

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JULIE GEORGE, individually and on behalf of all others similarly situated in Missouri,)	Case No. 16-cv-1887
)	
Plaintiff,)	NOTICE OF REMOVAL
v.)	
)	Removed from the Circuit Court of the
KELLOGG COMPANY,)	City of St. Louis, State of Missouri,
)	Case No. 1622-CC10943
Defendant.)	

Defendant Kellogg Company hereby effects the removal of this action from the Circuit Court for the City of St. Louis, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division. Removal is proper under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), because this case is a class action in which the putative class exceeds 100 members, at least one plaintiff is diverse from at least one defendant, and the amount in controversy exceeds \$5 million. This Court also has subject-matter jurisdiction under the diversity statute, 28 U.S.C. § 1332(a), because Plaintiff and Kellogg are completely diverse and there is over \$75,000 in controversy exclusive of interest and costs. Venue is proper under 28 U.S.C. § 1391 because a substantial number of the allegedly mislabeled products were sold in the City of St. Louis, Missouri, which is part of the District to which this case has been removed

FACTUAL BACKGROUND AND STATE COURT PROCEEDINGS

1. Plaintiff filed this lawsuit in the Circuit Court for the City of St. Louis, Missouri’s Twenty-Second Judicial Circuit. Defendant Kellogg received service on November 2, 2016.

2. Pursuant to 28 U.S.C § 1446(a), a true and correct copy of the state court case file is attached hereto as **Exhibit A** and incorporated herein by reference. Exhibit A includes all process, pleadings, motions, and orders filed in this case.

3. Plaintiff’s Petition alleges that the packaging of Kellogg’s Special K Fruit & Yogurt cereal is deceptive because it depicts a strawberry and blackberry on the front panel of the box, but does not contain strawberries or blackberries as an ingredient. *See* Ex. A, Petition, ¶¶ 2-3.

4. Based on those allegations, the Petition alleges claims for violation of the Missouri Merchandising Practices Act, RSMo. § 407.020, and unjust enrichment. Ex. A, Petition, ¶¶ 38-51.

5. The Petition seeks compensatory damages, disgorgement, restitution, injunctive relief, and attorneys' fees on behalf of a putative class consisting of all Missouri citizens who purchased Special K Fruit & Yogurt cereal since October 27, 2011. Ex. A, Petition, ¶¶ 27, 45, 51, Prayer for Relief.

REMOVAL IS PROPER UNDER 28 U.S.C. § 1332(d)

6. CAFA provides that federal courts have original jurisdiction over class actions in which (i) any plaintiff is diverse from any defendant, (ii) there are at least 100 members in the putative class, and (iii) the amount in controversy exceeds \$5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d). Under 28 U.S.C. § 1441(a), any such action may be removed to the district court for the district and division embracing the place where the action is pending.

The Parties Are Sufficiently Numerous To Satisfy CAFA

7. Plaintiff and all members of the putative class are citizens of Missouri. Ex. A, Petition, ¶ 27. Plaintiff alleges that “many hundreds of thousands of purchasers” in Missouri purchased Special K Fruit & Yogurt cereal since October 27, 2011 and qualify as members of the putative class. Ex. A, Petition, ¶ 30. This satisfies CAFA's numerosity requirement.

The Parties Are Minimally Diverse

8. Kellogg is incorporated in Delaware and maintains its corporate headquarters in Battle Creek, Michigan. Accordingly, Kellogg is a citizen of Delaware and Michigan. *See* 28 U.S.C. § 1332(c)(1) (providing that a corporation is a “citizen of any State by which it has been incorporated and of the State where it has its principal place of business”); *see also Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (proving that a corporation's principal place of business is the place where “a corporation's officers direct, control, and coordinate the corporation's activities,” which is typically “the place where the corporation maintains its headquarters”).

9. Accordingly, the minimal diversity requirement is satisfied because Plaintiff and all “numerous” class members are citizens of Missouri and no Defendant is a citizen of Missouri. *See*

Ex. A, Petition, ¶¶ 11-12, 27. Additionally, because no Defendant is a citizen of Missouri, neither the “local controversy” nor the “home state” exception to CAFA apply. *See* 28 U.S.C. § 1332(d)(3)-(4).

