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17 *Attorneys for Defendants*  
18 *Small Planet Foods, Inc., and*  
19 *General Mills, Inc.*

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 OAKLAND DIVISION

23 BRENDAN PEACOCK, an individual, on  
24 behalf of himself, the general public, and  
25 those similarly situated,

26 Plaintiff,

27 v.

28 SMALL PLANET FOODS, INC.;  
GENERAL MILLS, INC.; and DOES 1  
THROUGH 50,

Defendants.

Case No.

**DEFENDANTS SMALL PLANET FOODS,  
INC. AND GENERAL MILLS, INC.'S  
NOTICE OF REMOVAL**

[Complaint filed March 6, 2018 and removed  
from the Superior Court of the State of  
California for the County of Alameda, Case No.  
RG18895553]

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1441(a), and 1446,  
3 defendants SMALL PLANET FOODS, INC. and GENERAL MILLS, INC. (hereinafter “General  
4 Mills”) hereby remove to this Federal Court the state court action described below.

5  
6 **I. THE STATE COURT ACTION**

7 On March 6, 2018, Plaintiff Brendan Peacock commenced this case in the Superior Court  
8 of California in and for the County of Alameda, titled *Brendan Peacock, an individual, on behalf*  
9 *of himself, the general public, and those similarly situated, Plaintiff v. Small Planet Foods, Inc.;*  
10 *General Mills, Inc.; and Does 1 through 50, Defendants*; Case No. RG18895553. Pursuant to 28  
11 U.S.C. § 1446(a), a copy of the Complaint filed in that action is attached hereto as **Exhibit A**.  
12 Plaintiff served Defendants General Mills, Inc. and Small Planet Foods, Inc. with a copy of the  
13 Complaint and Summons from the Superior Court on March 9, 2018. A copy of the Summons is  
14 attached hereto as **Exhibit C**.

15 The Complaint alleges four causes of action against General Mills: (1) Violation of the  
16 Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.*; (2) False Advertising,  
17 Business and Professions Code § 17500, *et seq.*; (3) Fraud, Deceit, and/or Misrepresentation; and  
18 (4) Unfair, Unlawful and Deceptive Trade Practices, Business and Professions Code § 17200, *et*  
19 *seq.* Ex. 1 (Compl.) ¶¶ 63–100. All four claims arise out of General Mills’ allegedly false and  
20 deceptive marketing and sale of Cascadian Farm brand frozen fruits and vegetables (hereinafter  
21 “Cascadian Farm Products”). *Id.* ¶¶ 1, 18–19.<sup>1</sup>

22 Plaintiff brings this action as a putative class action. *See, e.g., id.* ¶ 54. He seeks to  
23 represent a class of “[a]ll persons who, between February 28, 2014 and the present, purchased, in  
24 California, any of Defendants’ Products,” and a subclass consisting of “[a]ll members of the Class  
25 who purchased any of Defendants’ Imported Products.” *Id.* ¶ 54. Plaintiff alleges that the  
26 members of the putative class at least exceeds 200, and its members are “so numerous that joinder

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28 <sup>1</sup> The products at issue in the case are listed in paragraph 18 of the complaint and are too numerous to list here. These products are hereinafter referred to as “Cascadian Farm Products.”

1 of all such persons is impracticable.” *Id.* ¶ 56.

2 Plaintiff seeks the following forms of relief: (1) injunctive relief; (2) restitution of a price  
3 premium Plaintiff and the class members allegedly paid for the Cascadian Farm Products;  
4 (4) “[a]n award of punitive damages, the amount of which is to be determined at trial”; and  
5 (3) reasonable attorneys’ fees and costs. Compl. at 29–30.

## 6 II. JURISDICTION

### 7 A. This Action Is Removable Under the Class Action Fairness Act of 2005, 28 U.S.C. 8 §§ 1332(d) and 1453

9 “[A]ny civil action brought in State court of which the district courts of the United States  
10 have original jurisdiction, may be removed by the defendant . . .” 28 U.S.C. § 1441(a). This  
11 action is removable under § 1441 because the District Courts of the United States have original  
12 jurisdiction over it pursuant to the Class Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C.  
13 § 1332(d); *see also* 28 U.S.C. § 1453(b) (setting procedure for removing class actions).

