

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DARLENE LONGO, individually, and on	:	
behalf of all others similarly situated,	:	
	:	
Plaintiff,	:	CIVIL CASE NO. _____
	:	
-against-	:	[Removed from Supreme Court of the State
	:	of New York, Suffolk County, Index No.
GENERAL MILLS, INC.,	:	610861/2015]
	:	
Defendant.	:	
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NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant General Mills, Inc. (“General Mills”) hereby removes this putative class action from the Supreme Court of the State of New York, County of Suffolk, where said case was originally filed and is currently pending, to the United States District Court for the Eastern District of New York. The removal is based on 28 U.S.C. §§ 1332, 1441, 1446, and on the following grounds.

BACKGROUND

1. On or about October 13, 2015, Plaintiff Darlene Longo initiated this putative class action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of Suffolk. Attached hereto as **Exhibit A** is an index of documents filed in State Court. A copy of Plaintiff’s Summons, Complaint, and Affidavit of Service is attached hereto as **Exhibit B**.

2. General Mills was served with the Summons and Complaint on October 16, 2015. This Notice of Removal is timely filed pursuant to 28.U.S.C. § 1446(b)(1), because General

Mills filed this notice within 30 days after receiving the initial pleadings through service or otherwise.

3. General Mills' time to respond to the Complaint has not expired and General Mills has not yet served or filed a response to the Complaint.

4. The Complaint asserts the following six claims: (1) violation of New York General Business Law § 349; (2) violation of New York General Business Law § 350; (3) breach of contract; (4) negligence/gross negligence; (5) unjust enrichment; and (6) fraudulent inducement. This case was filed following General Mills' announcement that it was recalling 1.8 million boxes of Cheerios and Honey Nut Cheerios cereal after an isolated incident where wheat flour was inadvertently introduced into the gluten-free oat flour production system for those cereals. *See* Compl. ¶¶3, 4, 6, 7. All of Plaintiff's claims are based on the theory that General Mills allegedly falsely labeled and advertised these cereals as wheat and gluten-free when they were not.

5. Plaintiff brings this action as a purported class action. She seeks to represent a putative class that includes herself and "all similarly situated individuals who purchased the Contaminated Cereals and/or consumed the Contaminated Cereals, on the basis that they were advertised, marketed, and labeled as free of gluten and/or wheat, from July 2015 to present." Compl. ¶26. Geographically, the putative class is not limited to any particular state.

GROUND FOR REMOVAL

As shown below, two independent bases exist for this Court's jurisdiction over this action.

I. This Court Has Diversity Jurisdiction Over This Action.

6. The United States District Court for the Eastern District of New York has original jurisdiction of this action pursuant to 28 U.S.C. § 1332 ("The district courts shall have original

jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 . . . and is between citizens of different states.”).

7. In a putative class action, only the citizenship of the named parties is considered when evaluating diversity jurisdiction. *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 334 (2d Cir. 2006) (“It is true that in a class action only the named plaintiffs need be diverse with the defendants to establish diversity jurisdiction.”). Here, the named parties are citizens of different states—Plaintiff is a citizen of New York and General Mills is a citizen of both Delaware and Minnesota.

8. Plaintiff alleges that she resides in Amityville, Suffolk County, in the State of New York. Compl. ¶¶18-19. As required by Local Rule 81.1, General Mills notes that Plaintiff did not specifically allege her domicile. General Mills understands the allegations raised in Paragraphs 18 and 19 of the Complaint to mean that Plaintiff is domiciled in, and therefore a citizen of, the State of New York. *See Palazzo ex rel. Delmage v. Corio*, 232 F.3d 38, 42 (2d Cir. 2000) (“An individual’s citizenship, within the meaning of the diversity statute, is determined by [her] domicile.”).

9. General Mills is incorporated under the laws of Delaware and its principal place of business in Minneapolis, Minnesota. General Mills is therefore a citizen of both Delaware and Minnesota.

10. Upon information and belief, the amount in controversy between the individual named plaintiff and General Mills in this matter exceeds \$75,000. Plaintiff does not specify an amount of damages in her Complaint but alleges that, as result of General Mills’ conduct, she suffered “economic damages” and “damages flowing from her consumption of the Contaminated Cereals, including without limitation, medical costs and other expenses related thereto.” Compl.

¶16. Plaintiff also alleges that “Plaintiff and each Class Member has suffered an ascertainable loss . . . including but not limited to, compensatory damages and/or medical expenses.” *Id.* ¶23. Plaintiff further seeks “direct damages,” “consequential damages,” “expectation damages,” “restitution,” “disgorge[ment] of profits,” and “punitive damages.” *E.g.*, Compl. ¶¶54, 64, 69, 79. Where, as here, the named plaintiff meets the \$75,000 amount-in-controversy requirement, supplemental jurisdiction exists over the claims of any remaining diverse plaintiffs. *Achtman*, 464 F.3d at 334 (citing *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 549 (2005)).