There Is at Least \$5,000,000 in Controversy

10. “In measuring the amount in controversy, a court must assume that the allegations of the complaint are true and that a jury will return a verdict for the plaintiff on all claims made in the complaint.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008). It must then “add[] up the value of the claim of each person who falls within the definition of the proposed class.” *Std. Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348 (2013). In other words, “[t]he ultimate inquiry is what is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.” *Korn*, 536 F. Supp. 2d at 1205. The amount-in-controversy standard is satisfied if the removing party can make a “plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

11. From 2012 through November 2016, sales of Kellogg’s Special K Fruit & Yogurt cereal to retailers and distributors totaled approximately \$374,437,485 nationwide. That amount is less than the dollar value of the retail purchase price in sales by retailers because of the mark-up by retailers. Plaintiff’s Petition is directed to the retail purchase price. Ex. A, Petition, ¶ 11. Kellogg is not able to track sales by state because, among other things, it sells to distributors and retailers, who may sell the product in various states. Based on population data from the 2015 U.S. Census, Kellogg estimates that approximately \$7,087,185.63 (or approximately 1.89%) of its national sales were sold in Missouri. *See* Ex. B, Decl. of John K. Min.

12. Plaintiff seeks compensatory damages, or in the alternative, restitution on behalf of the putative class. Although Plaintiff is vague about the precise “restitution” she seeks, her demand for restitution places in controversy at least the value of retail sales that would have been generated by Kellogg’s estimated sales to retailers and distributors of \$7,087,185.63 of Special K Fruit & Yogurt cereal in Missouri during the class period.¹

¹ Plaintiff appears to seek “restitution” of the entire purchase price of Kellogg’s Special K Fruit &

13. Plaintiff also seeks an injunction restraining Kellogg from engaging in “ongoing deceptive representations and omissions on the Product’s packaging.” Ex. A, Petition, ¶¶ 4, 45. “In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.” *James Neff Kramper Family Farm P’ship v. IBP, Inc.*, 393 F.3d 828, 833 (8th Cir. 2005) (quoting *Hunt v. Wash. State Apple Adver, Comm’n*, 432 U.S. 333, 347 (1977)); *see also Sutter v. Aventis CropScience USA Holding, Inc.*, 145 F. Supp. 2d 1050, 1053-54 (S.D. Iowa 2001) (denying motion to remand where value of injunctive relief sought exceeded \$75,000). The amount in controversy likewise includes “the cost of complying with [Plaintiff’s] requested injunctive relief.” *Gen. Dentistry for Kids, LLC v. Kool Smiles, P.C.*, 379 Fed. Appx. 634, 635 (9th Cir. 2010); *Toller v. Sagamore Ins. Co.*, 558 F. Supp. 2d 924, 930–31 (E.D. Ark. 2008) (holding that the amount in controversy exceeds \$5,000,000 when “measure by the value of the

Yogurt cereal. *See* Ex. A, Petition, ¶ 5 (seeking “at most equal to the refund of the purchase price she paid for the Product”). Kellogg believes that Plaintiff is legally precluded from recovering the full purchase price of the products because class members derived significant value from the products, and full restitution would therefore amount to an unjustified windfall. *See Samet v. Procter & Gamble Co.*, No. 12-1891, 2015 WL 5012828, at *2 (N.D. Cal. Aug. 24, 2015) (“The proper measure of restitution in a mislabeling case is the amount necessary to compensate the purchaser for the difference between the product as labeled and the product as received, not the full purchase price or all profits. There is no reason to go beyond the price premium, and doing so would result in a windfall to plaintiff.”)

