

## **SETTLEMENT AGREEMENT**

THIS CLASS ACTION SETTLEMENT AGREEMENT (“Agreement”) is made and entered into by and between Plaintiffs Crystal Hilsley, Nikki Cook, Adrienne Morris, and David Christensen on behalf of themselves and the proposed class in the action described below (“Plaintiffs”), *Hilsley v. General Mills, Inc.*, No. 3:18-cv-00395-L-BLM (the “Litigation” or the “Action”), and Defendants General Mills, Inc. and General Mills Sales, Inc. (General Mills and Plaintiffs are referred to collectively as the “Parties”) to settle and compromise the Action, and settle, resolve, and discharge the Released Claims, as defined below, according to the terms and conditions herein.

### **1. RECITALS**

1.1 WHEREAS, on or about December 5, 2017, Plaintiff Crystal Hilsley filed a putative class action complaint in the Superior Court of California, San Diego County, Case No. 37-2017-00046914 against General Mills alleging that General Mills engaged in false and misleading labeling and advertising of certain Fruit Flavored Snacks products. The Complaint included claims for violations of California’s Consumer Legal Remedies Act, (Civ. Code § 1750, *et seq.* [“CLRA”]), violations of California’s Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.* [“UCL”]) (*unlawful prong*), violations of California’s Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.* [“UCL”]) (*unfair prong*), violations of California’s False Advertising Law (Bus. & Prof. Code § 17500, *et seq.* [“FAL”]), (No Dkt. No. 1-2).

1.2 WHEREAS, on or about February 21, 2018, Defendants filed a Notice of Removal of the Litigation to the United States District Court for the Southern District of California, Case No. 3:18-cv-00395-L-BLM (*Hilsley v. General Mills, Inc., et al.*, No. 18-cv-00395, ECF 1 (S.D. Cal.)).

1.3 WHEREAS, on or about October 4, 2018, Plaintiff Adrienne Morris filed a Class Action Complaint against Mott’s LLP in the Central District of California captioned *Adrienne Morris v. Motts LLP*, No. 8:18-cv-01799-AG-ADS (“Federal Morris Litigation”). The complaint alleged that defendant engaged in false and misleading labeling and advertising of certain Fruit Flavored Snacks products. Ms. Morris later amended her complaint to add Nikki Cook as a plaintiff and General Mills, Inc., as a defendant. Ms. Cook and Ms. Morris are represented by the same plaintiffs’ counsel as Ms. Hilsley. The operative complaint in the Federal Morris Litigation includes claims for fraud by omission (Cal. Civ. Code §§ 1709–1710), negligent misrepresentation (Cal. Civ. Code §§ 1709–1710), violations of California’s Consumer Legal Remedies Act (Cal. Civ. Code § 1750), violations of California’s Unfair Competition Law (*unlawful prong*) (Cal. Bus. & Prof. Code § 17200), violations of California’s Unfair Competition Law (*unfair prong*) (Cal. Bus. & Prof. Code § 17200), violation of California’s False Advertising Law (Cal. Bus. & Prof. Code § 17500), and breach of express and implied warranties. No. 8:18-cv-01799-AG-ADS, ECF 47.

1.4 WHEREAS, on or about February 26, 2019, the Court in the Federal Morris Litigation granted-in-part and denied-in-part General Mills’ motion to dismiss.

1.5 WHEREAS, on or about March 26, 2019, the Court in the Action granted-in-part

General Mills' Motion to Dismiss.

1.6 WHEREAS, Plaintiffs intend to file an Amended Class Action Complaint ("Complaint") in the Action. The Complaint will add Adrienne Morris, Nikki Cook and David Christensen as Plaintiffs to the Action. It will allege General Mills engaged in false and misleading labeling and advertising of certain products, listed in Exhibit A to the Complaint and Exhibit 1 hereto. The Complaint includes claims for violations of California's Consumer Legal Remedies Act (Cal. Civ. Code § 1750), violations of California's Unfair Competition Law (*unlawful prong*) (Cal. Bus. & Prof. Code § 17200), violations of California's Unfair Competition Law (*unfair prong*) (Cal. Bus. & Prof. Code § 17200), violation of California's False Advertising Law (Cal. Bus. & Prof. Code § 17500), violation of the Minnesota Deceptive Trade Practices Act (M.S.A. § 325D.44), violation of the Minnesota False Statement in Advertising Act (M.S.A. § 325F.69), breach of express and implied warranties, and unjust enrichment.

1.7 WHEREAS, Plaintiffs' Counsel will file a notice of voluntary dismissal without prejudice in the Federal Morris Litigation within two (2) days of the filing date of the Amended Class Action Complaint in this Action.

1.8 WHEREAS, this Agreement is the product of extensive, arms-length, and vigorously contested settlement negotiations, formal discovery, and voluntary exchange of information relevant to the negotiation. The Parties have engaged in extensive, good-faith negotiations in an effort to reach an amicable resolution of the claims in the Action and the Federal Morris Litigation. Those efforts included an all-day, in-person mediation conducted by Jill R. Sperber, Esq. (Judicate West) on October 22, 2019, where the Parties agreed to the principal terms of a class action settlement. Those efforts also included repeated back-and-forth in the ensuing months to finalize the terms of the Agreement and resolve remaining conflicts between the Parties. Finally, the efforts included a second all-day mediation with Jill R. Sperber, Esq. on March 9, 2020 where the Parties finalized the terms of the settlement.

1.9 WHEREAS, General Mills maintains that the labels of the Products are truthful and accurate. General Mills maintains that it does not add artificial flavors to products that are labeled "No Artificial Flavors," "Naturally Flavored," or with similar designations of natural flavor; it flavors those products with flavors that are certified "natural." General Mills maintains that ingredients at issue in the Litigation, including malic acid, do not function as flavors in the Products. General Mills believes it can prove as much at summary judgment or trial. General Mills' experts have confirmed that the ingredients at issue do not function as a flavor. General Mills' willingness to resolve the Litigation on the terms and conditions embodied in this Agreement is based on, *inter alia*: (i) the time and expense associated with litigating the Litigation through trial and any appeals; (ii) the benefits of resolving the Litigation, including limiting further expense, inconvenience, and distraction, disposing of burdensome litigation, and permitting General Mills to conduct its business unhampered by the distractions of continued litigation; and (iii) the uncertainty and risk inherent in any litigation, regardless of legal merit.

1.10 WHEREAS, before entering into this Agreement, Class Counsel conducted an extensive and thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the claims, potential claims, and potential defenses asserted in this Action. As part of that investigation, Class Counsel obtained extensive information and

documents from General Mills through discovery, including information concerning marketing, label design, product formulation, and sales information for the Products. In total, General Mills turned over nearly 3,000 documents in the Action and the Federal Morris Litigation combined.

1.11 WHEREAS, Class Counsel's examination included, but was not limited to, review of several expert reports prepared by General Mills' experts for purposes of litigation. This assisted Class Counsel to evaluate the relative merits of Plaintiffs' claims against the benefits conferred in this Agreement.

1.12 WHEREAS, Plaintiffs, as proposed Class representatives, believe the claims settled herein have merit. Plaintiffs and their counsel recognize, however, the litigation risk involved, including the expense and length of continued proceedings necessary to prosecute the claims through trial and appeal, and have taken into account those factors, as well as litigation's inherent difficulties and delays. They believe the settlement set forth in this Agreement confers substantial benefits upon the Class Members. They have evaluated the settlement set forth in this Agreement and have determined it is fair, reasonable and adequate to resolve their grievances, and in the best interest of the Class.

1.13 WHEREAS, the Litigation has not been certified as a class action. Subject to the approval of the Court, the Parties agree that a class may be conditionally certified for purposes of settlement only. General Mills agrees to class-action treatment of the claims alleged in this Litigation solely for the purpose of compromising and settling those claims on a class basis as set forth herein. In the event the Court deems this case inappropriate for class action treatment or otherwise rejects this Agreement, the Parties agree to continue further good-faith settlement negotiations.

