IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

KARL EBERT and CAROL KRAUZE,
Individually and on behalf of
all persons similarly situated,

Case No. 13-CV-3341 (DWF/JJK)

Plaintiffs,

-v-

GENERAL MILLS, INC.,

Defendant.

FIRST AMENDED COMPLAINT – CLASS ACTION

Plaintiffs, Karl Ebert and Carol Krauze, individually and on behalf of all others similarly situated, by and through their attorneys, Mark Thieroff of Siegel Brill, P.A., Shawn M. Collins and Edward J. Manzke of the Collins Law Firm, P.C., Norman B. Berger and Michael D. Hayes of Varga Berger Ledsky Hayes & Casey, and J. Gordon Rudd, Jr. and Anne T. Regan of Zimmerman Reed, P.L.L.P., for their Complaint against Defendant, General Mills, Inc. ("GMI"), state as follows:

NATURE OF THE ACTION

1. This is a class action lawsuit brought by and on behalf of owners of residential properties located in an area in Minneapolis, Minnesota that has a serious vapor contamination problem caused by GMI. The impacted area in Minneapolis, part of what is known as the Como neighborhood, is a residential area comprised of family

homes as well as rental properties occupied by many students from the nearby University of Minnesota.

2. Over the course of many years, GMI released large volumes of chemicals, including the toxic chemical trichloroethylene ("TCE"), onto the ground and into the environment at an industrial facility (the "Facility") it owned in the Como neighborhood. The TCE and other toxic chemicals released by GMI at the Facility have migrated into the surrounding residential area, contaminating the entire Class Area (as that term is defined below in Paragraph 18) with toxic vapors. Remedial measures are necessary to protect every property in the Class Area from this vapor contamination.

3. The value of homes owned by Plaintiffs and all other property owners throughout the Class Area has been substantially diminished due to the vapor contamination caused by GMI. This lawsuit seeks to recover these lost property values, costs Plaintiffs have incurred to protect themselves and their properties' residents from the vapor contamination, as well as other damages.

4. GMI has failed to adequately investigate and remediate the contamination present at the Facility, which continues to migrate in vapor form onto properties throughout the Class Area. GMI has failed to adequately investigate and remediate the vapor contamination known to exist on properties owned by Plaintiffs and others throughout the Class Area. This lawsuit thus seeks injunctive relief against GMI, specifically the entry of an order which 1) preliminarily and permanently restrains and enjoins GMI from allowing its vapor contamination from continuing to migrate onto Plaintiffs' and other Class Area properties, and 2) compels GMI to sufficiently and

permanently abate the contamination it has caused at the Facility, on Plaintiffs' property, and on Class Area properties.

THE PARTIES

5. Defendant GMI is a Delaware corporation with its principal place of business located in Golden Valley, Minnesota. Upon information and belief, GMI owned and operated the Facility, located at 2010 East Hennepin Avenue in Minneapolis, from approximately 1930 until 1977.

6. Plaintiffs own residential property located within the Class Area at 1044 20th Ave. S.E., Minneapolis, Minnesota. Plaintiffs' property is contaminated with TCE vapors that derive from GMI's disposal of TCE into the environment at the Facility. Based on the vapor contamination detected on Plaintiffs' property, GMI has agreed to install a vapor mitigation system on Plaintiffs' property.

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this case arises under the laws of the United States of America; specifically, because Count I is predicated upon and seeks relief pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607.[1]

[1] In conformance with the citizen suit notice provision of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(b)(2)(A), Plaintiffs have served a notice of endangerment on GMI, and intend to amend in this action to assert an "imminent and substantial endangerment" claim against GMI under RCRA Section 6972(a)(1)(B) as soon as possible after RCRA's statutory ninety (90) day notice period has expired in early March, 2014.

8. This Court has supplemental jurisdiction over the Minnesota state law claims set forth in Counts II through IV pursuant to 28 U.S.C. § 1367.

9. Pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), venue is proper in this Court because GMI has its corporate headquarters within this judicial district and because this case arises out of actions (including the release of environmental contaminants) occurring at, and pertaining to property located within, this judicial district.

ALLEGATIONS COMMON TO ALL CLAIMS

10. Various hazardous substances, including TCE, a human carcinogen, were used at the Facility during GMI's ownership and operation of the Facility.

11. During its ownership and operation of the Facility, GMI disposed of and released various hazardous substances, including TCE, into the environment at the Facility.

12. GMI has admitted that between 1947 and 1962, GMI disposed of approximately 1,000 gallons per year of waste solvents, mainly TCE, by burying them in the ground at the Facility in stacks of perforated drums.

13. The hazardous substances and hazardous wastes, including TCE, released by GMI at the Facility have migrated into adjacent residential areas, contaminating the entire Class Area. TCE vapors are present on all Class Area properties and beneath, inside or immediately adjacent to all homes in the Class Area, threatening the health of all residents in the Class Area. Plaintiffs and members of the Class first learned in 2013 of this TCE vapor contamination in the Class Area.