For purposes of removal, however, the relevant inquiry is what amount is put in controversy by the plaintiff’s complaint, not what a defendant will actually owe. *See Villas v. Peak Interests*, No. 06-282, 2006 WL 3253472, at *3 (D. Neb. Nov. 8, 2006) (“[F]or purposes of determining diversity jurisdiction, the face of the plaintiff’s complaint sets the jurisdictional amount.”); *Zunamon v. Brown*, 418 F.2d 883, 885-86 (8th Cir. 1969) (holding that “the sum claimed by the plaintiff controls” unless it “appear[s] to a legal certainty” that this amount cannot be recovered). Accordingly, the full amount of approximately \$7 million Missouri sales figure is properly included in the amount-in-controversy calculation. *See Waller v. Hewlett-Packard Co.*, No. 11-454, 2011 WL 8601207, at *2 n.3 (S.D. Cal. May 10, 2011) (calculating amount in controversy based on the full purchase price, even though the plaintiff argued it would be “unrealistic” to expect the putative class members to receive a “100% reimbursement,” as the relevant inquiry is based on the “relief a plaintiff seeks, not what the plaintiff may reasonably or ultimately obtain”); *Jarrett v. Panasonic Corp. of N. Am.*, 934 F. Supp. 2d 1020, 1023 (E.D. Ark. 2013) (“[T]he jurisdictional fact ‘is not whether the damages are greater than the requisite amount, but whether a fact finder *might* legally conclude’ that they are.”) (*quoting Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 944 (8th Cir.2012)) (emphasis in original).

object of the litigation from the vantage point of the defendant,” as expressly contemplated by CAFA); *see also Adams v. Am. Family Mut. Ins. Co.*, 981 F. Supp. 2d 837, 848 (S.D. Iowa 2013) (explaining that “In determining the amount in controversy under [CAFA], the value of injunctive relief should probably be considered from either the plaintiffs' or the defendant's point of view.”).

14. The injunctive relief Plaintiff seeks would likely require Kellogg to cease selling Special K Fruit & Yogurt cereal in its current packaging nationwide. In order to comply with such an injunction, Kellogg would need to hire an outside vendor to visit thousands of stores nationwide, remove all boxes of Special K Fruit & Yogurt cereal from the shelves, and destroy those products. Because Kellogg would not be able to sell Special K Fruit & Yogurt cereal during the several months it would take to create new packaging, it would incur a significant loss of sales during that time. Kellogg estimates that the cost of complying with Plaintiff's requested injunctive relief would be approximately \$1 million. Ex. B, Decl. of John K. Min.

15. Plaintiff also seeks attorneys' fees. Ex. A, Petition at 13 (Prayer for Relief). Those fees are properly considered as part of the amount in controversy for the purposes of determining federal jurisdiction. *See Raskas v. Johnson & Johnson*, 719 F.3d 884, 887-88 (8th Cir. 2013); *Slocum v. Gerber Prod. Co.*, No. 16-04120, 2016 WL 3983873, at *4 (W.D. Mo. July 25, 2016) (considering amount of attorney's fees in determining the amount in controversy where the plaintiff alleged a cause of action under the Missouri Merchandising Practices Act). Fee requests in consumer class actions, such as this lawsuit, are typically significant. *See, e.g., Wilson v. Airborne, Inc.*, No. 07-770, 2008 WL 3854963, at *12 (C.D. Cal. Aug. 13, 2008) (awarding \$3,459,946 in attorneys' fees in false advertising class action); *see also Kerr v. Ace Cash Experts, Inc.*, No. 10-1645, 2010 WL 5177977, *2 (E.D. Mo. Dec. 14, 2010) (“Even if plaintiffs are correct that their damages total \$1,800,000, or even only \$594,000, similar amounts have been held to satisfy the amount in controversy requirement in similar cases because of the potential for punitive damages and attorneys fees.”); *Thornton v. DFS Services LLC*, No. 09-1040, 2009 WL 3253836, *1-2 (E.D. Mo. Oct. 9, 2009) (noting that “[e]ven if only a fraction of the Missouri customers suffered actual damages, plaintiff is bringing additional claims for punitive damages and attorneys' fees, which could easily exceed the \$5,000,000 threshold” of CAFA”);

16. When aggregated, the potential damages and/or restitution, the cost of complying with Plaintiff's requested injunctive relief, and the amount of attorneys' fees that class counsel may recover exceed \$5 million.