1.14 WHEREAS, based upon the discovery taken to date, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties have agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Agreement.

NOW THEREFORE, subject to the final approval of the Court as required herein and by applicable law and rules, the Parties hereby agree, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, that any Released Claims against any Released Parties shall be settled, compromised and forever released upon the following terms and conditions.

## **2. DEFINITIONS**

In addition to the terms defined above, the following terms have the meanings set forth below.

2.1 "Challenged Claims" means the statements "No Artificial Flavors," "Naturally Flavored," "All Natural Flavors" or similar designations of natural flavor appearing on the packaging of the Products or used in any way in connection with the sale or marketing of the Products.

2.2 "Challenged Ingredients" means the synthetic, racemic, or industrial versions of

malic acid or other acidulants or identified flavoring or other ingredients as specified in formulations of the Products (as defined below) during the Class Period.

2.3 “Class” means all residents of the United States of America who, during the Class Period as defined herein, purchased any of the General Mills Products as defined in Exhibit 1 hereto for personal and household use and not for resale. The Class Definition excludes: (1) Defendants and Defendants’ officers directors, employees, agents, and affiliates; (2) counsel for any of the parties; (3) the Court and its staff; and (4) all persons who properly execute and filed a timely request for exclusion.

2.4 “Class Counsel” means Plaintiffs’ counsel of record in the Litigation, the Law Offices of Ronald A. Marron, APLC and The Elliot Firm.

2.5 “Class Member” means a Person (defined below) who falls within the definition of the Class set forth in Section 2.3.

2.6 “Class Period” means January 1, 2012 through the date of class certification, as designated by the Court in its Preliminary Approval Order.

2.7 “Class Representative(s)” means named Plaintiffs Crystal Hilsley, Adrienne Morris Nikki Cook, and David Christensen.

2.8 “Compliance Date” means the date within four (4) years of the date of Final Approval (defined below) by which General Mills must have completed the packaging change described in Section 5.2.b of the Agreement.

2.9 “Court” means the United States District Court for the Southern District of California.

2.10 “Defendants” means General Mills, Inc., General Mills Sales, Inc., and all parties named as defendants in the Litigation or Federal Morris Litigation.

2.11 “Defense Counsel” means Defendants’ counsel of record in the Litigation, Perkins Coie LLP.

2.12 “Effective Date” means the first date by which any Judgment entered pursuant to the Agreement becomes Final (defined below), except as specifically provided in Sections 1.10 and 9.2 of this Agreement.

2.13 “Exclusion Deadline” means the date that is the end of the period to request exclusion from the Settlement, as established by the Court in the Preliminary Approval and set forth in the Notice.

2.14 “Final” means (a) if no appeal from the Judgment is filed, the date of expiration of the time for the filing or noticing of any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for review is filed and denied, the date the petition is denied; or (d) if a petition for review is filed and granted, the date of final affirmance or final



dismissal of the review proceeding initiated by the petition review. Any proceeding or order, or any appeal or petition for review pertaining solely to any application for attorneys' fees or expenses will not in any way delay or preclude the Judgment from becoming Final, and the Parties' obligations as set forth in Section 10.2 are not dependent on the Judgment becoming Final.

2.15 "Final Approval" means issuance of an order granting final approval of this Agreement as binding upon the Parties; holding this Agreement to be final, fair, reasonable, adequate, and binding on all Class Members who have not excluded themselves as provided below; ordering that the settlement relief be provided as set forth in this Agreement; ordering the releases as set forth in Section 7, below; and entering judgment in this case.

2.16 "General Mills" means Defendants General Mills, Inc. and General Mills Sales, Inc., and all related entities.

2.17 "Judgment" means the judgment to be entered by the Court pursuant to the Settlement.

2.18 "Long Form Notice" means a document to be disseminated in accordance with the Preliminary Approval order, informing Persons who fall within the Class definition of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement and their options with respect thereto.

2.19 "Notice Administrator" means the company designated by the Defendants and approved by the Court to provide notice to the Class.

2.20 "Notice Date" means the day on which the Notice Administrator initiates the Online Notice.

2.21 "Notice Plan" means the method of providing the Class with notice of the Settlement, as approved by the Court.

2.22 "Objection Deadline" means the date that is the end of the period to object to the Settlement, as established by the Court in the Preliminary Approval and set forth in the Notice.

2.23 "Online Notice" means notice to Settlement Class Members (defined below) via the Internet.

2.24 "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual's or entity's parents, subsidiaries, spouse, heirs, predecessors, successors, representatives, and assignees.

2.25 "Preliminary Approval" means issuance of an order, granting preliminary approval to this Settlement as within the range of possible Final Approval; approving Class Notice to the Class Members as described in Section 6 below; and setting a hearing to consider Final Approval of the settlement and any objections thereto.

2.26 “Print Publication Notice” means notice to Settlement Class Members (defined below) via a publication, should publication notice be deemed necessary by the Notice Administrator and approved by the Court.

2.27 “Products” means the products listed in Exhibit 1 hereto (and Exhibit A to the Complaint) and all substantially similar fruit flavored snacks products, including but not limited to varying sizes, seasonal iterations, licensed characters, or other similar variations of such products.

2.28 “Released Claims” means all rights, actions, causes of action, suits, debts, dues, sums of money, accounts, liabilities, losses, obligations, fees, costs, reckonings, bonds, bills, specialties, controversies, agreements, contracts, variances, trespasses, damages, judgments, extensions, executions, claims, and demands whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, that have been or could have been asserted, by or on behalf of Plaintiffs or the Class Members, including, without limitation, any claims, whether individual, class, direct, derivative, representative, legal, equitable, or in any other capacity, in any court, tribunal, or proceeding, arising under federal statutory or common law, state statutory or common law, local statutory or common law, or any law, rule or regulation, including the law of any jurisdiction outside the United States, that relate to any labeling or other claim that was, or could have been, alleged in the Action to be false, misleading, or non-compliant with federal or state laws or regulations concerning the presence or absence of malic acid or other acidulants or flavoring or other ingredients as specified in formulations of the Products (as defined above) during the Class Period, and the function, characterization, or nature of malic acid or other acidulants or identified flavoring ingredients as currently specified in the Products, that relate to the Challenged Claims, the Challenged Ingredients, or other claims arising out of allegations of false or misleading advertising of the Products involving a common factual predicate that is asserted in the Litigation. This release expressly does not extend to personal injury claims regarding the Products.

2.29 “Released Persons” means Defendant General Mills, Inc. and each, any and all of its respective past, present, and future heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, affiliates, divisions, joint ventures, entities in which General Mills has a controlling interest, holding companies, employees, agents, consultants, marketing partners, resellers, lead generators, telemarketers, independent contractors, insurers, reinsurers, directors, officers, partners, principals, attorneys, accountants, financial advisors, investors, investment bankers, underwriters, shareholders, auditors, legal representatives; and each and all of the past, present, and future parents, subsidiaries, affiliates, officers, directors, principals, representatives, employees, agents, shareholders, attorneys, successors, executors, and assigns of any of the foregoing entities, any licensors of the Products, and including specifically all defendants named in the Litigation or the Federal Morris Litigation.

2.30 “Settlement” means the settlement agreement memorialized in this Agreement and all attachments hereto.

2.31 “Settlement Website” means an internet website created and maintained by the Notice Administrator, the URL of which shall be specified in the Notice Plan

2.32 “Settling Parties” means, collectively, General Mills the Plaintiffs, and all Class Members.

2.33 “Summary Notice” means a document to be disseminated in accordance with the Preliminary Approval Order, informing Persons who fall within the Class definition of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement and their options with respect thereto.

