

BURSOR & FISHER, P.A.

L. Timothy Fisher (State Bar No. 191626)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com

Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHELLE DEVERA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

GENERAL MILLS, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Michelle deVera (“Plaintiff”) brings this action on behalf of herself and all others
2 similarly situated against Defendant General Mills, Inc. (“Annie’s” or “Defendant”) for making,
3 marketing, and distributing its Annie’s Macaroni & Cheese products. Plaintiff makes the following
4 allegations pursuant to the investigation of their counsel and based upon information and belief,
5 except as to the allegations specifically pertaining to themselves, which are based on personal
6 knowledge.

7 **NATURE OF ACTION**

8 1. This is a class action lawsuit concerning the presence of harmful chemicals known
9 as phthalates in Defendant’s popular Macaroni & Cheese products (the “Products”). For years,
10 Defendant has been aware that its Products contain phthalates but only recently has it pledged to
11 take steps to remove these harmful chemicals. Thus, Defendant has chosen to prioritize profits
12 over the safety of the consuming public.

13 2. Plaintiff brings claims individually and on behalf of a class of all other similarly
14 situated purchasers of the Products for breach of implied warranty and fraud.

15 **PARTIES**

16 3. Plaintiff Michelle deVera, is, and at all times relevant to this action has been, a
17 resident of Fremont, California. Within the last six months, Ms. deVera purchased Annie’s
18 Macaroni & Cheese from a Walmart store located in Union City, California. Had Defendant
19 disclosed on the label that the Product contained phthalates, Ms. deVera would have been aware of
20 that fact and would not have purchased the products, or at the very least, would have paid
21 significantly less for them. After learning of the presence of phthalates in the Product, Ms. deVera
22 stopped purchasing the Product. However, Ms. deVera regularly visits stores where Defendant’s
23 products are sold and remains interested in purchasing safe macaroni and cheese products. He
24 would consider purchasing Defendant’s Product in the future if Defendant removed the phthalates.

25 4. Defendant General Mills, Inc. is a Delaware corporation with its principal place
26 located in Minneapolis, Minnesota. Defendant manufactures, markets, and distributes the Products
27 throughout the United States.
28

JURISDICTION AND VENUE

1
2 5. This Court has subject matter jurisdiction over this civil action pursuant to 28
3 U.S.C. § 1332. This Court has supplemental jurisdiction over state law claims pursuant to 28
4 U.S.C. § 1367.

5 6. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C.
6 § 1332(d) because there are more than 100 class members and the aggregate amount in controversy
7 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a
8 citizen of a state different from Defendant.

9 7. This Court has personal jurisdiction over Defendant because Defendant is
10 headquartered in this District and conducts substantial business within California such that
11 Defendant has significant, continuous, and pervasive contacts with the State of California.

12 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
13 does substantial business in this District, a substantial part of the events giving rise to Plaintiff's
14 claims took place within this District because Plaintiff purchased the Product in this District and
15 were therefore injured in this District.

COMMON FACTUAL ALLEGATIONS

16
17 9. Phthalates are synthetic chemicals used to make plastics flexible.

18 10. Phthalates can migrate into food products during processing, packaging, and
19 preparation. Although not intentionally added to food, phthalates are “indirect” food additives
20 because they escape from food contact materials, including processing equipment, such as plastic
21 tubing, conveyor belts or gloves, as well as food packaging materials.

22 11. Because phthalates bind with fats, they tend to be found at higher levels in highly
23 processed or fatty foods, such as the Products.

24 12. Within the scientific community, phthalates are called “endocrine disruptors”
25 because they affect the body’s hormones by mimicking them or blocking them. Specifically, they
26 interfere with the body’s natural levels of estrogen, testosterone, and other hormones, which is why
27 they are called “disruptors.”
28

1 13. Unfortunately, researchers have proved that, unlike other chemicals, phthalates
2 appear to have more serious effects at lower levels than at higher levels. Although it is typically
3 assumed that the higher the dose or exposure, the greater the harm, endocrine disruptors play by
4 different rules.

