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10 Attorneys for GENERAL MILLS, INC., and
11 GENERAL MILLS SALES, INC.

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14

15 LORETTA SCHWEINSBURG, on
16 behalf of herself and all others similarly
situated,

17 Plaintiff,

18 v.

19 GENERAL MILLS, INC.;;
20 GENERAL MILLS SALES, INC.;

21 Defendants.
22
23
24

Case No. **'22CV403 DMS JLB**

**NOTICE OF REMOVAL BY
DEFENDANTS GENERAL MILLS
INC., AND GENERAL MILLS
SALES, INC.**

[Complaint filed February 23, 2022
and removed from the Superior Court
of the State of California in and for
the County of San Diego, Case
No. 37-2022-00006951-CU-BT-CTL]

*[Declaration of Matthew Teasdale in
support thereof filed concurrently with
this notice]*

Redacted Version

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:
2

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

7 **I. THE STATE COURT ACTION**

8 On February 23, 2022, Plaintiff Loretta Schweinsburg commenced this case
9 in the Superior Court of California in and for the County of San Diego, titled
10 *Loretta Schweinsburg, on behalf of herself and all others similarly situated v.*
11 *General Mills, Inc. and General Mills Sales, Inc.*; Case No. 37-2022-00006951-
12 CU-BT-CTL. Pursuant to 28 U.S.C. § 1446(a), a copy of the Complaint filed in that
13 action is attached hereto as **Exhibit 1**. Plaintiff served Defendants General Mills,
14 Inc. and General Mills Sales, Inc. with a copy of the Complaint and Summons from
15 the Superior Court on February 25, 2022. A copy of the Summons is attached
16 hereto as **Exhibit 2**. A copy of the Civil Cover sheet is attached as **Exhibit 3**.

17 The Complaint alleges two causes of action against Defendants: (1)
18 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
19 (unfair and unlawful prongs); and (2) breach of implied warranty of
20 merchantability. Ex. 1 (Compl.) ¶¶ 134–52. Both claims arise out of General Mills’
21 alleged “unfair” and/or “unlawful” use of partially hydrogenated oils as an
22 ingredient in Hamburger Helper products. *Id.* ¶ 20–43, 88–89.¹

23 Plaintiff brings this action as a putative class action. *See, e.g., id.* ¶ 115. She
24 seeks to represent a class of “[a]ll citizens of California who purchased Hamburger
25 Helper, Tuna Helper, and/or Chicken Helper containing partially hydrogenated oil
26 in California between January 1, 2000 and December 31, 2016.” *Id.* ¶ 126. Plaintiff
27 alleges that there are “thousands” of members of the putative class. *Id.* ¶ 131.

28 ¹ The products at issue are: Hamburger Helper, Chicken Helper, and Tuna Helper. See Compl. ¶ 3.

1 Plaintiff seeks, among other things, the following forms of relief: (1)
2 “[d]eclaratory relief that the conduct alleged [in the Complaint] is unlawful; (2) an
3 award of actual damages, (3) punitive damages, (4) “restitution of \$60 million,” and
4 (5) “[a]n award of attorney fees and costs.” Compl. at p. 23, XII. Prayer for Relief.

5 II. GROUNDS FOR REMOVAL

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

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

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

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

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

1 many persons, or when the parties are numerous, and it is impracticable to bring
 2 them all before the court,” Cal. Civ. Pro. § 382. The requirements of class
 3 certification under § 382 “parallel those of Fed. R. Civ. P. 23.” *Vigil v. Naturals*,
 4 2016 WL 6806206, at *3 (C.D. Cal. Nov. 17, 2016).

5 Likewise, as Plaintiff alleges, the putative class contains 1000 or more
 6 members. *See* Compl. ¶ 119 (“The Class is sufficiently numerous, as it includes
 7 thousands of individuals . . .”).

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

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

20 Here, Plaintiff’s request for damages places far more than \$5,000,000 in
 21 controversy.² *See* Compl. at p. 23. Plaintiff explicitly seeks \$60 million in
 22 restitution, in addition to punitive damages. *Id.* Plaintiff alleges that she and class
 23 members “would not have purchased Hamburger Helper” had she known that the
 24 products contain partially hydrogenated oils (“PHOs”), and that she suffered
 25 physical and economic injury as a result of Defendants’ “decision to add trans fat to
 26 Hamburger Helper,” *id.* ¶ 112 & 143, meaning Defendants could be liable for the
 27 entire amount California consumers spent on the Hamburger Helper products

28 ² Defendants dispute that Plaintiff is entitled to any relief.

1 during the Class Period, and more in the case of punitive damages. As detailed in
2 the declaration of Matthew Teasdale filed in support of this Notice of Removal,
3 Defendants sold more than [REDACTED] worth of the Hamburger Helper products
4 in California between January 2014 and December 2017, a mere 4 years of the 16-
5 year Class Period. Teasdale Decl. ¶ 5. For these reasons, it is clear that the amount
6 in controversy exceeds \$5,000,000, and CAFA jurisdiction is proper.

7 **3. The Parties Are Minimally Diverse**

8 The parties are minimally diverse because “any member of [the class] of
9 plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C.
10 § 1332(d)(2)(A).

11 Plaintiff Loretta Schweinsburg is a citizen of California who—on
12 information and belief—is domiciled California. Compl. ¶ 12; *see Rice v. Thomas*,
13 64 F. App’x 628, 628–29 (9th Cir. 2003) (explaining that an individual is domiciled
14 in a place if she resides and has an intent to stay there). Plaintiff also seeks to
15 represent a class of California consumers. Compl. ¶ 126. It is reasonable to assume
16 that at least one of these consumers is domiciled in California.

17 The Defendants are not citizens of California. General Mills, Inc., and
18 General Mills Sales, Inc., are incorporated under the laws of Delaware, and their
19 principal place of business is in Minneapolis, Minnesota. *See* Compl. ¶ 10; *see*
20 *Albino v. Standard Ins. Co.*, 349 F. Supp. 2d 1334, 1337 (C.D. Cal. 2004) (for
21 purposes of diversity jurisdiction, “[a] corporation is a citizen both of the state
22 where it was incorporated and the state where it has its primary place of business”).
23 Thus, both Defendants are citizens of different states from at least one Plaintiff, and
24 CAFA’s minimal diversity requirements are met. *See* 28 U.S.C. § 1332(d)(2).

25 **B. Venue and Intra-district Assignment Are Proper.**

26 The Southern District of California is the proper venue for this action upon
27 removal because this district embraces the California Superior Court, County of
28

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