14 CAFA gives federal courts original jurisdiction over putative class actions in which:  
15 (1) the aggregate number of members in the proposed class is 100 or more; (2) the amount in  
16 controversy “exceeds the sum or value of \$5,000,000, exclusive of interests and costs”; and  
17 (3) the parties are minimally diverse, meaning, “any member of a class of plaintiffs is a citizen of  
18 a State different from any defendant.” 28 U.S.C. § 1332(d)(2), (d)(5)(B). For the following  
19 reasons, and as shown in the accompanying declaration of Lisa Wacek, these requirements are  
20 met here.

#### 21 1. This Is a Putative Class Action in Which the Aggregate Number of Members 22 Is 100 or More

23 This action is a putative class action within the meaning of CAFA. CAFA defines “class  
24 action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar  
25 State statute or rule of judicial procedure authorizing an action to be brought by 1 or more  
26 representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). Plaintiff filed this action  
27 under section 382 of the California Code of Civil Procedure, Compl. at ¶ 54, which authorizes  
28 “one or more [to] sue . . . for the benefit of all” when “the question is one of common or general

1 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them  
2 all before the court,” Cal. Civ. Pro. § 382. The requirements of class certification under § 382  
3 “parallel those of Fed. R. Civ. P. 23.” *Vigil v. Naturals*, 2016 WL 6806206, at \*3 (C.D. Cal. Nov.  
4 17, 2016). Likewise, as Plaintiff alleges, the putative class contains 100 or more members. *See*  
5 Compl. ¶ 56 (alleging that the class and subclass “each is composed of more than 100 persons”).

## 6           **2. The Amount in Controversy Exceeds \$5,000,000**

7           CAFA permits courts to aggregate the claims of the individual class members “to  
8 determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of  
9 interests and costs.” 28 U.S.C. § 1332(d)(6). Where, as here, the plaintiff does not allege an  
10 amount in controversy in the complaint, “a defendant can establish the amount in controversy by  
11 an unchallenged, plausible assertion of the amount in controversy in its notice of removal.”  
12 *Ibarra v. Manheim Invs.*, 775 F.3d 1193, 1197–98 (9th Cir. 2015). If defendant’s assertions are  
13 challenged, it bears the burden of establishing the amount in controversy by a preponderance of  
14 the evidence. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553–54  
15 (2014). “This burden is not ‘daunting’ and only requires that the defendant ‘provide evidence  
16 establishing that it is more likely than not that the amount in controversy exceeds [\$5,000,000].”  
17 *Blevins v. Republic Refrigeration, Inc.*, 2015 WL 12516693, at \*6 (C.D. Cal. Sept. 25, 2015)  
18 (citation omitted) (alterations in original). Defendant may submit this evidence in opposition to  
19 plaintiff’s motion to remand. *Dart Cherokee*, 135 S. Ct. at 554.

20           Here, Plaintiff’s request for restitution places more than \$5,000,000 in controversy.<sup>2</sup> *See*  
21 Compl. at 29–30. Plaintiff seeks an order from this court requiring General Mills to pay  
22 “restitution of the price premium paid, i.e., the difference the price consumers paid for the  
23 Products and the price that they would have paid but for Defendant’s misrepresentations.” *Id.* at  
24 29. Plaintiff alleges that “[i]f consumers knew that the Products were not from a farm in the  
25 Cascades, but from elsewhere in the United States or imported, they would pay less for the  
26 Products.” Compl. ¶ 40; *see also id.* ¶ 39 (“Because consumers believe the Products are from a  
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28           <sup>2</sup> Defendants dispute that Plaintiff is entitled to any relief.

1 farm in the Cascades, and not sourced from all over the United States and the world, Defendants  
2 are able to charge a premium for the Products as compared to similar produce.”). Plaintiff does  
3 not allege a specific price premium. *Id.* ¶ 39.