II. This Action Is Removable Under The Class Action Fairness Act Of 2005.

11. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), which provides in pertinent part as follows:

The district court shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which—

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

28 U.S.C. § 1332(d)(2).

12. The requirements of CAFA are met here because, as discussed in greater detail below, the matter in controversy in this purported class action exceeds the sum or value of \$5,000,000 (taking into account all damages and equitable relief sought for all of the purported class members’ claims in the aggregate, exclusive of interest and costs), and there is “minimum

diversity” under CAFA, *i.e.* “any member of a class of plaintiffs is a citizen of a State different from any defendant.” *Id.* § 1332(d)(2)(A).

A. This Is a Putative Class Action Within the Meaning of CAFA, Whose Members Exceed 100.

13. CAFA defines “class action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar state statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” *Id.* § 1332(d)(1)(B). Here, the Complaint shows that this is a purported class action filed under state class action rules. Plaintiff refers to the action as a “putative class action . . . against defendant General Mills” that is brought by Plaintiff “individually and on behalf of all others similarly situated” (Compl. at 1), and pursuant to New York’s class action statute, Civil Practice Law and Rule 901. Compl. ¶26.

14. The purported class members, as described in the Complaint, exceed 100. Plaintiff alleges that “the proposed Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable.” Compl. ¶29. Plaintiff also asserts a class of all “individuals who purchased the Contaminated Cereals and/or consumed the Contaminated Cereals, on the basis that they were advertised, marketed, and labeled as free of gluten and/or wheat, from July 2015 to present.” Compl. ¶26. Further, as shown on the face of the Complaint, the quantity of products at issue in this case—those Cheerios boxes into which wheat flour was inadvertently introduced—total approximately 1.8 million. The affected products were distributed to retailers nationwide, who in turn sold them to consumers. It stands to reason therefore that the putative class exceeds 100 members.

B. Minimal Diversity Exists Between the Parties.

15. CAFA requires only “minimal diversity”—*i.e.*, that the citizenship of at least one putative class member differs from that of at least one defendant. 28 U.S.C. § 1332(d)(2)(A).

16. As noted above, Plaintiff and General Mills are citizens of different states. Thus CAFA's minimal diversity requirement is satisfied.

C. The Amount in Controversy Requirement Is Satisfied.

17. Plaintiff's lawsuit meets CAFA's amount-in-controversy requirement because it seeks monetary damages, restitution, injunctive relief, disgorgement, punitive damages, attorneys' fees, and other relief that, in the aggregate, exceed CAFA's \$5 million threshold.

18. Plaintiff does not plead a specific amount in controversy, so General Mills need only make "a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

19. Under CAFA, the "claims of the individual class members must be aggregated." 28 U.S.C. § 1332(d)(6). "[CAFA] tells the District Court to determine whether it has jurisdiction by adding up the value of the claim of each person who falls within the . . . proposed class and determine whether the resulting sum exceeds \$5 million." *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348 (2013). Attorneys' fees are properly included in the calculation. *See Pollock v. Trustmark Ins. Co.*, 367 F. Supp. 2d 293, 298 (E.D.N.Y. 2005) (holding, in reference to GBL § 349, that "[a]ttorney's fees can be considered as part of the amount in controversy where they are anticipated or awarded in the governing statute"); *see also Fields v. Sony Corp. of Am.*, No. 13 CIV. 6520 GBD, 2014 WL 3877431, at *2 (S.D.N.Y. Aug. 4, 2014). So are punitive damages. *Frederick v. Hartford Underwriters Ins. Co.*, 683 F.3d 1242, 1248 (10th Cir. 2012). The value of injunctive relief should also be included in the amount in controversy calculation. *See Alicea v. Circuit City Stores, Inc.*, 534 F. Supp. 2d 432, 435 (S.D.N.Y. 2008). If the Court is uncertain whether the amount in controversy exceeds \$5 million, "the court should err in favor of exercising jurisdiction over the case." S. Rep. No. 109-14, at 42 (2005); *see also*

Dart Cherokee, 135 S. Ct. at 554 (noting “that no antiremoval presumptions attend cases invoking CAFA”).

20. Plaintiff seeks (for herself and the putative class) compensatory damages, injunctive relief, restitution and disgorgement, punitive damages, attorneys’ fees, as well as any further relief as the Court may deem just and proper. Compl. at 16-17 (Prayer for Relief); *id.* ¶¶54, 64, 69, 79. As shown below, removal is proper because together, these remedies exceed the \$5 million required for federal jurisdiction.

21. Compensatory/Economic Damages. Plaintiff alleges that she and the Class Members have been damaged, at a minimum, in the amount paid for the recalled products (plus “consequential damages”). *E.g.*, Compl. ¶¶16 (“Plaintiff sustained economic damages reflecting the prices she paid for the Contaminated Cereals”); 23, 53, 54, 64, 69. Here, General Mills, in the conduct of its recall and refund/reimbursement program for the affected products, has offered consumers reimbursement in form of replacement products that have an average value of \$3.48 per unit, which is equivalent to the average price paid for these products. That unit value, multiplied by 1.8 million recalled units, totals \$6,264,000.00, which exceeds \$5 million. Thus, the amount in controversy unquestionably exceeds the CAFA threshold. *Ebin v. Kangadis Food Inc.*, No. 13 CIV. 2311 JSR, 2013 WL 3936193, at *3 (S.D.N.Y. July 26, 2013).