2.34 The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

### **3. DENIAL OF WRONGDOING**

Defendants deny the material factual allegations and legal claims asserted by the Plaintiffs in the Litigation, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Similarly, this Agreement provides for no admission of wrongdoing or liability by Defendants, their past, present and future officers, directors, employees, shareholders, subsidiaries, parents, affiliates, accountants, advisers, agents, contractors, legal counsel, successors, heirs, and assigns. This Agreement is entered solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

### **4. BENEFITS OF SETTLEMENT**

Class Counsel and the Plaintiffs recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation through trial and appeals. Class Counsel also has taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel is mindful of the inherent problems of proof of liability or class damages under the claims and possible defenses to the claims asserted in the Litigation. Class Counsel believes that the proposed Agreement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, the Class Representatives and Class Counsel have determined that the Agreement is in the best interests of the Plaintiffs and the Class.

### **5. SETTLEMENT CONSIDERATION**

5.1 General Mills will be ordered and enjoined to either remove the Challenged Claims or the Challenged Ingredients from the Products or provide consumers additional information about any Products bearing the Challenged Claims and which contain the Challenged Ingredients as follows:

5.2 For all packaging that continues to bear the Challenged Claims and contain the Challenged Ingredients, General Mills shall provide injunctive relief as follows:

5.2.a **Website Modification:** Modification to the General Mills website that discloses in substance the following points: (1) that General Mills specifies that flavors in the Products bearing the Challenged Claims come from all natural sources; (2) that General Mills identifies “natural flavors” in the ingredient list in accordance with FDA regulations;

and (3) that General Mills states that the Products may also contain synthetic malic acid or other acidulants. Malic acid is intended for use not as a flavor or to impart the characterizing flavor of these Products, but is a substance the FDA approves for multiple uses including a flavor enhancer, a flavoring agent or adjuvant, or as a pH control agent. 21 C.F.R. § 184.1069.

5.2.b **Packaging Change:** Packaging for Products bearing the Challenged Claim shall display an asterisk or similar reference immediately following or adjacent to the “No Artificial Flavors” claim that directs the consumer to the statement “\*Learn More at [the URL or webpage of the General Mills website (appearing elsewhere on the packaging) containing the disclosure above].” The URL or webpage will refer the consumer to the webpage ask.GeneralMills.com. For four (4) years from the Compliance Date, the language in 5.2.a above shall appear on ask.GeneralMills.com, and for two (2) years from the date of the Final Approval, the language in 5.2.a above shall appear in the first two rows of “tiles” on the webpage, or with similar prominence should the format of the webpage change. For the General Mills webpage, consumers will be able to click an appropriate “tile” to reference the information in 5.2.a.

5.3 **Implementation.** General Mills shall implement the injunctive relief described in Section 5.2 as follows:

5.3.a General Mills shall implement the injunctive relief described in Section 5.2.a. (Website Modification) within six months of Final Approval.

5.3.b General Mills shall implement the injunctive relief described in Section 5.2.b (Packaging Change) beginning as soon as reasonably practicable and shall have changed all packaging within four (4) years of Final Approval. To allow for supply chain issues, General Mills will not be in violation of the injunction for the distribution or sale of any Products with packaging produced before the four-year period but sold after that period.

5.3.c General Mills shall comply with the injunctive relief provisions for a period of four (4) years from the Compliance Date, except that for two (2) years from Final Approval, the language in Section 5.2.a. shall appear in the first two rows of “tiles” on ask.GeneralMills.com, or with similar prominence should the format of the webpage change.

## 6. **NOTICE**

6.1 Prior to the Notice Date, the Notice Administrator shall establish the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format with a clickable table of contents; answers to frequently asked questions; a contact information page that includes the address for the Notice Administrator and addresses and telephone numbers for Class Counsel and Defendant’s Counsel; the Agreement; the signed order of Preliminary Approval; a downloadable and online version of the form by which Class Members may exclude themselves from the Class; and (when they become available) the motion for final approval and Plaintiff’s application(s) for Attorneys’ Fees, Costs and an Incentive Award.

6.2 The Settlement Website shall remain accessible ten (10) days after the Objection Deadline.

6.3 Should the Notice Administrator and/or the Court deem publication notice necessary, a black and white version of the Print Publication Notice will be published in a periodical selected by the Notice Administrator and approved by the Court.

6.4 As necessary, additional online notice shall be provided on websites and/or social media platforms chosen by the Notice Administrator and accessible to desktop and mobile users, so that overall notice of the Settlement (including the Online Notice and Print Publication Notice) is reasonably calculated to apprise the Class of the Settlement. Such notice shall begin no later than thirty (30) days after Preliminary Approval. No later than seven (7) days prior to the hearing on Final Approval, the Notice Administrator shall submit a declaration to the Court under penalty of perjury explaining how the media were chosen and attesting to the number of impressions delivered and the number of click throughs and unique visits to the Settlement Website and further attesting that the means and frequency of notice selected under this paragraph, when combined with notice under the other paragraphs of this Section 6, were sufficient to meet the requirements of the United States Constitution and Federal Rule of Civil Procedure 23.

6.5 The Notice Administrator shall establish and maintain an email address where the Class may obtain information about the Litigation.

6.6 The Parties shall supervise the Notice Administrator in the performance of the notice functions set forth in this Section 6.

6.7 At least seven (7) days prior to the Final Approval hearing referenced in Section 9 of this Agreement, the Notice Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

6.8 The Parties agree that the Notice Administrator shall serve notice of the Settlement Agreement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than ten (10) days after the filing of this Settlement Agreement with the Court.

6.9 The Notice Administrator will file a certification with the Court stating the date or dates on which the CAFA notice was sent. Defendant will provide Class Counsel with any substantive responses received in response to any CAFA notice.

6.10 General Mills shall be responsible for paying all costs of notice as set forth in this Section 6 and all costs of the Notice Administrator in processing objections and exclusion requests as set forth in Sections 9.5 through 9.6.

## **7. RELEASES**

7.1 Upon the Effective Date, Plaintiffs and the Class fully and forever release the Released Persons, including, General Mills, its parent, affiliated entities, and subsidiaries and each and all of its respective present or former directors, officers, consultants, affiliated entities or corporations, subsidiaries, divisions, franchisees, partners, joint venturers, agents, shareholders,



investors, creditors, insurers, attorneys, employees, representatives, successors, licensees, customers, and assigns, any licensors of the Products, and including specifically all defendants named in the Hilsley Federal Action or the Morris Federal Action from the Released Claims, including all rights, actions, causes of action, suits, debts, dues, sums of money, accounts, liabilities, losses, obligations, fees, costs, reckonings, bonds, bills, specialties, controversies, agreements, contracts, variances, trespasses, damages, judgments, extensions, executions, claims, and demands whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, that have been or could have been asserted, by or on behalf of Plaintiffs or the Class Members, including, without limitation, any claims, whether individual, class, direct, derivative, representative, legal, equitable, or in any other capacity, in any court, tribunal, or proceeding, arising under federal statutory or common law, state statutory or common law, local statutory or common law, or any law, rule or regulation, including the law of any jurisdiction outside the United States, that relate to any labeling or other claim that was, or could have been, alleged in the Action to be false, misleading, or non-compliant with federal or state laws or regulations concerning the presence or absence of malic acid or other acidulants or identified flavoring or other ingredients as specified in formulations of the Products during the Class period, and the function, characterization, or nature of such ingredients that relate to the Challenged Claims, Challenged Ingredients, or other claims arising out of allegations of false or misleading advertising of the Products involving a common factual predicate that is asserted in the Litigation. This release expressly does not extend to personal injury claims regarding the Products.

## **8. CLASS CERTIFICATION**

8.1. The Parties agree that, for settlement purposes only, this Litigation shall be certified as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) or 23(b)(3), or both, with Plaintiffs as the Class representatives and Plaintiffs' counsel as Class Counsel.

8.2 In the event the Agreement is terminated or for any reason the Agreement and/or settlement described therein is not effectuated, the certification of the Class shall be vacated, and litigation shall proceed as if the Class had not been certified. General Mills' conditional consent herein to certification of the Class shall not be used against General Mills by any Party or non-party for any purpose in this Litigation or any other litigation, lawsuit, or proceeding of any kind whatsoever.

## **9. CLASS SETTLEMENT PROCEDURES**

9.1 Plaintiffs shall file an application for preliminary approval of the Settlement by no later than September 4, 2020 pursuant to the Court's Order dated July 13, 2020.