4 As detailed in the declaration of Lisa Wacek filed in support of this Notice of Removal,  
5 Defendants sold more than \$18 million worth of the Products to California retailers in 2014,  
6 2015, 2016, 2017, and the first three months of 2018 (“Class Period”). Declaration of Lisa Wacek  
7 (“Wacek Decl.”) ¶ 5; Compl. ¶ 54 (class period dates from February 28, 2014 through present);  
8 *Hunter v. Nature’s Way Prods., LLC*, 2016 WL 4262188, at \*11 (S.D. Cal. Aug. 12, 2016)  
9 (explaining that the “statute of limitations for actions under FAL or CLRA is three years” and  
10 “[t]he statute of limitations for UCL or breach of warranty claims is four years”). This sales figure  
11 is less than the total retail sales number because retailers sell the Products to consumers at a  
12 markup. Wacek Decl. ¶ 4. Thus, even if Plaintiff seeks only a fraction of the retail sales of the  
13 Products, that number likely exceeds \$5 million. *See* Wacek Decl. ¶ 4–5.

14 Plaintiff’s remaining requests for relief substantially increase General Mills’ potential  
15 damages exposure, putting CAFA jurisdiction beyond reasonable dispute. Plaintiff requests  
16 “punitive damages, the amount of which is to be determined at trial.” Compl. at 30. Plaintiff also  
17 seeks injunctive relief, which would presumably include an order requiring General Mills to  
18 remove language and graphics on the Cascadian Farm Products that suggest the Products are  
19 sourced from Skagit Valley, Washington. Compl. at 29. Such an order would require General  
20 Mills to retrieve, redesign, and replace the Cascadian Farm Products’ labeling at substantial cost.  
21 This cost is properly considered part of the amount in controversy. *See, e.g., Anderson v.*  
22 *Seaworld Parks & Entm’t, Inc.*, 132 F. Supp. 3d 1156, 1161 (N.D. Cal. 2015) (“The amount in  
23 controversy in class actions requesting an injunction may be determined by the cost of  
24 compliance by Defendant.” (citation omitted)). Finally, Plaintiff seeks attorneys’ fees and costs,  
25 which add to the amount in controversy where, as here, the underlying statute provides for an  
26 attorneys’ fee award. *See Alexander v. FedEx Ground Packaging Sys., Inc.*, 2005 WL 701601, at  
27 \*5 (N.D. Cal. Mar. 25, 2005); *see* Cal. Civ. Code § 1780(e) (court must award costs and  
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1 attorneys' fees to prevailing plaintiff in CLRA case).

2 In sum, Plaintiff's requested restitution, together with potential punitive damages, the cost  
3 of complying with an injunction, and attorneys' fees and costs, places the amount in controversy  
4 well above CAFA's \$5 million threshold.

### 5 **3. The Parties Are Minimally Diverse**

6 The parties are minimally diverse because "any member of [the class] of plaintiffs is a  
7 citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

8 Plaintiff Brendan Peacock is a resident and citizen of California who—on information and  
9 belief is domiciled—in Sacramento, California. Compl. ¶ 3; *see Rice v. Thomas*, 64 F. App'x 628,  
10 628–29 (9th Cir. 2003) (explaining that an individual is domiciled in a place if she resides and has  
11 an intent to stay there). Plaintiff also seeks to represent a class of California consumers. Compl.  
12 ¶ 54. It is reasonable to assume that at least one of these consumers is domiciled in California.

13 Defendants are not citizens of California. General Mills, Inc. is incorporated under the  
14 laws of Delaware, and its principal place of business is in Minneapolis, Minnesota. *See* Compl.  
15 ¶ 5. Small Planet Foods is a Washington corporation with its principal place of business in  
16 Minneapolis, Minnesota. *See* Compl. ¶ 4; *see Albino v. Standard Ins. Co.*, 349 F. Supp. 2d 1334,  
17 1337 (C.D. Cal. 2004) (for purposes of diversity jurisdiction, "[a] corporation is a citizen both of  
18 the state where it was incorporated and the state where it has its primary place of business").  
19 Thus, Defendants are citizens of different states from Plaintiff, and CAFA's minimal diversity  
20 requirements are met. *See* 28 U.S.C. § 1332(d)(2).

### 21 **B. None of CAFA's Exceptions Bar Removal in this Case**

22 This action does not fall within the exclusions to removal jurisdiction described in 28  
23 U.S.C. §§ 1332(d)(4), (d)(9), or 28 U.S.C. § 1453(d).<sup>3</sup>

24 Section 1332(d)(4) requires a federal court to decline jurisdiction over a class action  
25 when, among other things, "greater than two-thirds of the members of all proposed plaintiff

26 \_\_\_\_\_  
27 <sup>3</sup> General Mills, Inc. and Small Planet Foods—the only defendants in this action—are not  
28 "States, State officials, or other governmental entities against whom the district court may be  
foreclosed from ordering relief." 28 U.S.C. § 1332(d)(5)(A) therefore does not preclude this  
Court's jurisdiction.