22. Punitive Damages. Plaintiff also seeks an award of punitive damages. Compl. ¶¶54, 64. As noted above, punitive damages can be considered as part of CAFA’s amount in controversy. Although Plaintiff does not allege an estimate of punitive damages, she requests them and such damages should be considered with respect to the amount in controversy requirement.

23. Attorneys' Fees. Plaintiff also seeks attorneys' fees and costs. Compl. at 17; *id.* ¶¶54, 64. As noted above, attorneys' fees can be considered as part of CAFA's amount in controversy. Although Plaintiff does not allege an estimate of attorneys' fees, she requests them and such fees should be considered with respect to the amount in controversy requirement.

24. Injunctive Relief. Plaintiff also seeks injunctive relief in the form of an order "prohibiting Defendant for its continuous unlawful conduct." Compl. at 17. As noted above, injunctive relief can be considered with respect to CAFA's amount in controversy requirement. Although Plaintiff does not allege an estimate as to the value of the injunctive relief she seeks, she requests it and such amount should be considered with respect to the amount in controversy requirement.

25. Total Amount in Controversy. As discussed above, the amount in controversy requirement for federal diversity jurisdiction under CAFA is easily satisfied. 28 U.S.C. § 1332(d)(2). The value of the recalled units—which is sought by Plaintiff as compensatory/economic damages—exceeds \$5 million, without even accounting for the value of the punitive damages, attorneys' fees, injunctive relief, restitution and disgorgement, and costs sought by Plaintiff.

D. General Mills Is the Only Defendant in this Action.

26. General Mills is a corporation and the only defendant. Therefore, the primary defendant is not a state, state official, or other governmental entity, and the requirement of 28 U.S.C. § 1332(d)(5)(A) is met. Since General Mills is the only defendant, no other defendant is required to consent to this removal. 28 U.S.C. § 1453(b).

E. No CAFA Exceptions apply.

27. This action does not fall within any exception to CAFA removal jurisdiction under 28 U.S.C. §§ 1332(d) or 1453(d), and Plaintiff has the burden of proving otherwise.

Greenwich Fin. Servs. Distressed Mortgage Fund 3 LLC v. Countrywide Fin. Corp., 603 F.3d 23, 26 (2d Cir. 2010); *see also Fields*, 2014 WL 3877431 at *3.

28. General Mills is the sole defendant in this action, and is not a “state[], state official[], or other governmental entit[y] against whom [this Court] may be foreclosed from ordering relief[;]” thus, the exception set forth at 28 U.S.C. § 1332(d)(5) does not apply.

III. General Mills Has Satisfied All Other Requirements For Removal.

29. Intradistrict Assignment. Pursuant to 28 U.S.C. § 1441(a), assignment to the United States District Court for the Eastern District of New York is proper because Plaintiff filed this action in the Supreme Court of the State of New York, County of Suffolk.

30. Attachment of Pleadings. Pursuant to 28 U.S.C. § 1446, General Mills hereby provides this Court with copies of all process, pleadings, and orders served on and/or received by General Mills in this action, attached as Exhibit B.

31. Notice to State Court/Plaintiff. Upon the filing of this Notice of Removal in the United States District Court for the Eastern District of New York, written notice of removal with be given to Plaintiff. General Mills will promptly serve on Plaintiff and file with the Supreme Court of the State of New York, County of Suffolk, a Notice of Filing of Notice of Removal to Federal Court, as required by 28 U.S.C. § 1446(d).

IV. Non-Waiver Of Defenses.

32. General Mills expressly reserves all of its defenses. By removing the action to this Court, General Mills does not waive any rights or defenses available under federal or state law. General Mills expressly reserves the right to move for dismissal of the Complaint under Rule 12 of the Federal Rules of Civil Procedure. Nothing in this Notice of Removal should be taken as an admission that Plaintiff’s allegations are sufficient to state a claim for relief or have any merit.

CONCLUSION

Defendant General Mills requests that the above-described action now pending against it in the Supreme Court of the State of New York, Suffolk County, be removed to the United States District Court for the Eastern District of New York.

Dated: New York, New York.
November 13, 2015

Respectfully submitted,
PERKINS COIE LLP

By: /s/ Manny J. Caixeiro

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30 Rockefeller Plaza, 22nd Floor
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*Attorneys for Defendant
General Mills, Inc.*

EXHIBIT A



NYSCEF
Suffolk County Supreme Court

Document List
Index # 610861/2015

Created on:11/11/2015 02:49 PM

Case Caption: DARLENE LONGO - v. - GENERAL MILLS, INC.,

Judge Name:

Doc#	Document Type/Information	Status	Date Received	Filed By
1	SUMMONS	Processed	10/13/2015	Napoli, M.
2	COMPLAINT	Processed	10/13/2015	Napoli, M.
3	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit of Service of Summons and Complaint on Defendant General Mills, Inc.	Processed	10/21/2015	Napoli, M.