5 14. Indeed, the director of the National Institute of Environmental Health Sciences,
6 Linda Birnbaum, stated that chemical manufacturers are asking “old questions” when they test for
7 safety even though “science has moved on.”

8 15. The problem posed by phthalates is that hormones can increase the risk of some
9 cancers, regardless of whether those hormones are natural or synthetic. Too much or too little of a
10 hormone can be harmful. By way of example, research shows that animals exposed to phthalates
11 are more likely to develop liver cancer, kidney cancer, and male reproductive organ damage.
12 Studies also show associations between children’s exposure to phthalates and the risk of asthma,
13 allergies and bronchial obstruction.

14 16. Researchers at Mount Sinai also found a link between obesity and phthalates. They
15 found that among overweight girls ages 6 to 8, the higher the concentration of certain phthalates in
16 their urine, the higher their body mass index (BMI). A study among Danish children ages 4 to 9
17 found that the higher the concentration of phthalates, the shorter the child.

18 17. Even short-term exposure to phthalates has now been linked to developmental
19 deficits. Researchers found that children in intensive care units who were exposed to the phthalates
20 through plastic tubing and catheters had 18 times as much of the chemicals in their blood compared
21 to children who had not spent time in the ICU. Four years later, the children who had been
22 exposed to the phthalates had more problems with attention and motor coordination. The
23 researchers found that the phthalates caused these problems regardless of medical complications or
24 treatments.

25 18. Parents must also be wary of prenatal exposure to phthalates. Several studies that
26 have tested phthalate levels in women in their third trimester of pregnancy have found health
27 effects in the infants, toddlers, and older children of the mothers with the highest levels. A 2011
28

1 study found that six-month-old boys whose mothers had the highest phthalate levels scored lower
2 on brain and motor development tests.

3 19. Research suggests that boys exposed to phthalates while in the womb may be more
4 likely to develop smaller genitals and incomplete descent of the testicles. Boys who are born with
5 undescended testicles are 2-8 times more likely to develop testicular cancer later on than men born
6 with both testicles descended. Studies by Harvard researchers have shown phthalates may alter
7 human sperm DNA and semen quality.

8 20. Columbia University researchers discovered that three-year-olds with high prenatal
9 exposure to two types of phthalates were more likely to have motor delays. They also reported that
10 three phthalates were linked to certain behavior problems in three-year-olds. One phthalate in the
11 study was linked to lower mental development in girls.

12 21. It therefore comes as no surprise that, as of February 2009, children's toys and child
13 care products sold in the U.S (such as teething rings and plastic books) cannot contain certain
14 phthalates. The ban on those phthalates is the result of a law passed in 2008, the Consumer
15 Product Safety Improvement Act. The law permanently banned these phthalates.

16 22. A few months before the 2008 bill passed, major retailers such as Wal-Mart, Target,
17 and Babies "R" Us promised to remove or severely restrict children's products containing
18 phthalates by the end of 2008. That provided added incentives for major companies making
19 teething rings and other soft plastic products to stop using phthalates.

20 23. The ban in the U.S. followed similar bans in other countries. In 2006, the European
21 Union banned the use of certain phthalates in toys that may be placed in the mouth by children
22 younger than 3 years old. Fourteen other countries, including Japan, Argentina, and Mexico, had
23 also banned phthalates from children's toys prior to the U.S.

24 24. According to scientists, "[t]here is strong evidence that phthalates block the
25 production of the hormone testosterone. 'That means there is less testosterone available to the
26 developing male fetus, and since testosterone is absolutely vital to build his reproductive organs,
27 the worry is that you will get malformations and other kinds of problems that translate to health
28 effects later,' Dr. Patisaul said. Those include 'infertility, low sperm counts, altered male

1 reproductive behavior and changes in the area of the brain that are important for sex differences
2 between men and women,' as well as a heightened risk of testicular cancer later on, she said." *Id.*

3 25. "If you asked most scientists about the top 10 or 20 endocrine-disrupting chemicals
4 they worry about, phthalates would be on that list,' Dr. Patisaul said. 'We have an enormous
5 amount of data.'" *Id.*

6 26. Acknowledging the harmfulness of phthalates and their presence in Defendant's
7 Products,¹ Defendant has pledged to take steps to remove these harmful chemicals from its
8 Products.² Accordingly, Plaintiff seeks compensatory damages for all Products purchased that still
9 contain phthalates.

