

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Shelby Franklin, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

General Mills Inc.,

Defendant.

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Case No.

**CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff, Shelby Franklin (hereinafter “Plaintiff”), individually and on behalf of all others similarly situated, by her attorneys, alleges the following upon information and belief, except for those allegations pertaining to Plaintiff, which are based on her personal knowledge:

NATURE OF THE ACTION

1. This action seeks to remedy the deceptive and misleading business practices of General Mills, Inc. (“General Mills” or “Defendant”) with respect to the marketing and sales of the following list of Defendant’s products throughout the State of New York and throughout the country (hereinafter the “Products”):

- Shells & White Cheddar Mac & Cheese;
- Organic Shells & White Cheddar Mac & Cheese
- Classic Cheddar Mac & Cheese
- Organic Classic Cheddar Mac & Cheese
- Shells & Real Aged Cheddar Mac & Cheese
- Organic Shells & Real Aged Cheddar Mac & Cheese
- Organic Macaroni & Cheese Classic Cheddar Cheese with 12g Protein

- Gluten Free Rice Pasta & Cheddar Mac
- Rice Pasta Shells & White Cheddar
- Red Lentil Spirals & White Cheddar
- Organic Shells & White Cheddar Mac & Cheese with Whole Grains
- Organic Farm Friends & Cheddar Mac & Cheese
- Organic Grass Fed Shells & White Cheddar Mac & Cheese
- Organic Grass Fed Shells & Real Aged Cheddar Mac & Cheese
- Organic Mac & Bees Mac & Cheese; Mac & Trees Mac & Cheese
- Quinoa Rice Pasta & White Cheddar
- Reduced Sodium Mac & Cheese
- Organic Peace Pasta & Parmesan Mac & Cheese
- Spirals With Butter & Parmesan
- Organic Alfredo Shells & Cheddar Mac & Cheese
- Penne & Four Cheese Mac & Cheese
- Bunny Pasta with Yummy Cheese Mac & Cheese
- Organic Grass Fed Classic Cheddar Mac & Cheese

2. Defendant fails to disclose on the Products’ packaging and labels (the one place that all consumers view when purchasing a product) that the Products contain “ortho-phthalates,” also known as “phthalates[.]”

3. Phthalates are dangerous and harmful chemicals when consumed, especially by pregnant women and children.

4. In the past few years, researchers have linked phthalates to asthma, attention-deficit hyperactivity disorder, breast cancer, obesity and type II diabetes, low IQ, neurodevelopmental

issues, behavioral issues, autism spectrum disorders, altered reproductive development and male fertility issues.¹

5. Defendant manufactures, sells, and distributes the Products using a marketing and advertising campaign centered around claims that appeal to health-conscious consumers.

6. For example, Defendant touts its Products as either Certified Organic or Made-with-Organic ingredients and all of the Products' packaging state that they don't have artificial flavors, synthetic colors, or preservatives. Further, Defendant uses a cute bunny as a "mascot," which appears on the Products, along with a "Bunny of Approval," and the phrase "Made with Goodness!" Reasonable consumers, including Plaintiffs and Class Members, value these claims for important reasons, including the belief that they are safer and healthier than alternative products that are not represented as organic or one's that are made with goodness. Because Defendants' Products are contaminated with phthalates (which is something that they have the ability to completely control) these representations are false, deceptive, and willfully malicious.

7. Defendant's marketing and advertising campaign includes the one place that every consumer looks when purchasing a product – the packaging and labels themselves.

8. Defendant's advertising and marketing campaign, however, is false, deceptive, and misleading because the Products contain phthalates.

9. Plaintiff and those similarly situated ("Class Members") relied on Defendant's misrepresentations and omissions that the Products are healthy when purchasing the Products.

10. Plaintiff and Class Members paid a premium for the Products based upon their health-conscious marketing and advertising campaigns.

¹ <https://www.theguardian.com/lifeandstyle/2015/feb/10/phthalates-plastics-chemicals-research-analysis>.

11. Given that Plaintiff and Class Members paid a premium for the Products based on Defendant's misrepresentations that they are healthy and safe, Plaintiff and Class Members suffered an injury in the amount of the premium paid.

12. Defendant's conduct violated and continues to violate, *inter alia*, New York General Business Law §§ 349 and 350, and the Magnuson-Moss Warranty Act. Defendant also breached and continues to breach its warranties regarding the Products. In addition, Defendant has been and continues to be unjustly enriched.

13. Accordingly, Plaintiff brings this action against Defendant on behalf of herself and Class Members who purchased the Products during the applicable statute of limitations period (the "Class Period").

FACTUAL BACKGROUND

14. Consumers have become increasingly concerned about the effects of synthetic and chemical ingredients in food products that they and their family members consume. Companies such as Defendant have capitalized on consumers' desire for healthy and safe products, and indeed consumers are willing to pay, and have paid, a premium for these products.

15. Consumers lack the meaningful ability to test or independently ascertain or verify whether a product contains phthalates or other unsafe and unhealthy substances, especially at the point of sale, and therefore must and do rely on Defendant to truthfully and honestly report what their Products contain on their packaging or labels.

16. However, public reports and articles, including Defendant's own website, reveal that Defendant's Products contain phthalates. Despite this risk, Defendant failed to include phthalates on its ingredient list, nor did it include a warning on the packaging about the risk of phthalates in its Products.

17. While Defendant's packaging doesn't contain any warnings about the risk of phthalates, it does find ample space to brag to consumers that its Products are "Made with Goodness" and they are either Certified Organic or Made-with-Organic ingredients.

18. In fact, all of the Products' packaging state they are organic and don't have artificial flavors, synthetic colors, or preservatives, which is just another representation demonstrating their health-conscious marketing message.

19. This is especially troubling in light of Defendant's marketing towards children.

20. Defendant uses a cute bunny as a "mascot," which appears on the Products, along with a "Bunny of Approval," and the phrase "Made with Goodness!"

21. These representations and pictures are done to send the message to parents, caregivers, and their children (as well as all consumers) that Defendant's Products are healthy and safe food.

22. However, contrary to these representations and pictures, the products contain dangerous and harmful phthalates.

23. The phthalates enter the Products from the Product packaging and machines used to make the Products. According to the CDC, "[P]eople are exposed to phthalates by eating and drinking foods that have been in contact with containers and products containing phthalates."²

24. Despite knowing their Products contain dangerous and harmful phthalates, Defendant does not provide any information whatsoever on the Product label to inform the consumers of this. Rather, after knowing of this significant hazard, it was not until years later that Defendant began to bury this significant information on the FAQ section of its website, which is not easy to find by parents, caregivers, or consumers. Notably, this information is not listed on the Product page itself, nor is there any warning or denotation on the packaging or labels to check the

² https://www.cdc.gov/biomonitoring/Phthalates_FactSheet.html

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