EXHIBIT B

**NEW YORK STATE SUPREME COURT
COUNTY OF SUFFOLK**

-----	X	
	:	
DARLENE LONGO, individually, and on	:	
behalf of all others similarly situated,	:	Index No.:
	:	
<i>Plaintiffs,</i>	:	
	:	
v.	:	<u>SUMMONS</u>
	:	
GENERAL MILLS, INC.,	:	DEMAND FOR A JURY TRIAL
	:	
<i>Defendant.</i>	:	
-----	X	

TO: THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on Plaintiff's attorneys within 20 days after service of this Summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days of completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint. The basis of venue is Plaintiff's residence.

Dated: New York, New York
October 13, 2015

NAPOLI SHKOLNIK PLLC

/s/ Marie Napoli
Marie Napoli
1301 Avenue of the Americas, 10th Floor
New York, New York 10019
(212) 397-1000
mnapoli@napolilaw.com

*Attorneys for Plaintiff and the
putative Class*

NEW YORK STATE SUPREME COURT
COUNTY OF SUFFOLK

-----X	:	
DARLENE LONGO, individually, and on	:	
behalf of all others similarly situated,	:	Index No.:
	:	
<i>Plaintiffs,</i>	:	
	:	
v.	:	<u>COMPLAINT</u>
	:	
GENERAL MILLS, INC.,	:	DEMAND FOR A JURY TRIAL
	:	
<i>Defendant.</i>	:	
-----X	:	

Plaintiff Darlene Longo, individually and on behalf of all others similarly situated (“Plaintiff” or “Ms. Longo”), by and through her undersigned attorneys, Napoli Law PLLC, as and for her putative class action Complaint against defendant General Mills, Inc. (“GM” or “Defendant”), alleges as follows:

NATURE OF THE ACTION

1. This is an action to recover damages from GM arising out of GM’s sales and Plaintiff’s purchases of certain GM cereal products that GM sold and Plaintiff purchased that were not of the kind that GM warranted and advertised them to be, and on that basis sold.

2. Specifically, Plaintiff alleges for herself and on behalf of all others similarly situated that she sustained damages by purchasing GM’s *Cheerios* and *Honey Nut Cheerios* boxes that GM advertised and warranted as free of gluten and wheat, in

reliance on those advertisements and warranties, but which were not free of gluten or wheat (the "Contaminated Cereals").

3. Defendant affirms that it manufactured and placed in grocery retailers approximately 1.8 million boxes of the Contaminated Cereals from July 2015 to present.

4. GM has recalled and/or is recalling the Contaminated Cereals on the basis that wheat flour was introduced into GM's gluten-free oat flour system.

5. The undeclared allergen in the Contaminated Cereals is wheat, which has documented potential adverse health effects and may trigger illness or severe reactions. This is true specifically for those with wheat allergies, celiac disease, or gluten intolerance.

6. GM President, Jim Murphy, recently stated that GM's "Lodi production facility lost rail service for a time and our gluten-free oat flour was being off-loaded from rail cars to trucks for delivery to our facility on the dates in question... In an isolated incident involving purely human error, wheat flour was inadvertently introduced into our gluten-free oat flour system at Lodi."

7. GM's recall includes four (4) days of production of the original (yellow box) *Cheerios*, and thirteen (13) days of production of *Honey Nut Cheerios* manufactured at its Lodi facility, with plant code "LD," which indicates that the product was produced at the Lodi facility, and with the following "BETTER IF USED BY" code dates:

Honey Nut Cheerios	Honey Nut Cheerios	Honey Nut Cheerios	Yellow Box Cheerios
12JUL2016LD	17JUL2016LD	23JUL2016LD	14JUL2016LD
13JUL2016LD	18JUL2016LD	24JUL2016LD	15JUL2016LD
14JUL2016LD	20JUL2016LD	25JUL2016LD	16JUL2016LD
15JUL2016LD	21JUL2016LD		17JUL2016LD
16JUL2016LD	22JUL2016LD		

8. Food items containing wheat are medically known to cause illness and severe health reactions for individuals with wheat allergies and/or celiac disease. Products containing wheat can also cause illness or discomfort for individuals with gluten intolerance. Moreover, many individuals without celiac disease or an allergy to wheat and/or gluten choose not to consume food items with wheat or gluten for various reasons, including for prophylactic health reasons.

9. Plaintiff suffers from celiac disease. She cannot consume or ingest products that contain gluten. Celiac disease is an autoimmune disorder that can occur in genetically predisposed people where the ingestion of gluten leads to damage in the small intestine. Plaintiff does not consume food products unless they are gluten-free.

10. On or around September 5, 2015, Plaintiff saw a GM television commercial, advertising *Cheerios* and *Honey Nut Cheerios* as gluten-free.