9.2 For purposes of this Settlement, General Mills shall not oppose Plaintiffs' assertion, in papers filed in furtherance of this Agreement, that the Class satisfies each of the elements required under Federal Rule of Civil Procedure 23(a) and 23(b)(2) and/or 23(b)(3): that the class is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims or defenses of the representative parties are typical of the claims or defenses of the class; the representative parties will fairly and adequately protect the interests of the class; and that the party opposing the class has acted or refused to act on grounds that apply

generally to the class and/or questions of law or fact common to the class predominate over any questions affecting only individual members; and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

**9.3 Preliminary Approval.** As soon as practicable after the signing of this Agreement, the Parties shall move for settlement approval as follows:

9.3.a Promptly after execution of this Agreement, the Parties will submit the Agreement together with its exhibits to the Court and will request that the Court grant preliminary approval of the Settlement, as of the date of which the Settlement shall be deemed “filed” within the meaning of 28 U.S.C. § 1715; issue the Preliminary Approval Order; and schedule a hearing on whether the Settlement should be granted final approval and whether Class Counsel’s application for fee award and expenses, and for an incentive award to the Representative Plaintiff should be granted (“Final Approval Hearing”). The Parties shall request the Court schedule the Plaintiffs’ application for attorneys’ fees and incentive award to Named Plaintiffs to be filed no later than fourteen (14) calendar days prior to the Objection Deadline, or earlier, if the Court deems it necessary.

9.3.b General Mills shall cooperate in good faith in Plaintiffs’ preparation of the motion for preliminary approval of the Settlement, including by providing Class Counsel with information that is reasonably available about Product sales, product packaging and promotional materials as reasonably necessary to obtain preliminary and Final Approval of the Settlement.

9.3.c General Mills may file a supplement or addendum to the motion for Preliminary Approval that introduces evidence, including expert reports, as to the value of Plaintiffs’ claims.

**9.4 Final Approval Order and Judgment.** Prior to the hearing on Final Approval, Plaintiffs shall file a motion for Final Approval of class action settlement asking the Court to grant Final Approval of this Settlement; hold this Agreement to be final, fair, reasonable, adequate, and binding on all Class Members who have not excluded themselves as provided below; ordering that the Settlement relief be provided as set forth in this Agreement; ordering the releases as set forth in Section 7; and entering judgment in this case. General Mills may, but is under no obligation to, make separate filings in support of the motion. General Mills shall appear at the hearing to confirm its agreement with the terms of the Settlement as provided herein.

**9.5** The Notice shall advise prospective Class Members of their rights to forego the benefits of this Settlement and pursue an individual claim; to object to this Settlement individually or through counsel; and, if they object, to appear at the Final Approval hearing.

**9.6 Objections.** If any Class Member wishes to object to the Settlement, the Class Member must submit a written objection to the Notice Administrator. The written objection may be submitted by mail, express mail, electronic transmission, or personal delivery, but to be timely, it must be delivered to the Notice Administrator (not just postmarked or sent) prior the Objection Deadline.

9.6.a Each objection must include: (i) the case name and number: *Hilsley v.*

*General Mills, Inc.*, No. 3:18-cv-00395-L-BLM; (ii) the name, address and telephone number of the objector; (iii) the name, address, and telephone number of all counsel (if any) who represent the objector, including any former or current counsel who may be entitled to compensation for any reason if the objection is successful, and legal and factual support for the right to such compensation; (iv) documents or testimony sufficient to establish membership in the Settlement Class; (v) a detailed statement of any objection asserted, including the grounds therefor; (vi) whether the objector is, and any reasons for, requesting the opportunity to appear and be heard at the final approval hearing; (vii) the identity of all counsel (if any) representing the objector who will appear at the final approval hearing and, if applicable, a list of all persons who will be called to testify in support of the objection; (viii) copies of any papers, briefs, or other documents upon which the objection is based; (ix) a detailed list of any other objections submitted by the Class Member, or his/her counsel, to any class litigations submitted in any state or federal court in the United States in the previous five years (or affirmatively stating that no such prior objection has been made); and (x) the objector's signature, in addition to the signature of the objector's attorney (if any). Failure to include documents or testimony sufficient to establish membership in the Settlement Class shall be grounds for overruling and/or striking the objection on grounds that the objector lacks standing to make the objection. Failure to include any of the information or documentation set forth in this paragraph also shall be grounds for overruling an objection.

9.6.b Immediately upon receipt of any objection, the Notice Administrator shall forward the objection and all supporting documentation to counsel for the Parties. Prior to the hearing on Final Approval, Class Counsel shall file all such objections and supporting documentation with the Court.

9.6.c Class Counsel are primarily responsible for responding to any objectors. General Mills shall have the right, but not the obligation, to respond to any objection. General Mills shall cooperate in all oppositions to any objectors. If they so choose, Class Counsel and/or General Mills may respond to objectors by filing opposition on such date as set forth in the Preliminary Approval order, or any subsequent Court order(s) modifying the briefing schedule for the Final Approval hearing. The Party responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, in the Party's discretion, to the objector (or counsel for the objector), Class Counsel and Defense Counsel.

9.7 **Exclusions.** If any Class Member wishes to be excluded from (in other words, opt out of) this Settlement, the Class Member may do so by completing the exclusion form at the Settlement Website; downloading and submitting to the Notice Administrator a completed exclusion form; or submitting a valid request to exclude themselves, as described in the Notice, to the Notice Administrator. Requests to exclude themselves must be delivered (not just postmarked) by the Exclusion Deadline or they shall not be valid. A Class Member who elects to exclude themselves from this Settlement shall not be permitted to object to this Settlement or to intervene.

9.7.a At least fourteen (14) days prior to the hearing on Final Approval, the Claim Administrator shall prepare a list of the names of the Persons who, pursuant to the Long Form Notice, have excluded themselves from the Class in a valid and timely manner, and

Class Counsel shall file that list with the Court.

9.8 The proposed Preliminary Approval order and Long Form Notice will provide that any Class Member wishing to object or exclude themselves who fails to properly or timely file or serve any of the requested information and/or documents will be precluded from doing so.

9.9 **Effect if Settlement Not Approved or Agreement is Terminated.** This Agreement was entered into only for purposes of settlement. In the event that Preliminary or Final Approval of this Settlement and this Agreement does not occur for any reason, or if Final Approval is reversed on appeal, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Litigation, or in any other proceeding, and the Litigation shall continue as if the Settlement had not occurred. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to this Agreement, and the Parties' settlement discussions, shall be treated as strictly confidential and may not, absent a court order, be disclosed to any Person other than the Parties' counsel, and only for purposes of the Litigation.

#### **10. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARD**

10.1 Plaintiffs will petition the Court for attorneys' fees and costs in the total amount of \$725,000, and a Class Representative incentive award in the amount of \$5,000 each to Plaintiffs Hilsley, Cook, Morris, and Christensen. General Mills shall not object or oppose any such petition, including by contesting any fees, expenses, or incentive award requested, to the extent the petition does not request more than the amounts set forth above. Costs shall be deducted from the \$725,000 award as specified in Section 10.4.

10.2 Upon appropriate Court order so providing, all attorneys' fees and costs awarded to Class Counsel, and the incentive award to the Class Representatives, as set forth in Section 10.1 above, shall be paid by General Mills to Class Counsel within thirty (30) days of the date of the Court's Final Approval order, notwithstanding the existence of any timely filed objections thereto, or appeal (actual or potential) therefrom, or collateral attack on the Settlement or any part thereof. Any such payment will be subject to Class Counsel's obligation to make appropriate refunds or repayments if, and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the award is lowered, or the Settlement is disapproved, by a final order not subject to further review.

10.3 General Mills shall bear its own attorneys' fees and costs.

10.4 If so ordered by the Court upon Final Approval, Class Counsel shall be entitled to provisional reimbursement from General Mills of 100% of its expenses incurred, including litigation related expenses, subject to the Class Counsel's obligation to deduct any amounts paid from the agreed upon attorney's fees and costs of \$725,000, to be paid by General Mills as set forth in Sections 10.1 and 10.2 above.