1 classes in the aggregate are citizens of the State in which the action was originally filed,” and at  
2 least one defendant whose “alleged conduct forms a significant basis for the claims asserted by  
3 the proposed class . . . is a citizen of the State in which the action was originally filed.” 28 U.S.C.  
4 § 1332(d)(4)(A); *see also* 28 U.S.C. § 1332(d)(4)(B) (similarly excluding cases where “two thirds  
5 or more of” the class members and “the primary defendants, are citizens of the State in which the  
6 action was originally filed”). Section 1332(d)(4) does not apply here because neither of the  
7 Defendants are citizens of California, the state in which the action was originally filed. Compl.  
8 ¶¶ 4–5 (alleging that the Defendants are citizens of Delaware, Minnesota, and Washington).

9 Sections 1332(d)(9) and 1453(d) exempt certain securities and corporate governance cases  
10 from CAFA’s broad jurisdictional grant. *See* 28 U.S.C. § 1332(d)(9) (explaining that § 1332(d)(2)  
11 does not apply to cases arising under several sections of the Securities Act of 1933, several  
12 sections of the Securities Exchange Act of 1934, and certain state corporate governance laws); *id.*  
13 § 1453(d) (same). Those provisions do not bar jurisdiction here because Plaintiff’s claims do not  
14 arise under the Securities Act of 1933 or the Securities Exchange Act of 1934, nor do they  
15 involve state-centric corporate governance issues. *See* Compl. ¶¶ 63–100 (making claims that  
16 arise under California common law and consumer protection statutes).

### 17 III. VENUE AND INTRA-DISTRICT ASSIGNMENT

18 The Northern District of California, Oakland Division is the proper venue for this action  
19 upon removal because this district and division embrace the California Superior Court, County of  
20 Alameda, where the Complaint was filed and is currently pending. *See* 28 U.S.C. § 1441(a).

### 21 IV. DEFENDANTS HAVE SATISFIED ALL OTHER REMOVAL REQUIREMENTS

22 This Notice of Removal is timely filed. General Mills was served with a copy of the  
23 Complaint and Summons on March 9, 2018. General Mills filed and served this Notice of  
24 Removal within 30 days of service of the Complaint in compliance with 28 U.S.C. § 1446(b).

25 As required by 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and  
26 orders served upon the Defendants are being filed herewith. Copies of the Complaint, the Civil  
27 Case Cover Sheet, the Summons, and the Complex Determination Hearing and Case Management  
28

1 Conference notice are attached hereto as **Exhibits A–D**. No other pleadings have been filed to  
2 date in this matter in the Alameda County Superior Court. A true and correct copy of the state  
3 court’s docket is attached hereto as **Exhibit E**.

4 Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly serve on Plaintiff and file with  
5 the Superior Court a “[n]otice to adverse parties and state court.” Pursuant to Federal Rule of  
6 Civil Procedure 5(d), Defendants will also file with this Court a “Certificate of Service of Notice  
7 to Adverse Party and State Court of Removal to Federal Court.”

#### 8 **V. RESERVATION OF RIGHTS AND DEFENSES**

9 General Mills expressly reserve all defenses and rights, and none of the foregoing shall be  
10 construed as in any way conceding the truth of any of Plaintiff’s allegations or waiving any of  
11 General Mills’ defenses. *See, e.g., Key v. DSW, Inc.*, 454 F. Supp. 2d 684, 691 (S.D. Ohio 2006)  
12 (“[T]he fact that Defendant removed the case does not mean that Defendant concedes that  
13 Plaintiff has adequately alleged appropriate damages.”).

#### 14 **VI. CONCLUSION**

15 WHEREFORE, General Mills request that this Court consider this Notice of Removal as  
16 provided by law governing the removal of cases to this Court, that this Court take such steps as  
17 are necessary to achieve the removal of this matter to this Court from Alameda County Superior  
18 Court, and that this Court will make such other orders as may be appropriate to effect the  
19 preparation and filing of a true record in this cause of all proceedings that may have been had in  
20 the state court action.



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DATED: April 6, 2018

**PERKINS COIE LLP**

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