14. As a result of GMI's vapor contamination, the value of Plaintiffs' property and all other properties in the Class Area has been severely diminished. Further, the presence of vapor contamination in their living environment has caused Plaintiffs and other members of the Class to suffer the loss of the reasonable use and enjoyment of their property, and aggravation and annoyance.

15. GMI has failed to adequately investigate and remediate the vapor contamination caused by its unlawful waste handling practices, which continues to migrate into and throughout the Class Area.

16. GMI has taken insufficient steps to remediate the vapor contamination known to exist in the Class Area.

CLASS ALLEGATIONS

17. Plaintiffs bring each of the claims in this action in their own names and on behalf of a class of all persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

18. The Class consists of all persons and non-governmental entities that own residential property within the "Class Area." The geographical boundaries of the Class Area are depicted on the figure attached hereto as Exhibit 1.[2]

19. The Class Area consists of more than two hundred (200) properties. Upon information and belief, the Class consists of well more than one hundred (100) persons

[2] The geographic boundaries of the Class Area have been determined based on information presently available to Plaintiffs. Plaintiffs reserve the right to later expand the boundaries of the proposed Class Area based on information (including future testing) not presently available to Plaintiffs.

and/or legal entities, and is accordingly so numerous that joinder of all members is impractical.

20. There are core questions of law and fact that are common to each member of the Class, such as: whether GMI released hazardous substances and wastes, including TCE, into the Class Area; whether GMI unlawfully caused vapor contamination in the Class Area; what is the geographical scope of the vapor contamination caused by GMI; and whether GMI should be ordered to abate the vapor contamination present in the Class Area.

21. Plaintiffs' claims are typical of the claims of the Class. All claims seek recovery on the same legal theories and are based upon GMI's common course of conduct.

22. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

23. Plaintiffs have retained counsel who are competent and experienced in class action litigation, including environmental class action suits such as this one.

COUNT I

CERCLA COST RECOVERY, 42 U.S.C. § 9607(a)

24. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 23 of the Complaint as paragraph 24 of this Count I, as though fully set forth herein.

25. GMI is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

26. The Facility is a "facility" as defined by § 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. TCE is a "hazardous substance" as defined by § 101(14) of CERCLA, 42 U.S.C. § 9601(14).

28. GMI owned and operated the Facility during a time period when hazardous substances, including TCE, were disposed of into the environment at the Facility. GMI is thus a "covered person" that is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

29. The TCE and other hazardous substances released by GMI have resulted in vapor contamination on Plaintiffs' property and on properties throughout the Class Area.

30. Upon learning of the presence of TCE vapors on their property and beneath their house, and to protect their family from inhalation of TCE vapors inside their house, Plaintiffs incurred out-of-pocket costs to evaluate the release or threat of release of hazardous substances inside their house and evaluate structural issues concerning approaches to interim mitigation measures. Such costs were reasonable and necessarily incurred. These costs are "removal" costs within the meaning of Section 101(23) of CERCLA and hence are "response" costs within the meaning of Section 101(25) of CERCLA that are consistent with the National Contingency Plan.

31. Plaintiffs did not pollute the Facility, contaminate their own properties, or otherwise cause any releases of hazardous substances, including TCE. Accordingly, GMI is strictly liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) for all response costs incurred by Plaintiffs and the Class.

COUNT II

NEGLIGENCE

32. Plaintiffs repeat, reallege and incorporate by reference paragraphs 1 through 23 of this Complaint as paragraph 32 of this Count II, as though fully set forth herein.

33. GMI had and has a duty to Plaintiffs and the Class not to permit or allow hazardous substances and hazardous wastes, including TCE, used at the Facility to contaminate Plaintiffs' property and other Class Area properties. GMI also had and has a duty to promptly and responsibly respond to known releases of contaminants in a manner which would prevent vapor contamination, and otherwise protect Plaintiffs and the Class from this vapor contamination and the impacts it has on Class Area properties.

34. GMI has breached these duties by its negligent acts and omissions in owning, operating, maintaining, and controlling the Facility, by its improper release and disposal of contaminants, by its failure to properly handle, dispose of, contain and abate the hazardous wastes at, and released from, the Facility, and by its failure to promptly and effectively investigate and address the migration of vapor contamination off-site and into the surrounding residential areas, including properties owned by Plaintiffs and the other members of the Class.

35. GMI has also breached its duty to timely warn Plaintiffs and the Class of the risk of vapor contamination on their properties, and the risk of personal harm due to the presence of TCE vapors on their properties and within and beneath their homes.