17. Plaintiff attempts to evade removal by alleging that damages will be less than \$5 million. The U.S. Supreme Court, however, held that a party cannot avoid removal by pleading damages less than \$5 million. *See Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345 (2013) (stipulation to damages less than \$5 million does not bar CAFA removal). Further, the petition purports to limit "damages" only; it does not limit the costs of complying with injunctive relief.

REMOVAL IS PROPER UNDER 28 U.S.C. § 1332(a)

1. District courts also have original jurisdiction over civil actions in which (1) there is complete diversity of citizenship, and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a). The complete diversity requirement in class actions is based on the citizenship of the named plaintiffs at the time that the action was filed. *Sheehan v. Gustafson*, 967 F.2d 1214, 1215 (8th Cir. 1992) ("Courts look to the facts as of the date an action is filed to determine whether or not diversity of citizenship exists between the parties."). Moreover, if there is original jurisdiction over the named plaintiff based on diversity, then supplemental jurisdiction will attach to the claims of all other plaintiffs. *Gilmer v. Walt Disney Co.*, 915 F. Supp. 1001, 1010 (W.D. Ark. 1996) (holding that once the named plaintiff meets the amount in controversy requirement, 28 U.S.C. § 1367 grants "supplemental jurisdiction over the claims of the unnamed class members, regardless of their ability to independently meet the amount in controversy requirement.").

2. As set forth above, the parties are completely diverse because Plaintiff is a citizen of Missouri and Kellogg is a citizen of Delaware and Michigan. *See supra* ¶¶ 7-8.

3. Even ignoring Plaintiff's request for damages or restitution, the amount in controversy is satisfied because it would cost at least \$75,000 to comply with Plaintiff's request for injunctive relief. *See supra* ¶¶ 11-12; *see also Sutter*, 145 F. Supp. 2d at 1053-54 (holding that plaintiff had satisfied the amount in controversy requirement "when either punitive damages or the value of injunctive relief is included, as they must be."); *Luna v. Kemira Specialty, Inc.*, 575 F. Supp. 2d

1166, 1172-73 (C.D. Cal. 2008) (determining that amount in controversy exceeded \$75,000 based on value of requested injunctive relief in case where plaintiff declined to seek damages).

4. Furthermore, the amount in controversy includes all attorneys' fees reasonably anticipated to accrue until the action is resolved. *See Dowell v. Debt Relief Am., L.P.*, No. 07-27, 2007 WL 1876478, at *2 (E.D. Mo. June 27, 2007) (holding that attorneys' fees authorized under the MMPA count towards the amount in controversy) (citing *Rasmussen v. State Farm Mut. Auto Ins. Co.*, 410 F.3d 1029, 1030 (8th Cir. 2005)); *Chambers v. Penske Truck Leasing Corp.*, No. 11-381, 2011 WL 1459155, at *4 (E.D. Cal. Apr. 15, 2011) (noting that the court could "reasonably anticipate thousands of dollars in attorneys' fees," recognizing that fees "often exceed the damages," and concluding that jurisdictional threshold was satisfied); *see also supra* ¶ 13. If the case were resolved in Plaintiff's favor, it is reasonable to anticipate that Plaintiff would request fees in excess of \$75,000. *See id.*; *see also Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1034-35 (N.D. Cal. 2002) (concluding that amount in controversy exceeded \$75,000 based on court's recognition that the lawsuit would "require substantial effort from counsel" and its experience that fee awards are often significant).

5. Thus, regardless of the amount of individual damages Plaintiff may recover, the cost of Plaintiff's requested injunctive relief and the value of the attorneys' fees she seeks exceeds \$75,000, and removal is accordingly proper.

VENUE IS PROPER

6. A substantial part of the acts or omissions alleged in the Petition occurred in the Eastern District of Missouri because Plaintiff purchased the Kellogg product at issue in the City of St. Louis, Missouri. Ex. A, Petition, ¶ 11. Accordingly, venue is proper under 28 U.S.C. § 1391.

