. § 1332(d)(5)(B).		
19	7. In the alternative, the Court has diversity jurisdiction pursuant to 28 U.S.C. §		
20	1332(a). The amount in controversy exceeds \$75,000 exclusive of interest and costs.		
21 22	8. This Court has personal jurisdiction over Defendant because this action arises out		
22	of and relates to Defendant's contacts with this forum.		
24	9. Those contacts include but are not limited to sales of the Products directly to		
25	commercial and individual consumers located in this district, including at least one Plaintiff;		
26	shipping the Products to commercial and individual consumers in this district, including at least		
27	one Plaintiff; knowingly directing advertising and marketing materials concerning the Products		
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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. 7 10. Defendant knowingly directs electronic activity and ships the Products into this 8 9 district with the intent to engage in business interactions for profit, and it has in fact engaged in

such interactions, including the sale of the Products to Plaintiffs.

11 11. Defendant also sells the Products to retailers and wholesalers in this district for
12 the purpose of making the Products available for purchase by individual consumers in this
14 district.

15 12. In the alternative, this Court has diversity jurisdiction pursuant to 28 U.S.C. §
16 1332(a). The amount in controversy exceeds \$75,000 exclusive of interest and costs.

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13. Plaintiffs' losses and those of other Class members were sustained in this district.

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

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

FACTUAL ALLEGATIONS

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

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

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

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

20. Specifically, independent laboratory testing has revealed that the following
Cheerios products have tested positive for the presence of chlormequat: regular Cheerios, Honey
Nut Cheerios, Frosted Cheerios, and Oat Crunch Oats N' Honey Cheerios. The Products have
tested out at levels of between 40 to more than 100 parts per billion of chlormequat.

21. Chlormequat is a plant growth pesticide that is used to control plant size by
blocking hormones that stimulate growth prior to bloom. When applied to growing oat and grain
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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23. The packaging and labelling for Defendant's Products do not list chlormequat in the ingredient section, nor do they warn about the inclusion or potential inclusion of chlormequat in the Products

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

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

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

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

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

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29. Consumers including Plaintiffs especially rely the labels on food products, as they cannot confirm or disprove the claims stated on those labels simply by viewing or even consuming the Products.

Plaintiffs and, indeed, no reasonable consumer would ever expect that a food 30. product—especially one heavily marketed to children and families—would contain dangerous pesticides. Plaintiffs and Class Members suffered economic injuries as a result of purchasing the Products.

31. Plaintiffs suffered economic injury by Defendant's fraudulent and deceptive conduct as stated herein, and there is a causal nexus between Defendant's deceptive conduct and Plaintiffs' injury.

32. All flavors of the Products are sold for similar prices, are packaged in similar packaging, are manufactured using the same base formulation, and all contain unhealthy and 14 unsafe levels of chlormequat. Plaintiffs therefore have standing to represent the purchasers of 15 16 all flavors of the Products, regardless whether they purchased each individual flavor of each 17 Product.

CLASS ACTION ALLEGATIONS

19 33. Plaintiffs bring this action individually and as representative of all those similarly 20 situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in in the state of California who purchased the Products in the four years prior to the filing of this Complaint. 22

34. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries, 23 employees, officers, agents, and directors. Also excluded are any judicial officers presiding over 24 25 this matter and the members of their immediate families and judicial staff.

26 35. Plaintiffs reserve the right to alter the Class definition, and to amend this 27 Complaint to add Subclasses, as necessary to the full extent permitted by applicable law.

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

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

38. Existence and Predominance of Common Questions of Law and Fact – Rule
 23(a)(2), (b)(3): There are questions of law and fact common to the Class. These questions predominate over any questions that affect only individual Class members. Common legal and factual questions and issues include but are not limited to:

- a. Whether the marketing, advertising, packaging, labeling, and other promotional
 materials for Defendant's Products is misleading and deceptive;
 - b. Whether a reasonable consumer would understand Defendant's label to indicate that the Products did not contain dangerous levels of pesticides;
 - c. Whether Defendant was unjustly enriched at the expense of the Plaintiffs and Class members;
 - d. the proper amount of disgorgement or restitution;
 - e. the proper scope of injunctive relief; and
 - f. the proper amount of attorneys' fees.