11. Shortly thereafter, and in reliance upon that representation, Plaintiff purchased two boxes of the Contaminated Cereal, *Cheerios* and *Honey Nut Cheerios* cereals.

12. In total, between September 5, 2015 and October 2, 2015, Plaintiff purchased seven (7) boxes of the Contaminated Cereals.

13. On or around September 21, 2015, Plaintiff experienced symptoms indicating the onset of a celiac attack, which progressively worsened through September 28, 2015, and left her bedridden for weeks).

14. On or around October 2, 2015, Plaintiff's condition had become so severe that she was forced to make an emergency appointment with her physician, who determined that Plaintiff had sustained a celiac attack.

15. If Plaintiff had known that the boxes of Contaminated Cereals contained gluten, she never would have purchased them. Plaintiff purchased boxes of Defendant's cereals for the sole reason that they were advertised as gluten-free.

16. As a result of Defendant's false advertising, deceptive business practices, gross or negligent misrepresentation, and breach of contract, Plaintiff sustained economic damages reflecting the prices she paid for the Contaminated Cereals, and any and all damages flowing from her consumption of the Contaminated Cereals, including without limitation, medical costs and other expenses related thereto.

JURISDICTION AND VENUE

17. This Court has personal jurisdiction over Defendant General Mills, Inc., a Minnesota corporation doing business within the State of New York and the County of Suffolk, pursuant to New York Civil Practice Law and Rules (CPLR) § 301. Defendant is a foreign corporation conducting business in all 50 states, including the State of New

York, County of Suffolk, and is organized under the laws of Minnesota. Defendant maintains its principal place of business at 100 South 5th Street, Suite 1075, Minneapolis, MN 55402.

18. Venue is proper in the Supreme Court of the State of New York, Suffolk County, pursuant to CPLR § 503 because Plaintiff Darlene Longo is a resident of Suffolk County.

PARTIES

19. Plaintiff Darlene Longo resides in Amityville, New York.

20. Plaintiff was diagnosed with celiac disease in or around 2013 and was informed by her physician that, as a result of her celiac condition, she would have to strictly adhere to a gluten-free diet.

21. At the time Plaintiff purchased the Contaminated Cereal, she was unaware that the Contaminated Cereals contained gluten.

22. Plaintiff and each Class Member were led to believe by GM that the Contaminated Cereals were gluten-free and made without wheat, as they were advertised, labeled, and warranted and on those bases purchased the Contaminated Cereals.

23. Accordingly, Plaintiff and each Class Member has suffered an ascertainable loss as a result of Defendant's misrepresentations and omissions pertaining to the Contaminated Cereals, including but not limited to, compensatory damages and/or medical expenses.

24. Defendant General Mills, Inc. is a foreign corporation conducting business in all 50 states and is organized under the laws of Minnesota, maintaining its principal place of business at 100 South 5th Street, Suite 1075, Minneapolis, MN 55402.

25. At all times relevant to this case, Defendant marketed, produced, labeled, advertised, sold, distributed, and warranted the Contaminated Cereals under the General Mills brand throughout the United States and the State of New York. Defendant and/or its manufacturing facilities advertised in New York that boxes of *Cheerios* and *Honey Nut Cheerios* were “gluten-free” and did not contain wheat, even though they did.

CLASS ALLEGATIONS

26. Plaintiff brings this action pursuant to CPLR § 901 on behalf of herself and all similarly situated individuals who purchased the Contaminated Cereals and/or consumed the Contaminated Cereals, on the basis that they were advertised, marketed, and labeled as free of gluten and/or wheat, from July 2015 to present.

27. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or complaint.

28. Excluded from the class are Defendant, including any entity or division in which Defendant has a controlling interest, along with its legal representatives, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates the Judge to whom this case is assigned, the Judge’s staff, and

the Judge's immediate family; all governmental entities; and those persons who have suffered personal injuries as a result of the facts alleged herein.

29. This action is properly maintainable as a class action. As provided in CPLR § 901(a)(1), the proposed Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable. As provided in CPLR § 901(a)(2), there are questions of law or fact common to all Class Members that predominated over any questions affecting only individual members. Specifically, the common questions of fact and law include whether Defendant:

- a. Violated New York General Business Law §§ 349 and 350;
- b. Warranted to customers that purchased the Contaminated Cereals that those cereals did not contain gluten and wheat;
- c. Whether the Contaminated Cereals contained wheat and gluten;
- d. Whether Defendant breached its contract with customers that purchased the Contaminated Cereals;
- e. Whether Defendant's customers purchased the Contaminated Cereals in reliance on the Contaminated Cereals not containing wheat and gluten;
- f. Whether Defendant was grossly negligent in manufacturing the Contaminated Cereals such that they contained wheat and gluten;
- g. Whether Defendant was negligent in manufacturing the Contaminated Cereals such that they contained wheat and gluten;

- h. Whether Defendants were negligent and/or grossly negligent in allowing the Contaminated Cereals to shipped, and received and sold by retailers of the Contaminated Cereals,
- i. Whether Defendant unjustly enriched itself by receiving profits from the Contaminated Cereals.

