

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between *As You Sow* and General Mills, Inc. ("General Mills") to resolve claims against General Mills raised in the 60-day Notice of Violation sent by *As You Sow* to General Mills and public enforcers pursuant to Health and Safety Code §25249.7. *As You Sow* and General Mills (collectively, "the Parties") agree to the terms and conditions set forth below.

### 1. INTRODUCTION

1.1 *As You Sow* is a non-profit corporation dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. *As You Sow* is based in Oakland, California and is incorporated under the laws of the State of California.

1.2 General Mills produces, manufactures, distributes, and/or sells in California products called Total Whole Grain Cereal and Total Raisin Bran Cereal (collectively, "Covered Products").

1.3 On September 26, 2014, *As You Sow* sent a 60-day Notice of Violation ("Notice") to General Mills, General Mills Cereals, LLC, General Mills Sales, Inc., General Mills Cereals Properties, LLC (collectively referred to as the "Noticed Companies") and to public enforcers as required by Health and Safety Code section 25249.7, alleging that the Noticed Companies violated the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), California Health and Safety Code §§25249.5 *et seq.*, by failing to provide clear and reasonable warnings before exposing persons to lead contained in Total Whole Grain Cereal.

1.4 Lead is a chemical listed by the State of California as known to cause birth defects or other reproductive harm, pursuant to Proposition 65.

1.5 After the date of the Notice, General Mills completed a reformulation of Total Whole Grain Cereal to reduce the amount of calcium contained in the product from 100% of the recommended daily value to 2% of the recommended daily value. General Mills asserts that it began shipping the reformulated version of Total Whole Grain Cereal by October 2016 and ceased shipping the prior version by that same date.

1.6 After the date of the Notice, General Mills temporarily discontinued production and distribution of Total Raisin Bran Cereal. After discontinuing production, General Mills completed a reformulation of Total Raisin Bran Cereal to reduce the amount of calcium contained in the product from 100% of the recommended daily value to 2% of the recommended daily value. Since reformulation, General Mills has reinitiated production and distribution of the reformulated version of Total Raisin Bran Cereal for non-retail sale, e.g. in hotels, but has not reinitiated retail sale of the product.

1.7 The Parties have agreed to enter into this Settlement Agreement to resolve claims and defenses with regard to the Covered Products and to avoid prolonged and costly litigation.

1.8 Nothing in this Settlement Agreement is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Settlement Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.

1.9 Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, or defense that either Party may have in any other, or in future, proceedings unrelated to the matters covered in this settlement. This paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Settlement Agreement.

2. **EFFECTIVE DATE AND DURATION**

The "Effective Date" shall be the date when all Parties have signed the Settlement Agreement.

3. **REFORMULATION STANDARD FOR THE COVERED PRODUCTS**

3.1 Beginning on the Effective Date of this Settlement Agreement, General Mills agrees that, in the event it reformulates either of the Covered Products in the future to include 50% or more of the daily recommended value of calcium, it shall: (a) notify *As You Sow* no less than sixty (60) days prior to introducing the reformulated product for distribution or sale in California; and (b) meet a limit of no more than 0.5 micrograms of lead per 30 grams of the reformulated product as determined by the testing described in Section 4 of this Settlement Agreement. A Covered Product that satisfies both of these requirements is hereinafter referred to as "Compliant Reformulated Product."

3.1.1 The term "50% or more of the daily recommended value of calcium" refers to the amount of calcium per serving indicated on the Nutrition Facts panel in the label of the Covered Products, and not the amount of calcium per serving after milk is added.

3.2 If, after Execution of this Settlement, General Mills reformulates either of the Covered Products to include 50% or more of the daily recommended value of calcium, and the reformulated version contains more than 0.5 micrograms of lead per 30 grams as determined by the testing described in Section 4 of this Settlement Agreement, then this Settlement Agreement shall terminate as to that product. *As You Sow* retains all rights under Proposition 65 to file a notice and lawsuit regarding any reformulated version of the Covered Products in the event that this Settlement Agreement terminates as to that product.