39. Defendant engaged in a common course of conduct in contravention of the laws
Plaintiffs seek to enforce individually and on behalf of the Class. Similar or identical violations
of law, business practices, and injuries are involved. Individual questions, if any, pale by
comparison, in both quality and quantity, to the numerous common questions that predominate

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this action. The common questions will yield common answers that will substantially advance 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

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

43. There are no defenses available to Defendant that are unique to the named 14 Plaintiffs. 15

16 44. Adequacy of Representation – Rule 23(a)(4): Plaintiff are fair and adequate 17 representative of the Class because their interests do not conflict with the Class members' 18 interests. Plaintiffs will prosecute this action vigorously and is highly motivated to seek redress 19 against Defendant.

45. Furthermore, Plaintiffs has selected competent counsel who are experienced in 21 class action and other complex litigation. Plaintiffs and Plaintiffs' counsel are committed to 22 prosecuting this action vigorously on behalf of the Class and have the resources to do so. 23

24 Superiority – Rule 23(b)(3): The class action mechanism is superior to other 46. 25 available means for the fair and efficient adjudication of this controversy for at least the 26 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;
7		has suffered when weighed against the costs and burdens of highlight,
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;
11	с.	the prosecution of separate actions by individual Class members would create a
12		risk of inconsistent or varying adjudications, which would establish incompatible
13		standards of conduct for Defendant; and
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15	d.	the prosecution of separate actions by individual Class members would create a
16		risk of adjudications with respect to them that would be dispositive of the interests
17		of other Class members or would substantively impair or impede their ability to
18		protect their interests.
19	47.	Unless the Class is certified, Defendant will retain monies received as a result of
20	its unlawful	and deceptive conduct alleged herein.
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22	48.	Unless a class-wide injunction is issued, Defendant will likely continue to
23	advertise, m	arket, promote, and sell its Products in an unlawful and misleading manner, as
24	described th	roughout 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 o	or labeling in the future, and so will not purchase the Products although they would
27	like to.	
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		CLASS ACTION COMPLAINT

1	49. Ascertainability. To the extent ascertainability is required, the Class members are	
2	readily ascertainable from Defendant's records and/or its agents' records of retail and online	
3	sales, as well as through public notice.	
4	50. Defendant has acted on grounds applicable to the Class as a whole, thereby making	
5	appropriate final injunctive and declaratory relief concerning the Class as a whole.	
6 7	COUNT 1	
8	VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT, CAL. CIV. CODE § 1750 <i>ET SEQ</i> .	
9	51. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the	
10	extent necessary, pleads this cause of action in the alternative.	
11	52. Plaintiffs are "consumers" within the meaning of the Consumer Legal Remedies	
12	Act ("CLRA"), Cal. Civ. Code § 1761(d).	
13	53. The sale of Defendant's Products to Plaintiffs and Class members was a	
14 15	"transaction" within the meaning of the CLRA, Cal. Civ. Code § 1761(e).	
16	54. The Products purchased by Plaintiffs and Class members are "goods" within the	
17	meaning of the CLRA, Cal. Civ. Code § 1761(a).	
18	55. As alleged herein, Defendant's business practices are a violation of the CLRA	
19	because Defendant deceptively failed to reveal facts that are material to reasonable consumers.	
20	56. Defendant's ongoing failure to provide material facts about its Products violates	
21	the following subsections of Cal. Civ. Code § 1770(a) in these respects:	
22 23	a. Defendant's acts and practices constitute misrepresentations that its Products have	
23	characteristics, benefits, or uses which they do not have;	
25	b. Defendant misrepresented that its Products are of a particular standard, quality,	
26	and/or grade, when they are of another;	
27	and of grade, when they are of another,	
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	-10- CLASS ACTION COMPLAINT	