#### **11. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

11.1 The Effective Date of this Agreement shall be the date the Judgment has become

Final, as defined in Section 2.14.

11.2 If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation as of the date the Motion for Preliminary Approval was filed. In such event, except with respect to the Notice Administrator's fees, costs and expenses as provided in Section 9 herein, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and will not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

11.3 No order of the Court or modification or reversal on appeal of any order of the Court concerning any award of attorneys' fees, expenses, or costs to Class Counsel, or incentive award to the Class Representative, will constitute grounds for cancellation or termination of this Agreement.

## **12. MISCELLANEOUS PROVISIONS**

12.1 The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

12.2 The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.

12.3 The Parties agree that the consideration provided to the Class and the other terms of the Settlement were negotiated at arm's length, in good faith by the Parties, and reflect a settlement that was reached voluntarily and pursuant to at least two separate all-day mediation sessions. The Litigation was filed in good faith and was not frivolous. This Agreement is entered solely to eliminate the uncertainties, burdens and expenses of protracted litigation.

12.4 Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendants or any other Released Person; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants or any other Released Person in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Litigation or any other Released Person may file this Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.5 All agreements made and orders entered during the course of the Litigation and the Federal Morris Litigation relating to the confidentiality of information will survive this Agreement.



12.6 Other than as specifically permitted by this Section, the Parties and their counsel agree that they shall not cause any aspect of this Litigation or the terms of this Settlement not available in the public record to be reported to the public, the media, or news reporting services, other than the notices of the settlement to be issued by the Notice Administrator appointed and retained as described in Section 9. Any statement to the public, the media, or news reporting services shall be limited to what is available in the public record. Neither Plaintiff nor General Mills shall disparage the other. Nothing in this section shall restrict a Party from disclosing the terms of this Agreement pursuant to a valid court order.

12.7 Any and all exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

12.8 This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in interest.

12.9 This Agreement and any exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, and covenants covered and memorialized in such documents. Except as otherwise provided herein, the Parties will bear their own respective costs.

12.10 Class Counsel, on behalf of the Class, is expressly authorized by the Class Representatives to take all appropriate action required or permitted to be taken by the Class pursuant to this Agreement to effectuate its terms, and is expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Class that Class Counsel deems appropriate.

12.11 The Class Representatives will not object to motions filed by General Mills seeking to continue the obligation to respond to the Complaint, or any amendments thereto, during the pendency of Settlement-related proceedings.

12.12 Class Counsel shall be entitled to reasonable confirmatory discovery consisting of, as needed, a deposition of a General Mills' representative, a declaration from a General Mills' representative describing the cost and/or value of the injunctive relief provided for in the Agreement, and disclosure to Class Counsel of sales information and labels for the Products.

12.13 Each counsel or other Person executing this Agreement or any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

12.14 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.

12.15 This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

12.16 The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of the Court for

purposes of implementing and enforcing the Settlement.

12.17 None of the Parties, or their respective counsel, will be deemed the drafter of this Agreement or its exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its exhibits will be interpreted according to its fair meaning and will not be interpreted for or against any of the Settling Parties as the drafter thereof.

12.18 This Agreement and any exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that State's choice-of-law principles. Any provision of California Evidence Code §§ 1115-1128 notwithstanding, this Agreement may be enforced by any Party hereto by a motion under Code of Civil Procedure § 664.6 or by any other procedure permitted by California law. The provisions of the confidentiality agreement entered into with respect to the mediation process concerning this matter are waived solely for purposes of such enforcement.

12.19 If the Settlement is rejected by the Court, the Parties agree to negotiate in good faith including through the engagement of a mediator, regarding the elimination or revision of any provisions in the Agreement that resulted in Court rejection, with the goal of reaching a formal settlement agreement that will be accepted by the Court and thereafter to immediately submit a revised settlement agreement to the Court for approval, and all other terms and conditions herein shall continue in full force and effect until approval by the Court of the revised settlement agreement. Any fees and expenses of the mediator incurred pursuant to this provision shall be shared equally between General Mills and Class Counsel. Each Party shall bear its own attorneys' fees and costs of such renegotiation.

12.20 All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiffs or Plaintiffs' Counsel:

David Elliot  
The Elliot Law Firm  
2028 3<sup>rd</sup> Avenue  
San Diego, CA 92101  
Telephone: 619.468.4865  
Email: [Elliot.david@hotmail.com](mailto:Elliot.david@hotmail.com)


Ronald A. Marron  
Michael T. Houchin  
Lilach Halperin  
LAW OFFICES OF RONALD A. MARRON, APLC  
651 Arroyo Drive  
San Diego, CA 92103  
Telephone: 619.696.9006  
Facsimile: 619.564.6665  
Email: [ron@consumersadvocates.com](mailto:ron@consumersadvocates.com), [mike@consumersadvocates.com](mailto:mike@consumersadvocates.com),  
[lilach@consumersadvocates.com](mailto:lilach@consumersadvocates.com)

If to Defendant or Defendant's Counsel:

David T. Biderman  
PERKINS COIE LLP  
1888 Century Park E., Suite 1700  
Los Angeles, CA 90067-1721  
Telephone: 310.788.9900  
Facsimile: 310.788.3399  
Email: [DBiderman@perkinscoie.com](mailto:DBiderman@perkinscoie.com)

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by themselves, approved as to form and content by their respective attorneys.


DATED: 9/1/2020  
\_\_\_\_\_, 2020

DocuSigned by:  
  
9762DA34CF934CA...

On behalf of General Mills, Inc. and General  
Mills Sales, Inc.

DATED: 9/1, 2020


LAW OFFICES OF RONALD A. MARRON,  
APLC

By:   
Ronald A. Marron  
On Behalf of the Plaintiffs and the Class

APPROVED AS TO FORM AND  
CONTENT:

DATED: 9/1/2020, 2020

PERKINS COIE LLP

DocuSigned by:  
By:   
David T. Biderman  
Attorneys for Defendants

**EXHIBIT 1—PRODUCT LIST**

*Covered products include the products listed below and all substantially similar fruit flavored snacks products, including but not limited to varying sizes, seasonal iterations, licensed characters, or other similar variations of such products.*

**Gushers**

Super Sour - Crabby Apple, Grumpy Grape, Scary Cherry

[16000-14689]

[16000-14731]

[16000-41719]

Variety Pack – Tropical Flavors, Strawberry Splash

[16000-14709]

[16000-14707]

[16000-15910]

[16000-13856]

[16000-14733]

[16000-14698]

[16000-14734]

Tropical Flavors

[16000-24070]

[16000-48586]

[16000-14732]

Mood Morphers

[16000-48819]

Flavor Mixers

[16000-14718]



[16000-15835]

[16000-49727]

Strawberry Splash

[16000-14713]

[16000-49120]

[16000-15605]

Mouth Mixers

[16000-40508]

[16000-14712]

Variety Pack – Gushers, Fruit by the Foot, Fruit Roll-Ups, Fruit Flavored Snacks

[16000-44561]

[16000-17067]

[16000-14711]

[16000-14705]

Sweet & Fiery

[16000-14224]

[16000-14364]

[16000-14715]

[16000-14717]

Gushers & Fruit by the Foot King Size Variety Pack

[16000-15246]

**Fruit by the Foot**

Flavor Mixers

[16000-41025]

Berry Tie-Dye

[16000-27700]

Strawberry

[16000-49300]

Color by the Foot

[16000-38500]

Variety Pack

[16000-19430]

[16000-49615]

[16000-41909]

[16000-16710]

[16000-46817]

[16000-14879]

[16000-15686]

Sweet & Fiery

[16000-14225]

[16000-14374]

Valentine Mini

[16000-40196]

King Size Roll

[16000-16158]

**Fruit Roll Ups**

Mini Rolls Strawberry Craze

[16000-17313]

Strawberry Sensation

[16000-48587]

[16000-35540]