REMOVAL IS TIMELY

7. Under 28 U.S.C. § 1446(b), notice of removal of a civil action must be filed within thirty (30) days of the defendant's receipt of service of the summons and the Petition. Kellogg was served on November 2, 2016. *See* Ex. A at pg. 25. This Notice of Removal is accordingly timely.

OTHER REQUIREMENTS FOR REMOVAL ARE MET

8. Defendant Kellogg, the only Defendant, has not had any attorneys enter an appearance, file any responsive pleadings, or file any papers responding to the Petition in the state court.

9. Defendant will promptly give written notice of the filing of this Notice of Removal to all parties, and a copy of this Notice will be filed with the Clerk of the Circuit Court as required by 28 U.S.C. § 1446(d).

CONCLUSION

WHEREFORE, Notice is given that this action is removed from the Circuit Court of the City of St. Louis, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division.

Dated: December 1, 2016

Respectfully submitted,

GREENSFELDER, HEMKER & GALE, P.C.

By /s/ Erwin O. Switzer
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St. Louis, MO 63102
Ph: 314-335-6825
Fax: 314-241-8624
Email: eos@greensfelder.com

Attorneys for Defendant Kellogg Company

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December 2016, a true and correct copy of the foregoing document was served upon the following via the Court's electronic notification system and via e-mail to:

Matthew H. Armstrong
ARMSTRONG LAW FIRM LLC
8816 Manchester Rd., No. 109
St. Louis, MO 63144
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com

Attorney for Plaintiff

/s/ Erwin O. Switzer

1635170

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JULIE GEORGE, individually and on behalf of all others similarly situated in Missouri,

(b) County of Residence of First Listed Plaintiff CITY OF ST. LOUIS, MO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew H. Armstrong, Armstrong Law Firm LLC, 8816 Manchester Road, No. 109, St. Louis, MO 63144 (314) 258-0212

DEFENDANTS

KELLOGG COMPANY

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Erwin O. Switzer, Greensfelder, Hemker & Gale, P.C., 10 S. Broadway, Suite 2000, St. Louis, MO 63102 (314) 241-9090

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Removal under Class Action Fairness Act and Diversity 28 USC 1332 (a) and (d)

Brief description of cause:

Removal of Class Action Petition for Violation of MO Merchandising Practice Act and Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

4,999,999.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12/01/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Erwin O. Switzer

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

JULIE GEORGE,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 16-cv-1887
KELLOGG COMPANY,)	
)	
)	
Defendant,)	
)	

ORIGINAL FILING FORM

**THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY
WHEN INITIATING A NEW CASE.**

☐ THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS
PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____
AND ASSIGNED TO THE HONORABLE JUDGE _____.

☐ THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY
PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND
THAT CASE WAS ASSIGNED TO THE HONORABLE _____. THIS CASE MAY,
THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

☒ NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT
COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE
MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: 12/01/2016

/s/ Erwin O. Switzer
Signature of Filing Party

EXHIBIT A



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1622-CC10943 - JULIE GEORGE V KELLOGG COMPANY (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/ Execution
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This information is provided as a service and is not considered an official court record.