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.	
7 8	57. By reason of the foregoing, Plaintiffs and the Class have been irreparably harmed,	
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10	entitling them to injunctive relief, disgorgement, and restitution.	
	58. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin	
11 12	publication of misleading and deceptive nutritional labels on Defendant's Products and to	
12	recover reasonable attorneys' fees and costs.	
14	59. Pursuant to Cal. Civ. Code § 1782(d), Plaintiffs intend to amend their Complaint	
15	to add a claim for damages pursuant to the CLRA not less than 30 days after commencement of	
16	this action and compliance with relevant notice requirements under Section 1782(a).	
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 26	63. Consumers conferred a benefit on Defendant by purchasing the Products,	
26 27	including an effective premium above their true value. Defendant appreciated, accepted, and	
28	retained the benefit to the detriment of consumers.	
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	CLASS ACTION COMPLAINT	

1	64. Defendant continues to possess monies paid by consumers to which Defendant is	
2	not entitled.	
3	65. Under the circumstances it would be inequitable for Defendant to retain the benefit	
4	conferred upon it and Defendant's retention of the benefit violates fundamental principles of	
5	justice, equity, and good conscience.	
6 7	66. Plaintiff seeks disgorgement of Defendant's ill-gotten gains and restitution of	
8	Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed	
9	appropriate by the Court, and such other relief as the Court deems just and proper to remedy	
10	Defendant's unjust enrichment.	
11	67. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as	
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13	a result of Defendant's actions as set forth above.	
14	COUNT 3 BREACH OF AN IMPLIED WARRANTY UNDER CALIFORNIA LAW	
15	68. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and plead	
16	this cause of action if necessary in the alternative.	
17	69. Plaintiffs purchased the consumer goods described herein from Defendant, who	
18	at the time was in business of manufacturing and selling consumer goods including the Products.	
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20	70. The Products were, at the time of Plaintiffs' purchase, not of the same quality as	
21	those generally acceptable in the trade; were not fit for the ordinary purposes for which the	
22	goods are used; and were not adequately labeled.	
23	71. Plaintiffs were harmed by the purchase, as set forth herein, and Defendant's	
24	breach of the implied warranty was a substantial factor in causing Plaintiffs' harm.	
25	PRAYER FOR RELIEF	
26	WHEREFORE, Plaintiffs respectfully request the Court grant the following relief	
27 28	against Defendant:	
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	CLASS ACTION COMPLAINT	

1	a. Certifying the Class;
2	b. Declaring that Defendant violated the CLRA and/or was unjustly enriched and or
3	breached an implied warranty;
4	c. Awarding actual, special, exemplary, and punitive damages to the extent permitted by
5	law or equity;
6	d. Ordering disgorgement of Defendant's ill-gotten gains and restitution of Defendant's
7	wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed
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10	appropriate by the Court;
11	e. Ordering an awarding of injunctive relief as permitted by law or equity, including
12	enjoining Defendant from continuing the unlawful practices as set forth herein, and
13	ordering Defendant to engage in a corrective advertising campaign;
14	f. Ordering Defendant to pay attorneys' fees and litigation costs;
15	g. Ordering Defendant to pay both pre- and post-judgment interest on any amounts
16	awarded; and
17	h. Such other relief as the Court may deem just and proper.
18	TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.
19	Respectfully submitted,
20	/s/ Charles C. Weller
21	Charles C. Weller (Cal. SBN: 207034) Attorney for Plaintiff
22 23	CHARLES C. WELLER, APC
23 24	11412 Corley Court San Diego, California 92126 Tel: 858.414.7465
25	Fax: 858.300.5137
26	February 23, 2024
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	CLASS ACTION CONFLAINT

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Cheerios Lawsuit Says Cereals Contain</u> <u>Dangerous Levels of Chemical Pesticide</u>