30. As provided in CPLR § 901(a)(3), the proposed lead Plaintiff's claims, one or any one of them, are typical of those of the proposed Class because the proposed lead Plaintiff's claims are based upon the same facts and circumstances (practice or course of conduct) that gives rise to the claims of the other class members and based upon the same predominate legal theories.

31. As provided by CPLR § 901(a)(4), the representative Plaintiff can adequately and fairly represent the Class. No conflict of interest exists between the representative Plaintiff and the Class Members because Defendant's alleged conduct affected them similarly.

32. Moreover, pursuant to CPLR § 901(a)(4), the Plaintiff and her chosen attorneys are familiar with the subject matter of the lawsuit and have full knowledge of the allegations contained in his complaint so as to be able to assist in its prosecution. In addition, the Plaintiff's attorneys are competent in the areas of law relevant to this Complaint and have sufficient experience and resources to vigorously represent the Class Members and prosecute this action.

33. As provided by CPLR § 901(a)(5), a class action is superior to any other available method for adjudicating this controversy. The proposed Class is the surest was

to fairly and expeditiously compensate so large a number of injured persons that constitute the Class, (ii) to keep the courts from being inundated by hundreds or thousands of repetitive cases, and (iii) to reduce transactions costs so that the injured Class members can obtain the most compensation possible. Accordingly, class treatment presents a superior mechanism for fairly resolving similar issues and claims without repetitious wasteful litigation relevant to this action.

STATEMENT OF FACTS

34. General Mills sells its cereals and sold the Contaminated Cereals throughout the United States, including the State of New York.

35. Plaintiff and members of the Class have made at least one purchase of the Contaminated Cereals in the State of New York since July 2015.

36. Plaintiff purchased the Contaminated Cereals and upon consumption and/or General Mills statement to the same effect, discovered that the Contaminated Cereals contained gluten and wheat.

37. Plaintiff has discovered that at least two cereals, the Contaminated Cereals, contain gluten and wheat.

38. General Mills inaccurately labeled these cereals by labeling them as wheat and gluten free, when these cereals are not and were not gluten free.

39. Plaintiff and members of the Class purchased the Contaminated Cereals in reliance that they were gluten and wheat free.

CLAIMS FOR RELIEF

COUNT 1

VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

40. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 39 as if fully set forth herein, and further alleges:

41. This is an action to recover damages caused by General Mills' unfair and deceptive trade practices in violation of New York General Business Law § 349.

42. NY GBS Law § 349 declares as unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state."

43. Producing, marketing, advertising, selling, distributing, warranting, labeling or introducing Contaminated Cereals into interstate commerce constitutes "business, trade or commerce" within the meaning of NY GBS Law § 349.

44. Plaintiff and the Class members are "consumers" within the meaning of NY GBS Law § 349.

45. General Mills participated in misleading, false, or deceptive acts that violate GBL § 349 by falsely labeling and advertising the Contaminated Cereals as "gluten-free." General Mills intentionally led Plaintiff and members of the Class, who relied upon that misrepresentation, to believe that these products did not contain wheat and gluten when GM knew that they did contain these items as prohibited by GBL § 349.

46. In the course of its business, General Mills' Lodi Facility on certain dates in July 2015, added wheat into products that were advertised, labeled and warranted

as gluten-free and otherwise engaged in activities intended to and with a tendency to deceive.

47. General Mills was aware of this information and concealed this information from Plaintiff and members of the Class.

48. General Mills engaged in unfair and deceptive business practices in violation of § 349 by failing to disclose the wheat in certain of its allegedly gluten-free products.

49. As described above, General Mills made material statements about the content, ingredients, and health risks of the Contaminated Cereals that were either false or misleading.

50. General Mills owed Plaintiff and the Class a duty to disclose the true nutritional content, ingredients, and health risks of the Contaminated Cereals, since General Mills:

- a. Had exclusive knowledge that General Mills' Lodi Facility on certain dates in July 2015 allowed wheat into products that were labeled as "gluten-free";
- b. General Mills concealed this information from the Plaintiff and the Class; and/or
- c. Made misrepresentations about the nutritional content, ingredients, and health risks of the Contaminated Cereals, while withholding material facts from Plaintiff that directly belied those representations.

51. General Mills' concealment of the true nutritional content, ingredients, and health risks of the Contaminated Cereals were material to Plaintiff and the Class.

52. Plaintiff and the Class suffered ascertainable loss caused by General Mills' misrepresentations and its concealment of and failure to disclose material information.

53. General Mills had a continuing obligation to all General Mills' customers to refrain from unfair and deceptive acts under § 349. All purchasers and/or consumers of Contaminated Cereals suffered ascertainable loss in the form of economic damages as a result of General Mills' deceptive and unfair acts and practices made in the course of General Mills' business.