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☐ Ascending

- 11/09/2016** ☐ **Notice of Service**
 SERVICE RETURN.
Filed By: MATTHEW HALL ARMSTRONG
On Behalf Of: JULIE GEORGE
- ☐ **Agent Served**
 Document ID - 16-SMOS-8705; Served To - KELLOGG COMPANY; Server - ; Served Date - 02-NOV-16;
 Served Time - 15:59:00; Service Type - Special Process Server; Reason Description - Served
- 11/08/2016** ☐ **Jury Trial Scheduled**
Scheduled For: 04/24/2017; 9:00 AM ; BRYAN L HETTENBACH; City of St. Louis
- 11/01/2016** ☐ **Summons Issued-Circuit**
 Document ID: 16-SMOS-8705, for KELLOGG COMPANY.
- 10/28/2016** ☐ **Order - Special Process Server**
- 10/27/2016** ☐ **Entry of Appearance Filed**
Filed By: MATTHEW HALL ARMSTRONG
- ☐ **Exhibit Filed**
 EXHIBIT 2
Filed By: MATTHEW HALL ARMSTRONG
- ☐ **Exhibit Filed**
 EXHIBIT 1
Filed By: MATTHEW HALL ARMSTRONG
- ☐ **Motion Special Process Server**
Filed By: MATTHEW HALL ARMSTRONG
- ☐ **Filing Info Sheet eFiling**
Filed By: MATTHEW HALL ARMSTRONG
- ☐ **Note to Clerk eFiling**
Filed By: MATTHEW HALL ARMSTRONG
- ☐ **Pet Filed in Circuit Ct**
 Petition and Jury Demand
Filed By: MATTHEW HALL ARMSTRONG
On Behalf Of: JULIE GEORGE
- ☐ **Judge Assigned**

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

JULIE GEORGE, individually and on
behalf of all others similarly situated in
Missouri,

Plaintiff,

v.

KELLOGG COMPANY,

Defendant.

Serve: Kellogg Company
The Corporation Company RAGT
40600 Ann Arbor Rd. E., Ste. 201
Plymouth MI 48170

No. _____

JURY DEMAND

PETITION AND JURY DEMAND

Plaintiff JULIE GEORGE (“Plaintiff”), individually and on behalf of all others similarly situated in Missouri (“Class Members” or the “Class”), alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE CASE

1. KELLOGG COMPANY (“Kellogg” or “Defendant”) is the owner, manufacturer, advertiser, and seller of Kellogg’s® Special K® Fruit & Yogurt cereal (the “Product”).

2. On the front packaging of its “Fruit & Yogurt” Product, Defendant prominently places pictures of a bright, colorful strawberry and blackberry, thus implying

that the “fruit” contained in the Product is comprised of and/or made with strawberry and blackberry. No other pictures of fruit are represented on the Product’s front packaging.¹

3. As the Product’s Ingredients Panel indicates,² however, the only fruit contained in the Product is dried apples. Accordingly, Kellogg’s representations that the Product contains strawberry and blackberry are false and likely to deceive reasonable consumers.

4. Therefore, Plaintiff brings this action on behalf of herself and a class of Missouri consumers to rectify the injuries caused by Kellogg’s unlawful practices, and to enjoin Kellogg’s ongoing deceptive representations and omissions on the Product’s packaging.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court. The amount in controversy is less than \$75,000 per Plaintiff and Class Member individually and less than \$5,000,000 in the aggregate. Plaintiff believes and alleges that the total value of her individual claims is at most equal to the refund of the purchase price she paid for the Product.

6. Moreover, because the value of Plaintiff’s claims is typical of the claim value of each Class Member, the total damages to Plaintiff and Class Members, inclusive of costs and attorneys’ fees, will not exceed \$4,999,999 and is less than the five million dollar (\$5,000,000) minimum threshold necessary to create federal court jurisdiction.

¹. See image of Product’s front packaging, attached hereto as **Exhibit 1**.

². See image of Product’s Ingredients Panel, attached hereto as **Exhibit 2**.

7. Defendant cannot plausibly allege it has sold sufficient Products in Missouri during the Class Period to satisfy CAFA's jurisdictional minimum amount in controversy.

8. Based on the allegations of the foregoing paragraphs, there is no diversity or CAFA jurisdiction for this case.

9. This Court has personal jurisdiction over Defendant pursuant to § 506.500, RSMo., as Defendant has had more than sufficient minimum contact with the State of Missouri and has availed itself of the privilege of conducting business in this state. Additionally, and as explained below, Defendant has committed affirmative tortious acts within the State of Missouri that give rise to civil liability, including distributing and selling the misbranded Products throughout the State of Missouri.

10. Venue is proper in this forum pursuant to §§ 508.010 and 407.025.1, RSMo., because the transactions complained of occurred in the City of St. Louis, Missouri and Plaintiff was injured in the City of St. Louis, Missouri.