[16000-39840]

Blastin Berry Hot Colors

[16000-35510]

[.5 oz No UPC on Label]

Tropical Tie-Dye

[16000-39700]

Flavor Mixers – Strawberry, Lemonade, Tropical

[16000-45472]

Carnival – Cotton Candy, Caramel Apple, Berry Lemonade, Cherry Slushie

[16000-46386]

Fruit Roll Ups Carton

[16000-49582]

Variety Pack

[16000-18910]

[16000-12709]

Fruit Roll-Ups Variety Pack Unicorn

[16000-18910]

Fruit Roll Ups - Jolly Rancher

[16000-15243]

[16000-15242]

Fruit Roll-Ups Crazy Colors (.5 oz)

[No UPC on Label]

**Equities/Characters Fruit Flavored Snacks**

DC Superhero Girls

[16000-49152]

Star Wars

[16000-46387]

[16000-46443]

Scooby Doo

[16000-14571]

[16000-48696]

[16000-14916]

[16000-48534]

[16000-42419]

[16000-11510]

Dora and Friends

[16000-42413]

Hello Kitty

[16000-43093]

The Secret Life of Pets

[16000-47693]

Pokémon

[16000-49298]

[16000-49535]

Ninja Turtles

[16000-45159]

[16000-45202]

Thomas the Train

[16000-42225]

Trolls

[16000-47695]

[16000-14271]

Teen Titans

[16000-36375]

Hotel Transylvania

[16000-36482]

SpongeBob

[16000-42414]

Shimmer and Shine

[16000-36351]

Shark Bites

[16000-42417]

Disney

[16000-15482]

Minions

[16000-16063]

[16000-16062]

Disney Star Wars

[16000-46387]

Disney Toy Story

[16000-15228]

[16000-15394]

Disney Frozen

[16000-15227]

[16000-15229]

[16000-15482]

Jurassic World

[16000-16064]

**Sunkist Fruit Flavored Snacks**

Mixed Fruit

[16000-49433]

[16000-42351]

[16000-42416]

**Fiber One Fruit Flavored Snacks**

Fiber One Mixed Berry Fruit Flavored Snacks

[16000-41417]

Fiber One Assorted Fruits

[16000-41416]



[16000-41415]

[16000-48496]

**Motts Fruit Flavored Snacks**

Medley's Strawberry Apple

[16000-45667]

Halloween Assorted Fruit

[16000-47588]

Fruity Rolls

[16000-45011]

Assorted Fruit

[16000-47727]

[16000-44262]

[16000-49432]

[16000-48764]

[16000-43164]

[16000-15393]

[16000-16209]

[16000-28544]

[16000-14515]

[16000-47954]

Assorted Fruit Berry Fruit

[16000-49434]

[16000-14366]

Tropical Fruit

[16000-14243]

[16000-36464]

[16000-11495]

[16000-11495]

Berry Fruit

[16000-44261]

Mixed Berry

[16000-47953]

# **EXHIBIT 2**

United States District Court for the Southern District of California

**If You Purchased General Mills Fruit Snacks Products  
Between January 1, 2012 and [Date of Class Certification],  
Your Rights May Be Affected By A Class Action Settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- A proposed class action settlement has been reached in a lawsuit claiming that the labeling and marketing of General Mills Fruit Snacks Products was false or deceptive regarding the use of malic acid.
- General Mills, Inc. and General Mills Sales, Inc. (the “Defendants”) stand by their advertising and deny any wrongdoing but are settling the claims in this lawsuit.
- You are included if you purchased any of the following General Mills Fruit Snacks Products between January 1, 2012 and [Date of Class Certification]:
  - All varieties of Gushers;
  - All varieties of Fruit by the Foot;
  - All varieties of Betty Crocker fruit snacks, such as DC Superhero Girls, Star Wars, Scooby Doo, Dora and Friends, Hello Kitty, The Secret Life of Pets, Pokémon, Ninja Turtles, Thomas the Train, Trolls, Teen Titans, Hotel Transylvania, SpongeBob, Shimmer and Shine, Shark Bites, Disney, Minions, Disney Star Wars, Disney Toy Story, Disney Frozen, Jurassic World;
  - Sunkist brand Fruit Flavored Snacks;
  - Fiber One brand Fruit Flavored Snacks; and
  - Mott’s brand Fruit Flavored Snacks.

**Your legal rights are affected even if you do nothing. Read this Notice carefully.**

<b>Do Nothing</b>	If you do nothing, you automatically receive labeling and website modification benefits. You also give up your right to sue regarding claims related to the Settlement.
<b>Exclude Yourself</b>	If you don’t want to be included in the Settlement and keep your right to sue, you must exclude yourself (opt out) by <b>Month 00, 2020</b> .
<b>Object Comment</b> or	You can stay in the Settlement but object to any part it in writing by <b>Month 00, 2020</b> . You must write to the Court about why you do, or do not, like the Settlement.

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**1. Why Did I Get this Notice?**

If you purchased one or more General Mills Fruit Snacks Products between January 1, 2012 and [Date of Class Certification], as described on page 1 of this Notice, you have a right to know about a proposed settlement (“Settlement”) in this class action lawsuit and your options in relation thereto, before the Court decides whether to give its final approval of the settlement.

This Notice explains the lawsuit, the Settlement, your legal rights, and what benefits are available. The Court overseeing the case is the United States District Court for the Southern District of California, and the case is known as *Crystal Hilsley, Adrienne Morris, Nikki Cook, and David Christensen v. General Mills, Inc. and General Mills Sales, Inc.*, Case No. 3:18-cv-00395-L-BLM. Crystal Hilsley, Adrienne Morris, Nikki Cook and David Christensen, the people who sued, are called the Plaintiffs and the companies they sued, General Mills, Inc. and General Mills Sales, Inc., are called the Defendants.

**2. What is a Class Action and Who is Involved?**

In a class action, one or more people, called a Class Representative (in this case Crystal Hilsley, Adrienne Morris, Nikki Cook and David Christensen) represent the interests of people who have common claims that are more important than the issues that affect only individuals. All of these people are a Class or Class Members. The companies that the Plaintiffs have sued (in this case General Mills, Inc. and General Mills Sales, Inc.) are called the Defendants. One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class.

**3. What is this Lawsuit About?**

Plaintiffs brought a class action lawsuit on behalf of purchasers of General Mills Fruit Snacks Products. The case alleges that Defendants General Mills, Inc. and General Mills Sales, Inc. made false and misleading claims and breached express and implied warranties regarding the use of malic acid in General Mills Fruit Snacks Products. Defendants deny Plaintiffs’ allegations and continue to stand by their products and advertising. Before a trial could resolve Plaintiffs’ allegations, Plaintiffs and Defendants reached a settlement.

The full settlement agreement and court documents associated with this case can be viewed at [www.fruitsnackssettlement.com](http://www.fruitsnackssettlement.com), or by contacting the Notice Administrator.

**4. What benefits does the Settlement Provide?**

Within four years of final approval of the class action settlement, Defendants have agreed to implement certain modifications of the website, labeling and packaging for General Mills Fruit Snacks products. Defendants must keep these changes in place for a period of four years.

- Packaging for Fruit Snacks products that say “No Artificial Flavors,” “Naturally Flavored,” “All Natural Flavors” or similar designations of natural flavors, shall display an asterisk or similar reference immediately following or adjacent to the “No Artificial Flavors” or similar claim that directs the consumer to the statement “\*Learn More at ask.GeneralMills.com [or a similar website]”; and
- Defendants will modify the General Mills website [ask.GeneralMills.com or a similar website] to



disclose in substance the following points: (1) that General Mills specifies that flavors in the Products bearing the “No Artificial Flavors” or similar claim come from all natural sources; (2) that General Mills identifies “natural flavors” in the ingredient list in accordance with FDA regulations; and (3) that General Mills states that the Fruit Snacks products may also contain synthetic malic acid or other acidulants. Malic acid is intended for use not as a flavor or to impart the characterizing flavor of these Products, but is a substance the FDA approves for multiple uses including a flavor enhancer, flavoring agent or adjuvant, or as a pH control agent.