54. Pursuant to NY GBL § 349 Plaintiff and the Class make claims for direct damages, consequential damages, punitive damages, and attorney's fees and costs. The damages suffered by the Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of General Mills.

COUNT 2
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 350

55. Plaintiff incorporates by reference Paragraphs 1 through 55 as though fully set forth herein, and further alleges:

56. NY GBS Law § 350 declares as unlawful "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state."

57. Producing, marketing, advertising, selling, distributing, warranting, labeling or introducing Contaminated Cereals into interstate commerce constitutes “false advertising” within the meaning of NY GBS Law § 350.

58. General Mills’ conduct of producing, marketing, advertising, selling, distributing, warranting, labeling or introducing Contaminated Cereals into interstate commerce is “business, trade or commerce” within the meaning of NY GBS Law § 350 and General Mills directed these activities towards consumers.

59. General Mills engaged in false advertising that violated GBL § 350 because General Mills falsely produced, marketed, advertised, sold, distributed, warranted, and labeled the Contaminated Cereals as one, “gluten-free,” and two, as safe for consumers with wheat allergies, celiac disease, or gluten intolerance to consume, when in fact the Contaminated Cereals were neither.

60. Plaintiff and members of the putative Class purchased the Contaminated Cereals in reliance upon these misrepresentations.

61. General Mills knew that the complained-of conduct violated GBL § 350.

62. Plaintiff and the Class suffered ascertainable loss caused by General Mills’ false advertising.

63. General Mills has a continuing obligation to all General Mills’ customers to refrain from false advertising under § 350. All purchasers and/or consumers of Contaminated Cereals suffered ascertainable loss in the form of economic damages as a result of General Mills’ false advertising made in the course of General Mills’ business.

64. Pursuant to NY GBL § 350 Plaintiff and the Class make claims for direct damages, consequential damages, punitive damages, and attorney's fees and costs. The damages suffered by the Plaintiff and the Class were directly and proximately caused by General Mills' false advertising.

**COUNT 3
BREACH OF CONTRACT**

65. Plaintiff incorporates by reference Paragraphs 1 through 64 as though fully set forth herein, and further alleges:

66. Each and every purchase and sale of the Contaminated Cereals constitutes a valid contract between General Mills and the purchaser of its cereals.

67. Material to those contracts are General Mills' affirmative warrants and representations concerning the absence of wheat and gluten in the Contaminated Cereals.

68. General Mills breached these contracts by selling Plaintiff and the Class Contaminated Cereals, products that Plaintiff's would not have purchased if Plaintiff had known that those cereals contained wheat and gluten.

69. As a direct result of General Mills' breaches of these contracts, Plaintiff and the Class have been damaged in an amount to be proven at trial, for expectation damages, and other damages, including reliance, restitution, and consequential damages.

**COUNT 4
NEGLIGENCE AND/OR GROSS NEGLIGENCE**

70. Plaintiff incorporates by reference Paragraphs 1 through 69 as though fully set forth herein, and further alleges:

71. General Mills owed a duty to Plaintiff and the Class to insure that the contents of its products are as labeled, warranted, and marketed.

72. General Mills breached this duty by selling the Contaminated Cereals, because the Contaminated Cereals were not as labeled, warranted, or marketed.

73. General Mills breach of this duty was the proximate cause of Plaintiff's and the Class members' damages because these persons purchased the Contaminated Cereals based upon General Mills false representations concerning their content.

74. Based on its breach, Plaintiff and members of the Class have suffered damages in an amount to proven at trial.

COUNT 5
UNJUST ENRICHMENT & DISGORGEMENT OF PROFITS

75. Plaintiff incorporates by reference Paragraphs 1 through 74 as though fully set forth herein.

76. Defendant was aware of the illicit conduct described herein.

77. Through Defendant's illicit conduct, Defendant has unjustly enriched itself. As a result of General Mills' unlawful and deceptive acts described herein, General Mills was enriched at the expense of and to the detriment of Plaintiff and the Class.

78. Given the circumstances, it would contravene principles of equity to permit General Mills to retain the ill-gotten benefits it received from Plaintiff and Class members. Accordingly, it would be unjust and inequitable for General Mills to retain the

benefit without restitution to Plaintiff and the Class for the monies paid to General Mills for the Contaminated Cereals.

79. Therefore, Defendant is required to disgorge profits that flowed to Defendant as a direct result of their unlawful conduct.

COUNT 6 FRAUDULENT INDUCEMENT

80. Plaintiff incorporates by reference Paragraphs 1 through 79 as though fully set forth herein, and further alleges:

81. At all relevant times, Defendant knew that the Contaminated Cereals contained wheat and that the Contaminated Cereals were not “gluten-free.”