10 CLASS REPRESENTATION ALLEGATIONS

11 27. Plaintiff seeks to represent a class defined as all persons in the United States who
12 purchased the Products (the "Class"). Excluded from the Class are persons who made such
13 purchases for purpose of resale.

14 28. Plaintiff also seeks to represent a subclass of all Class Members who purchased the
15 Products in California (the "California Subclass").

16 29. At this time, Plaintiff does not know the exact number of members of the
17 aforementioned Class and Subclasses ("Class Members" and "Subclass Members," respectively);
18 however, given the nature of the claims and the number of retail stores in the United States selling
19 the Products, Plaintiff believes that Class and Subclass members are so numerous that joinder of all
20 members is impracticable.

21 30. There is a well-defined community of interest in the questions of law and fact
22 involved in this case. Questions of law and fact common to the members of the Class that
23 predominate over questions that may affect individual Class members include:

- 24 (a) whether Defendant failed to disclose material facts concerning the Products;
25 (b) whether Defendant breached implied warranties to Plaintiff and the Class;

26
27
28 ¹ <https://www.annies.com/faq/>

² <https://www.nytimes.com/2021/02/19/business/annies-mac-cheese-plastic-phthalates.html>

1 (c) whether Plaintiff and the Class have sustained damages with respect to the
2 common law claims asserted, and if so, the proper measure of their damages.

3 31. Plaintiff's claims are typical of those of the Class because Plaintiff, like all members
4 of the Class, purchased, in a typical consumer setting, Defendant's Products, and Plaintiff sustained
5 damages from Defendant's wrongful conduct.

6 32. Plaintiff will fairly and adequately protect the interests of the Class and Subclasses
7 and have retained counsel that is experienced in litigating complex class actions. Plaintiff has no
8 interests which conflict with those of the Class or the Subclasses.

9 33. A class action is superior to other available methods for the fair and efficient
10 adjudication of this controversy.

11 34. The prosecution of separate actions by members of the Class and the Subclasses
12 would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct
13 for Clorox. For example, one court might enjoin Clorox from performing the challenged acts,
14 whereas another might not. Additionally, individual actions could be dispositive of the interests of
15 the Class and the Subclasses even where certain Class or Subclass members are not parties to such
16 actions.

17 **COUNT I**

18 **(Breach of Implied Warranty Under the Song-Beverly Act, Cal. Civ. Code
19 § 1790 *et seq.* and California Commercial Code § 2314)**

20 35. Plaintiff incorporates by reference the foregoing paragraphs of Complaint as if fully
21 stated herein.

22 36. Plaintiff brings this claim individually and on behalf of the members of the
23 proposed Class and Subclass against Defendant.

24 37. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, *et seq.*,
25 and California Commercial Code § 2314, every sale of consumer goods in this State is
26 accompanied by both a manufacturer's and retail seller's implied warranty that the goods are
27 merchantable, as defined in that Act. In addition, every sale of consumer goods in this State is
28 accompanied by both a manufacturer's and retail seller's implied warranty of fitness when the

1 manufacturer or retailer has reason to know that the goods as represented have a particular purpose
2 and that the buyer is relying on the manufacturer's or retailer's skill or judgment to furnish suitable
3 goods consistent with that represented purpose.

4 38. The Products at issue here are "consumer goods" within the meaning of Cal. Civ.
5 Code § 1791(a).

6 39. Plaintiff and the Class members who purchased one or more of the Products are
7 "retail buyers" within the meaning of Cal. Civ. Code § 1791.