The parties have also agreed to pay reasonable attorneys’ fees and costs (including the costs to administer this Settlement), and a Class Representative incentive award to the named Plaintiff will be paid for by the Defendant.

Class Counsel may request attorneys’ fees and costs from the Defendants of no more than \$725,000, and an incentive award to the named Plaintiffs of \$5,000 each. The final amount of attorneys’ fees and costs and Class Representative incentive award will be determined by the Court. All Class Members who do not request exclusion from this Settlement will forever release all claims from January 1, 2012 to the present related to the allegations in this case.

#### **5. Am I Included in the Settlement?**

You are included in the Settlement if:

- (1) You live in the United States and
- (2) You purchased General Mills Fruit Snacks Products, for household or personal use and not for resale, from January 1, 2012 to [Date of Class Certification] (the “Class Period”). Products include the following:

#### **GUSHERS**

- Gushers Super Sour - Crabby Apple, Grumpy Grape, Scary Cherry
- Gushers Variety Pack - Tropical Flavors, Strawberry Splash
- Gushers Tropical Flavors
- Gushers Mood Morphers
- Gushers Flavor Mixers
- Gushers Strawberry Splash
- Gushers Mouth Mixers
- Gushers Sweet & Fiery
- Variety Pack - Gushers, Fruit by the Foot, Fruit Roll-Ups, Fruit Flavored Snacks
- Gushers & Fruit by the Food King Size Variety Pack

#### **FRUIT BY THE FOOT**

- Fruit by the Foot Flavor Mixers
- Fruit by the Foot Berry Tie-Die
- Fruit by the Foot Strawberry
- Fruit by the Foot Color by the Foot
- Fruit by the Foot Variety Pack
- Fruit by the Foot Sweet & Fiery
- Fruit by the Foot Valentine Mini

- Fruit by the Food King Size Roll

### **FRUIT ROLL UPS**

- Fruit Roll Ups Mini Rolls Strawberry Craze
- Fruit Roll Ups Strawberry Sensation
- Fruit Roll Ups Blastin Berry Hot Colors
- Fruit Roll Ups Tropical Tie-Die
- Fruit Roll Ups Flavor Mixers - Strawberry, Lemonade, Tropical
- Fruit Roll Ups Carnival - Cotton Candy, Caramel Apple, Berry Lemonade, Cherry Slushie
- Fruit Roll Ups Carton
- Fruit Roll Ups Variety Pack
- Fruit Roll Ups Variety Pack Unicorn
- Fruit Roll Ups - Jolly Rancher
- Fruit Roll Ups Crazy Colors

### **BETTY CROCKER FRUIT SNACKS**

- Betty Crocker Fruit Snacks DC Superhero Girls
- Betty Crocker Fruit Snacks Star Wars
- Betty Crocker Fruit Snacks Scooby Doo
- Betty Crocker Fruit Snacks Dora and Friends
- Betty Crocker Fruit Snacks Hello Kitty
- Betty Crocker Fruit Snacks The Secret Life of Pets
- Betty Crocker Fruit Snacks Pokémon
- Betty Crocker Fruit Snacks Ninja Turtles
- Betty Crocker Fruit Snacks Thomas the Train
- Betty Crocker Fruit Snacks Trolls
- Betty Crocker Fruit Snacks Teen Titans
- Betty Crocker Fruit Snacks Hotel Transylvania
- Betty Crocker Fruit Snacks SpongeBob
- Betty Crocker Fruit Snacks Shimmer and Shine
- Betty Crocker Fruit Snacks Shark Bites
- Betty Crocker Fruit Snacks Disney
- Betty Crocker Fruit Snacks Minions
- Betty Crocker Fruit Snacks Disney Star Wars
- Betty Crocker Fruit Snacks Disney Toy Story
- Betty Crocker Fruit Snacks Disney Frozen
- Betty Crocker Fruit Snacks Jurassic World

### **SUNKIST FRUIT FLAVORED SNACKS**

- Sunkist Fruit Flavored Snacks Mixed Fruit

### **FIBER ONE**

- Fiber One Fruit Flavored Snacks Mixed Berry
- Fiber One Fruit Flavored Snacks Assorted Fruits

### **MOTT'S FRUIT FLAVORED SNACKS**

- Mott's Fruit Flavored Snacks Strawberry Apple
- Mott's Fruit Flavored Snacks Halloween Assorted Fruit
- Mott's Fruit Flavored Snacks Fruity Rolls
- Mott's Fruit Flavored Snacks Assorted Fruit
- Mott's Fruit Flavored Snacks Assorted Fruit Berry Fruit
- Mott's Fruit Flavored Snacks Tropical Fruit
- Mott's Fruit Flavored Snacks Berry Fruit
- Mott's Fruit Flavored Snacks Mixed Berry

You are not included in the Settlement if you are:

- (1) Defendants and Defendants' officers, directors, employees, agents, and affiliates,
- (2) counsel for any of the parties;
- (3) the judge presiding over the *Hilsley* case and the Court staff; and/or
- (4) are a person who properly executed and filed a timely request for exclusion.

### **6. Can I Exclude myself from the Settlement?**

Yes. If you do not want to be included in the Settlement, you can request to be excluded. To exclude yourself you must submit a written request for exclusion requesting to be "excluded" from this Settlement to the Notice Administrator. You may exclude yourself from the settlement by (1.) completing the exclusion form at the Settlement Website; (2.) downloading and submitting to the Notice Administrator a completed exclusion form; or (3.) submitting a valid request to exclude yourself to the Notice Administrator

In order to be valid, your request for exclusion must be delivered (not just postmarked) no later than **MONTH 00, 2020**.

You may submit your request for exclusion online at [www.fruitsnackssettlement.com](http://www.fruitsnackssettlement.com) or to the Notice Administrator at:

Hilsley v. General Mills Settlement  
P.O. Box 812  
Warminster, PA 18974-0812

If you exclude yourself, you will not be legally bound by the Settlement and you may be able to sue (or continue to sue) the Defendants for the claims related to this lawsuit.

### **7. If I Don't Exclude Myself, Can I Sue the Defendants for the Same Things Later?**

No. If you do not properly and timely submit a request for exclusion, you waive your right to opt out and will be deemed to be a member of the Class. Unless you timely exclude yourself, you give up the right to sue the Defendants and certain related entities and individuals for the claims and related claims that this Settlement resolves, and you will be bound by the terms of this Settlement. If you have a pending lawsuit against Defendants, other than this class action, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit. Remember, any exclusion request must be signed, mailed, and postmarked by **no later than [Date]**.

#### **8. Can I Object to the Settlement?**

Yes. If you are a Class Member and do not request exclusion, you or an attorney on your behalf may object to the Settlement. Such objection must be in writing and submitted to the Notice Administrator at the following address:

Hilsley v. General Mills Settlement  
P.O. Box 812  
Warminster, PA 18974-0812

**The objection must be delivered (not just postmarked or sent by) no later than [date].**

You must include the following in your objection:

- (1) Caption or title that identifies it as “Objection to Class Settlement in *Hilsley v. General Mills, Inc.*, Case No. 3:18-cv-00395-L-BLM”
- (2) Your name, address and telephone number;
- (3) the name, address, and telephone number of all counsel (if any) who represent you, including any former or current counsel who may be entitled to compensation for any reason if the objection is successful, and legal and factual support for the right to such compensation;
- (4) documents or testimony sufficient to establish membership in the Settlement Class
- (5) a detailed statement of any objection asserted, including the grounds therefor;
- (6) whether you are, and any reasons for, requesting the opportunity to appear and be heard at the final approval hearing;
- (7) the identity of all counsel (if any) representing you who will appear at the final approval hearing and, if applicable, a list of all persons who will be called to testify in support of the objection;
- (8) copies of any papers, briefs, or other documents upon which the objection is based;
- (9) a detailed list of any other objections submitted by you, or your counsel, to any class litigations submitted in any state or federal court in the United States in the previous five years (or affirmatively stating that no such prior objection has been made)
- (10) your signature, in addition to the signature of the objector’s attorney (if any)

#### **9. What’s the Difference Between Objecting and Excluding?**

Objecting is explaining to the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

#### **10. Can I Appear or Speak in this Lawsuit and Proposed Settlement?**

Yes, you can appear or speak at the hearing as long as you do not exclude yourself but are not required to. This is called making an appearance.