36. GMI's breaches of its duties to Plaintiffs and the Class are continuing and have caused substantial injury and damage to Plaintiffs and the Class, including, but not limited to, injury in the form of damages to their property, loss of property value, loss of the reasonable use and enjoyment of their property, and aggravation and annoyance, all due to the actual presence of vapor contamination on their properties. In addition to compensatory damages, Plaintiffs and the Class also seek injunctive relief under this Count, in the form of an injunctive order restraining and enjoining GMI from allowing continued vapor contamination of Plaintiffs' and Class members' properties and compelling GMI to abate the vapor contamination it has caused in the Class Area.

COUNT III

PRIVATE NUISANCE

37. Plaintiffs repeat, reallege and incorporate by reference paragraphs 1 through 23 and 33 through 36 of this Complaint as paragraph 37 of this Count III, as though fully set forth herein.

38. The Facility and the migration of contamination from the Facility into the Class area constitutes a private nuisance to Plaintiffs and the Class. GMI remains in control of the Facility with respect to addressing the contamination present there and which continues to cause vapor contamination throughout the Class Area.

39. Contaminants improperly disposed at and released from the Facility continue to migrate in vapor form onto Plaintiffs' property and properties throughout the Class Area.

40. GMI has failed to properly dispose of, contain and abate the hazardous wastes at, and released from, the Facility. GMI's continuing control over the Facility, so as to cause and permit further vapor contamination of Class Area properties, constitutes an unreasonable, unwarranted and unlawful use of the Facility. GMI's control and maintenance of this nuisance, and the actual presence of vapor contamination on properties owned by Plaintiffs and the Class, has substantially interfered with Plaintiffs' and other Class members' reasonable use and enjoyment of their properties.

41. Plaintiffs and the Class have suffered substantial damage as a result of GMI's control and ongoing maintenance of the Facility, a private nuisance. In addition to compensatory damages, Plaintiffs and the Class also seek injunctive relief under this Count, in the form of an injunctive order restraining and enjoining GMI from allowing continued vapor contamination of Plaintiffs' and Class members' properties and compelling GMI to abate the vapor contamination it has caused in the Class Area.

COUNT IV

WILLFUL AND WANTON MISCONDUCT

42. Plaintiffs repeat, reallege and incorporate by reference paragraphs 1 through 23 of this Complaint as paragraph 42 of this Count IV, as though fully set forth herein.

43. Despite knowing that Plaintiffs and the Class are in a position of peril with respect to the vapor contamination that exists throughout the Class Area, GMI has failed to adequately investigate and remediate the contamination caused by its unlawful waste handling practices.

44. For well over a decade prior to this suit being filed, GMI had recognized that area residents were in a position of peril with respect to vapor contamination emanating from the Facility, yet unreasonably and irresponsibly failed and refused to investigate and remediate vapor contamination in a timely or sufficient manner. Despite knowing that Plaintiffs and the Class were in a position of peril with respect to vapor contamination emanating from the Facility, GMI unreasonably and irresponsibly waited until 2013 before performing any vapor testing of properties in the Class Area or taking any responsive measures.

45. GMI has acted in a willful and wanton manner and in reckless indifference to Plaintiffs' and the Class's health and property, and to the safety of the general public. At all times since recognizing that Plaintiffs and the Class were in a position of peril, GMI has attempted to avoid or shortcut a thorough response to the contamination it has caused in the Class Area, elevating its desire to save money over the interests of the owners of Class Area properties and the health and safety of the residents in the Class Area.

46. As a direct and proximate result of the willful, wanton and reckless acts and/or omissions of GMI, Plaintiffs and the Class have sustained damages. In addition to compensatory damages, Plaintiffs and the Class also seek injunctive relief under this Count, in the form of an injunctive order restraining and enjoining GMI from allowing continued vapor contamination of Plaintiffs' and Class members' properties and compelling GMI to abate the vapor contamination it has caused in the Class Area.

RELIEF REQUESTED

WHEREFORE, Plaintiffs and the Class request that this Court enter judgment in their favor and against Defendant, and specifically request entry of the following relief:

A. that the Court certify Plaintiffs' action as a class action on behalf of all others similarly situated, appoint Plaintiffs' counsel as counsel for the Class, and order that Notice be given to the Class of this action;

B. that the Court declare that Defendant is liable under Section 107(a) of CERCLA for the response costs incurred through the date of trial by Plaintiffs and the Class in connection with the release of hazardous substances, including pre-judgment interest on such costs and order that Defendant reimburse Plaintiffs and the Class for such response costs;

C. that the Court award Plaintiffs and the Class compensatory and other appropriate damages in amounts to be determined by the evidence at trial and allowed by law;

D. that the Court preliminarily and permanently restrain and enjoin GMI from allowing continued vapor contamination of Class Area properties and compel GMI to abate the vapor contamination it has caused on Class Area properties; and

E. that the Court award Plaintiffs and the Class their costs of suit and such other and further relief as the Court deems appropriate and just.

JURY TRIAL DEMANDED

Plaintiffs and the Class request trial by jury on all issues so triable.

Dated: January 17, 2014

By: s/ Michael D. Hayes
One of Plaintiffs' Attorneys

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