82. Plaintiff and members of the Class purchased the Contaminated Cereals based upon this misrepresentation.

83. Defendant intended to and did deceive Plaintiff and members of the Class in this regard solely in order to induce Plaintiff and members of the Class to act upon its misrepresentations, resulting in injury to Plaintiff and members of the Class, and resulting in gain to General Mills.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf and on behalf of the Class, request relief as follows:

1. An award of damages in an amount to be determined at trial;

2. A declarations of the Court that this action is properly maintainable as a class action, and certifying Plaintiff as representatives of the Class pursuant to CPLR § 901;
3. A cease-and-desist order against Defendant prohibiting Defendant for its continuous unlawful conduct;
4. A notice to the Class of this action and relief resulting therefrom;
5. Costs and disbursements incurred by Plaintiff and the Class in connection with this action, including reasonable attorneys' fees; and
6. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: October 13, 2015

NAPOLI SHKOLNIK PLLC

/s/ Marie Napoli

Marie Napoli
1301 Avenue of the Americas, 10th Floor
New York, New York 10019
(212) 397-1000
mnapoli@napolilaw.com

*Attorneys for Plaintiff and the
putative Class*

NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 10/21/2015

SUPREME COURT
 COUNTY OF SUFFOLK, STATE OF NEW YORK

Darlene Longo, individually, and on behalf of all others similarly situated
Plaintiff

-against-

General Mills, Inc.

Defendant

AFFIDAVIT OF SERVICE

INDEX # 610861/2015

DATE FILED 10/13/2015

State of Minnesota, County of Hennepin ss:

Jeremy Fuchs, being sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides in Minneapolis, MN. On 10/16/2015, at 2:25 PM at 100 S 5th Street, Suite 1075 Minneapolis, MN 55402 deponent served the within Summons & Complaint on General Mills, Inc. the defendant/respondent therein named.

1. Individual ☐ By delivering a true copy of each to said defendant/respondent personally; deponent knew the person so served to be the person described as the defendant/respondent therein.

2. Corporation ☒ A _____, delivering thereat a true copy of each to Cathy Prescher personally, deponent knew said corporation so serviced to the corporation, described in same as said defendant/respondent and knew said individual to be Agent thereof.

3. Suitable Age Person ☐ By delivery a true copy to _____ a person of suitable age and discretion. Said premises is the defendant's/respondent's ☐ actual place of business ☐ dwelling house/usual place of above within the state.

4. Affixing to Door ☐ By affixing a true copy of each to the door said premises which is the defendant's/respondent's ☐ actual place of business ☐ dwelling house/usual place of above within the state.

5. Mailing a copy ☐ On _____ deponent completed service under the last two sections by depositing a copy of the _____ to the above address in a First Class postpaid properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of _____.

Deponent was unable, with due diligence to find the defendant/respondent or a person of suitable age and discretion, having called thereat on the following dates and times:

6. Non Service ☐ After due search, careful inquiry and diligent attempts, I have been unable to effect process upon the defendant/respondent being served because of the following:

- ☐ party unknown at address ☐ No one ever in or available to accept service
☐ Evading ☐ Other (see attached)
☐ Moved left no forwarding
☐ Address does not exist

7. Description ☒ A description of the defendant/respondent, or other person served, or spoken to on behalf of the

Sex	Skin Color	Hair Color	Age	Height	Weight
Female	White	Brown	40	5'10"	180

8. Wit. Fees ☐ \$_____ the authorizing traveling expenses and one day's witness fee was paid (tendered) to the witness/recipient.

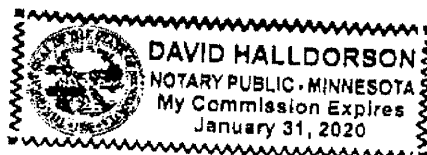
9. Military Service ☐ Deponent asked person spoken to whether the defendant/respondent was was in the military service of the United States Government or on active duty in the military service in the State of MN and was informed defendant/respondent was not.

Sworn to before me on this the 19th day of October, 2015.

Server signature: _____

Job # 315895

Notary Public: _____



JS 44 (Rev. 1/2013)

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

Darlene Longo

DEFENDANTS

General Mills, Inc.

(b) County of Residence of First Listed Plaintiff Suffolk County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Hennepin Co., MN

(IN U.S. PLAINTIFF CASES ONLY)

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

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

Napoli Shkolnik PLLC

1301 Avenue of the Americas, 10th Floor New York, New York 10019
(212) 397-1000

Attorneys (If Known)

Perkins Coie LLP

30 Rockefeller Plaza, 22nd Floor New York, New York 10112
(212) 262-6900**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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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 (specify)
- ☐ 6 Multidistrict Litigation

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

Brief description of cause:

Plaintiff alleges injury from General Mills allegedly falsely labeling and advertising cereal as wheat and gluten-free.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/13/2015

SIGNATURE OF ATTORNEY OF RECORD

Manny J. Chaisiro J.H.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Manny J. Caixeiro, counsel for General Mills, Inc., do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☒ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Counsel for Defendant General Mills, Inc. certifies that General Mills, Inc. has no corporate parent. No publicly held company owns more than 10% of the stock of General Mills, Inc.

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? _____
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? _____

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.



Yes



No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?



Yes

(If yes, please explain)



No

I certify the accuracy of all information provided above.

Signature: Manny J. Caixeiro J-H