You can also have your own lawyer appear in court and speak for you, but you must pay for the lawyer yourself.

**11. How Can I Appear in this Lawsuit?**

If you want yourself or your own lawyer (instead of Class Counsel) to participate or speak for you in this lawsuit, you must give the Court a paper that is titled a “Notice of Appearance.”

The Notice of Appearance must contain the title of the lawsuit, a statement that you wish to appear at the Fairness Hearing, and the signature of you or your lawyer. Your Notice of Appearance can also state that you or your lawyer would like to speak at the Court’s Fairness Hearing on the Proposed Settlement. If you submit an objection and would like to speak about the objection at the Court’s Fairness Hearing, both your Notice of Appearance and your objection should include that information. Your Notice of Appearance must be signed, mailed and **postmarked by [Date]**, to the Court at:

**Clerk of Court**

U.S. District Court Southern District of California  
333 West Broadway, Suite 420  
San Diego, CA 92101  
Telephone: 619-557-5600

Copies of your Notice of Appearance must also be mailed to counsel for the Plaintiff and the Defendant at the addresses listed below:

**For the Class:**

Ronald A. Marron  
Law Offices of Ronald Marron, APLC  
651 Arroyo Drive  
San Diego, CA 92103  
Telephone: (619) 696-9006

**For Defendants General Mills, Inc. and  
General Mills Sales, Inc.:**

Charles C. Sipos  
Perkins Coie LLP  
201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
Telephone: (206) 359-8000

**12. What if I do Nothing?**

If you do nothing, and the court approves the settlement, you will no longer have the ability to sue for monetary damages or injunctive relief with respect to your purchase of general mills fruit snacks products during the class period, and your claims during the class period will be released and dismissed.

**13. Do I have a lawyer in this case?**

Yes. The Court appointed the Law Offices of Ronald A. Marron, APLC and the Law Office of David Elliot, PC (“Class Counsel”) to represent you. You have the right to hire your own lawyer, at your own expense, but you do not need to. Class Counsel will represent all Class Members in this lawsuit who do not object or retain their own lawyer.

**14. How will Class Counsel be Paid?**

The Defendants have agreed that Class Counsel will seek an award of attorneys' fees and costs. If the Court approves the award, the Defendants have agreed to pay Class Counsel's attorneys' fees and costs, up to \$725,000. Class Members are not responsible for paying Class Counsel.

**15. When will the Court Hold a Hearing to Consider the Settlement?**

On **[Date and Time]**, the Honorable M. James Lorenz of the United States District Court for the Southern District of California will hold a hearing (the "Fairness Hearing") in Courtroom 5B of the federal courthouse at 221 West Broadway, San Diego, California 92101. At the hearing, the Court will decide whether to approve the Settlement and will determine the amount of attorneys' fees and costs and Plaintiff's incentive award. You or your lawyer may appear at the Fairness Hearing **but do not have to do so**.

**16. What is the Effect of Final Settlement Approval?**

If the Court grants final approval of the Settlement, all members of the Class will release and forever discharge any and all claims or causes of action that have been, might have been, are now, or could have been brought in the lawsuit *Hilsley v. General Mills, Inc.*, No. 18-cv-00395, alleging labels, marketing, or advertising relating to the General Mills Fruit Snacks Products are false, misleading, or non-compliant with federal or state laws or regulations concerning the presence of malic acid or other acidulants or identified flavoring or other ingredients present in the products during the Class Period, and the function, characterization, or nature of these ingredients as they relate to the advertising claims "No Artificial Flavors" or other similar statements.

If the Court does not approve the Settlement, the case will proceed as if no settlement had been attempted. If the Settlement is not approved and litigation resumes, there can be no assurance that the Class will recover more than is provided for under the Settlement, or anything at all. In other words, there is no guarantee of success if litigation proceeds.

**17. How Can I Obtain More Information?**

This notice summarizes the proposed settlement. For more detailed information about the Settlement, including the Settlement Agreement and other court documents you can:

- Visit **[www.fruitsnackssettlement.com](http://www.fruitsnackssettlement.com)**.
- Write to the Notice Administrator at  
**Hilsley v. General Mills Settlement**  
**P.O. Box 812**  
**Warminster, PA 18974-0812**
- Call toll free **877-852-8873**.

**Please do not contact the Court or Clerk's Office regarding this notice.**

# **EXHIBIT 3**



## **If You Purchased General Mills Fruit Snacks Products Between January 1, 2012 and [Date of Class Certification], Your Rights May Be Affected By A Class Action Settlement.**

A proposed class action settlement has been reached in a lawsuit claiming that labeling and marketing of General Mills Fruit Snacks Products was false or deceptive. Defendants stand by their advertising and deny any wrongdoing but are settling the claims in this lawsuit.

### **ARE YOU INCLUDED?**

You are included if you purchased any of the following General Mills Fruit Snacks Products between January 1, 2012 and **[DATE of Class Certification]**:

- Fruit by the Foot; all varieties of Betty Crocker fruit snacks, such as DC Superhero Girls, Star Wars, Scooby Doo, Dora and Friends, Hello Kitty, The Secret Life of Pets, Pokémon, Ninja Turtles, Thomas the Train, Trolls, Teen Titans, Hotel Transylvania, SpongeBob, Shimmer and Shine, Shark Bites, Disney, Minions, Disney Star Wars, Disney Toy Story, Disney Frozen, Jurassic World; Sunkist brand Fruit Flavored Snacks; Fiber One brand Fruit Flavored Snacks; and Mott's brand Fruit Flavored Snacks.

### **WHAT DOES THIS SETTLEMENT PROVIDE?**

Defendants agreed to modify product labeling and website descriptions for General Mills Fruit Snacks Products.

- Fruit Snacks Products that say "No Artificial Flavors" or similar, will display an asterisk immediately following "No Artificial Flavors" or similar claim directing consumers "\*\*Learn More at ask.GeneralMills.com [or a similar website]"; and
- General Mills website will disclose that: (1) flavors labeled "No Artificial Flavors" come from natural sources; (2) flavors are identified in the ingredient list as "natural flavors"; and (3)

Fruit Snacks Products may also contain synthetic malic acid or other acidulants, not intended for use as a flavor.

### **WHAT ARE YOUR OPTIONS?**

- **DO NOTHING** - If you do nothing, you automatically receive labeling and website modification benefits. You also give up your right to sue regarding claims related to the Settlement.
- **Exclude Yourself** - If you don't want to be included in the Settlement and keep your right to sue, you must exclude yourself (opt out) by **Month 00, 2020**.
- **OBJECT** - You can stay in the Settlement but object to any part it in writing by **Month 00, 2020**. You must write to the Court about why you do, or do not, like the Settlement.

The Court will hold a hearing in this case on **Month 00, 2020** at **[TIME]** at the federal courthouse located at 221 West Broadway, Courtroom 5B, San Diego, CA 92101, to consider final approval of the Settlement, payment of attorneys' fees of up to \$725,000 inclusive of costs, an incentive award of up to \$5,000 for the Class Representative in the lawsuit, and related issues. The motion(s) by Class Counsel for attorneys' fees and costs and an incentive award for the Class Representative will be available for viewing on the settlement website after they are filed. You may appear at the hearing in person or through your attorney at your own cost, but you are not required to do so.

***This is only a summary.*** For more information about the Settlement, including a Detailed Notice, visit **www.fruitsnackssettlement.com**, call toll-free **877-852-8873**, or write to **Hilsley v. General Mills Settlement, P.O. Box 812, Warminster, PA 18974-0812**

**www.fruitsnackssettlement.com      877-852-8873**