8 40. Defendant is in the business of manufacturing, assembling, producing and/or selling
9 the Products to retail buyers, and is therefore a "manufacturer" and "seller" within the meaning of
10 Cal. Civ. Code § 1791.

11 41. Defendant impliedly warranted to retail buyers that the Products were merchantable
12 in that they would: (a) pass without objection in the trade or industry under the contract
13 description, and (b) were fit for the ordinary purposes for which the Products are used. For a
14 consumer good to be "merchantable" under the Act, it must satisfy both of those elements.
15 Defendant breached the implied warranties because the Products were unsafe and defective.
16 Therefore, the Products would not pass without objection in the trade or industry and were not fit
17 for the ordinary purpose for which they are used.

18 42. Plaintiff and Class members purchased the Products in reliance upon Defendant's
19 skill and judgment in properly packaging and labeling the Products.

20 43. The Products were not altered by Plaintiff or Class members.

21 44. The Products were defective at the time of sale when they left the exclusive control
22 of Defendant. The defect described in this complaint was latent in the product and not
23 discoverable at the time of sale.

24 45. Defendant knew that the Product would be purchased and used without additional
25 testing by Plaintiff and Class members.

26 46. As a direct and proximate cause of Defendant's breach of the implied warranty,
27 Plaintiff and Class members have been injured and harmed because they would not have purchased
28

1 the Products if they knew the truth about the products, namely, that they contained harmful
2 chemicals known as phthalates.

3 **COUNT II**
4 **(Fraud)**

5 47. Plaintiff incorporates by reference the foregoing paragraphs of Complaint as if fully
6 stated herein.

7 48. Plaintiff brings this claim individually and on behalf of the members of the
8 proposed Class and Subclass against Defendant.

9 49. As discussed above, Defendant failed to disclose material facts about the Products,
10 including but not limited to the fact that the Products contain harmful chemicals known as
11 phthalates.

12 50. The omissions made by Defendant, upon which Plaintiff and Class members
13 reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class
14 members to purchase the Products.

15 51. The fraudulent actions of Defendant caused damage to Plaintiff and Class members,
16 who are entitled to damages and other legal and equitable relief as a result.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seek
19 judgment against Defendant, as follows:

- 20 a. For an order certifying the nationwide Class and the Subclasses under Rule 23 of the
21 Federal Rules of Civil Procedure and naming Plaintiff as representatives of the
22 Class and Subclass and Plaintiff's attorneys as Class Counsel to represent the Class
23 and Subclass members;
- 24 b. For an order declaring the Defendant's conduct violates the statutes referenced
25 herein;
- 26 c. For an order finding in favor of Plaintiff, the nationwide Class, and the Subclasses
27 on all counts asserted herein;
- 28

- 1 d. For compensatory, statutory, and punitive damages in amounts to be determined by
2 the Court and/or jury;
- 3 e. For prejudgment interest on all amounts awarded;
- 4 f. For an order of restitution and all other forms of equitable monetary relief;
- 5 g. For an order requiring Defendant to undertake a corrective advertising campaign;
- 6 h. For injunctive relief as pleaded or as the Court may deem proper; and
- 7 i. For an order awarding Plaintiff and the Class and Subclass their reasonable
8 attorneys' fees and expenses and costs of suit.

9 **DEMAND FOR TRIAL BY JURY**

10 Plaintiff demands a trial by jury of all issues so triable.

11
12 Dated: April 2, 2021

Respectfully submitted,

13
14 **BURSOR & FISHER, P.A.**

15 By: /s/ L. Timothy Fisher
16 L. Timothy Fisher

17 L. Timothy Fisher (State Bar No. 191626)
18 1990 North California Blvd., Suite 940
19 Walnut Creek, CA 94596
20 Telephone: (925) 300-4455
21 Facsimile: (925) 407-2700
22 Email: ltfisher@bursor.com

23
24
25
26
27
28 *Counsel for Plaintiff*