4. TESTING OF THE COVERED PRODUCTS

4.1 After the Effective Date of this Settlement Agreement, if General Mills reformulates either of the Covered Products to include 50% or more of the daily recommended value of calcium, it shall have tested three randomly selected samples of the reformulated version of the product from at least three separate lots (or from as many lots as there are then available for testing). Testing under this Section 4 shall be conducted on the reformulated version of the Covered Product in the form intended for sale to the end-user. Testing shall begin within two months of any reformulation that contains 50% or more of the daily recommended value of calcium, and shall take place once per year for at least four years.

4.2 In the event that General Mills reformulates either of the Covered Products more than once, each time it reformulates the product so that the product contains 50% or more of the daily recommended value of calcium, it shall conduct the testing required under Paragraph 4.1. The terms of this Section 4 shall apply to each reformulated version of the product that contains 50% or more of the daily recommended value of calcium.

4.3 For purposes of determining whether a reformulated version of the Covered Products qualifies as a Compliant Reformulated Product, the arithmetic mean of three valid, randomly selected samples of the reformulated product will be controlling. Valid results are those that have no anomalous or flagged results or comments, in the quality assurance/quality control documents.

4.4 Testing for lead content under Paragraph 4.1 shall be performed using the protocols set forth in EPA Methods 6020, 6020a. The laboratory must digest at least 0.5 grams of each sample with a level of detection of at least 4 parts per billion. The sample preparation method must use a microwave- or heat-assisted acid digestion method.

4.5 Testing for lead content under Paragraph 4.1 shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or an independent third-party laboratory registered with the Environmental Protection Agency.

4.6 General Mills shall retain all test results and documentation of testing for lead content in any reformulated version of the Covered Products for a period of at least two years from the date of the test.

4.7 General Mills agrees to deliver full laboratory reports, including all accompanying quality assurance/quality control ("QA/QC") documentation, with results of testing for lead content in any reformulated version of the Covered Products to *As You Sow* within 14 days of receipt of the testing results.

## 5. SETTLEMENT PAYMENTS

5.1 Civil Penalty: Within 30 days of the Effective Date, General Mills shall pay \$5,000, in the form of a check made payable to *As You Sow*, as a civil penalty pursuant to Health and Safety Code section 25249.7(b). *As You Sow* shall remit seventy-five percent (75%) of this amount to the State of California pursuant to Health and Safety Code section 25249.12(b).

5.2 Within 30 days of the Effective Date, General Mills shall pay \$42,500, in the form of a check made payable to the Altshuler Berzon LLP Attorney-Client Trust Account, as reimbursement for *As You Sow*'s attorneys' fees, investigation costs, and other reasonable litigation costs and expenses.

## 6. ENFORCEMENT OF SETTLEMENT AGREEMENT

6.1 Prior to the filing of any action related to this Settlement Agreement, in the event a dispute arises with respect to any of the provisions of this Settlement Agreement, a Party must provide written notice of any alleged violation. The Parties shall meet and confer in good faith

within 30 days after either Party receives written notice of an alleged violation of this Agreement to attempt to resolve the alleged violation informally. The Parties shall first attempt to resolve the matter as specified herein before either Party files an enforcement action.

6.2 A Party who unsuccessfully brings or contests an enforcement action arising out of this Settlement Agreement shall be required to pay the prevailing Party's reasonable attorneys' fees and costs associated with such an enforcement action unless the unsuccessful Party has acted with substantial justification. For purposes of this Settlement Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, et seq.

6.3 Notwithstanding Section 7.2, a Party who prevails in a contested enforcement action arising out of this Settlement Agreement may only seek an award of attorneys' fees and costs associated with such an enforcement action pursuant to Code of Civil Procedure § 1021.5. The Party seeking such an award shall bear the burden of meeting all of the elements of section 1021.5, and this provision shall not be construed as altering any procedural or substantive requirements for obtaining such an award.

## 7. CLAIMS COVERED AND RELEASE

7.1 This Settlement Agreement is a full, final, and binding resolution between, on the one hand, *As You Sow*, on behalf of itself and its parents, subsidiaries, officers, directors, employees, attorneys, agents, insurers and representatives, and its successors and assigns (collectively referred to as the "*As You Sow* Entities") and, on the other hand, General Mills, the Noticed Companies, and their officers, directors, shareholders, owners, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisors, franchisees, licensors, licensees, customers, distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of the Covered Products, and the predecessors, successors and assigns of

any of them (collectively referred to as the "Releasees"), of any violation of Proposition 65 based on failure to warn about any exposures to lead contained in the Covered Products produced, distributed or sold by General Mills prior to the Effective Date.

7.2 *As You Sow*, on behalf of itself and the *As You Sow* Entities, hereby waives all rights to institute or participate in (directly or indirectly) any form of legal action, and fully releases and discharges the Releasees from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to attorneys' fees, expert fees, and investigator fees), costs and expenses (collectively referred to as the "Claims") for failure to provide warnings for any exposures to lead in the Covered Products produced, distributed or sold by General Mills prior to the Effective Date.

7.3 Unless this Settlement Agreement terminates pursuant to Paragraph 3.2 or 5.1, the Parties agree that General Mills' compliance with the terms of this Settlement Agreement shall be deemed to constitute compliance with Proposition 65 by any Releasee regarding alleged exposures to lead in the Covered Products manufactured on and after the Effective Date.

7.4 General Mills, on behalf of itself and the Noticed Companies, hereby releases, and waives any claims against, the *As You Sow* Entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters related to the Notice.

## 8. GOVERNING LAW AND CONSTRUCTION

This Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

## 9. MODIFICATION OF SETTLEMENT AGREEMENT

This Settlement Agreement may be modified only upon written agreement of the Parties.

10. **ENTIRE AGREEMENT**

The Parties declare and represent that no promise, inducement or other agreement has been made conferring any benefit upon any Party except those contained herein and that this agreement contains the entire agreement pertaining to the subject matter hereof.

11. **APPLICATION OF SETTLEMENT AGREEMENT**

This Settlement Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

12. **ATTORNEYS' FEES**

Except as specifically provided in this Settlement Agreement, each Party shall bear its own attorneys' fees and costs incurred in connection with the 60-day Notice of Violation.

13. **COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7**

*As You Sow* shall comply with the reporting requirements referred to in Health and Safety Code section 25249.7(f) (and established in Title 11 of the California Code of Regulations sections 3000-3008).

14. **PROVISION OF NOTICE**

All correspondence and notices required by this Settlement Agreement to the Parties shall be sent to:

***As You Sow***

As You Sow Foundation  
Attn: Sylvia Wu, Staff Attorney  
1611 Telegraph Street, Suite 1450  
Oakland, CA 94612  
Tel.: (510) 735-8158



With a copy to:

Barbara Chisholm  
Tony LoPresti  
Altshuler Berzon LLP  
177 Post Street, Suite 300  
San Francisco, CA 94108  
Tel.: (415) 421-7151

General Mills Cereals, LLC.

Trenton H. Norris  
Sarah Esmaili  
Arnold & Porter Kaye Scholer LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111-4024  
Telephone: (415) 471-3100

15. EXECUTION AND COUNTERPARTS

This Settlement Agreement may be executed in one or more counterparts and by means of facsimile or portable document format (.pdf), which taken together shall be deemed to constitute one document.

16. AUTHORIZATION

Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement on behalf of the Party represented and legally bind that Party. The undersigned have read, understand, and agree to all of the terms and conditions of this Settlement Agreement.

**APPROVED AS TO FORM:**

Dated: 8/23, 2018

ALTSHULER BERZON LLP

By: 

BARBARA J. CHISHOLM  
ALTSHULER BERZON LLP

Attorneys for AS YOU SOW

Dated: \_\_\_\_\_, 2018

ARNOLD & PORTER KAYE SCHOLER LLP

By: 

TRENTON H. NORRIS  
ARNOLD & PORTER KAYE SCHOLER LLP

Attorneys for GENERAL MILLS, INC.

SO AGREED:

Dated: 8/22, 2018

AS YOU SOW

By: 

Name: Andrew Bchar

Title: CEO

Dated: 9/10, 2018

GENERAL MILLS, INC.

By: 

Name: Christopher A. Rauschl

Title: Assistant Secretary