PARTIES

11. Plaintiff, Julie George, is a Missouri citizen and resident of the City of St. Louis. On at least one occasion during the Class Period (as defined below), Plaintiff purchased the Product with pictures of strawberries and blackberries on the front label of the Product package at a Schnucks store in the City of St. Louis, Missouri, for personal, family, or household purposes. The purchase price of the Product was \$2.50. Plaintiff's claim is typical of all Class Members in this regard. In the course of purchasing the Product, Plaintiff viewed, perceived, and read the Product's front packaging. Plaintiff

would not have purchased the Product, or would have purchased it on different terms, had she known that it did not contain strawberries and blackberries.

12. Defendant, KELLOGG COMPANY, is a Delaware corporation with its principal place of business located in Battle Creek, Michigan. Defendant promoted and marketed the Product at issue herein in this jurisdiction and in this judicial district.

13. The unfair, unlawful, deceptive, and misleading advertising and labeling for the Product was prepared and/or approved by Defendant and its agents, and was disseminated by Defendant and its agents through labeling and advertising containing the misrepresentations alleged herein.

14. Whenever reference in this Complaint is made to any act by Defendant or its subsidiaries, affiliates, distributors, retailers, and other related entities, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Defendant committed, knew of, performed, authorized, ratified, and/or directed such act or transaction on behalf of Defendant while actively engaged in the scope of their duties.

FACTUAL ALLEGATIONS

15. The labeling of the “Fruit & Yogurt” Product with large, colorful pictures of a strawberry and blackberry, prominently placed on the Product’s front packaging, is likely to deceive reasonable consumers, such as Plaintiff and the members of the putative Class, because the Product does not contain such fruit, but rather, the only fruit contained in the Product is dried apple.

16. Defendant’s deceptive and misleading conduct, as described herein, violates the Federal Food, Drug and Cosmetic Act (“FDCA”) and its labeling regulations,

including those set forth in 21 C.F.R. 101 *et seq.*, as well as parallel Missouri statutes. As described in detail below, these violations contravene Missouri's Merchandising Practices Act ("MMPA"), which prohibits deceptive, fraudulent, misleading and unfair conduct in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020.43, RSMo.

17. Under FDCA section 403(a), a food is "misbranded" if "its labeling is false or misleading in any particular," or if it fails to contain certain information on its label or its labeling. 21 U.S.C. § 343(a). Likewise, under Missouri law a food is deemed to be misbranded "[i]f its labeling is false or misleading in any particular." § 196.075.1(1), RSMo.

Defendant's Material Misrepresentations

18. At all material times, Defendant has represented that the fruit contained in its self-described "Fruit & Yogurt" Product is strawberries and blackberries because Defendant has prominently placed large, colorful pictures of the same on the Product's front packaging.

19. In reality, the Product does not contain any strawberries or blackberries; rather, the only fruit contained in the Product is dried apple.

20. A reasonable consumer would interpret colorful pictures of a strawberry and blackberry, prominently displayed on the Product's front packaging, which are accompanied by large and bolded print reading "Fruit & Yogurt" to mean that the "fruit" contained in the Product is the same fruit that is represented on the Product's front packaging.

21. This labeling and advertising is likely to deceive and has deceived reasonable consumers because the Product does not contain the represented fruit, but rather, only contains dried apple.

22. As a result of Defendant's misrepresentations, Plaintiff purchased the Product.

23. Plaintiff paid a price premium for the Product over other similar products that do not employ these misrepresentations.

24. Plaintiff and members of the Class would not have purchased the Product if it did not represent that the fruit contained therein was strawberry and blackberry.

25. Alternatively, Plaintiff and members of the Class would not have paid a price premium to purchase the Product.

26. Therefore, Defendant's omissions and representations on the Product's front packaging are false, misleading, and likely to deceive and have deceived reasonable consumers into purchasing the Product.

CLASS ALLEGATIONS

27. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, Plaintiff brings this action on her own behalf and on behalf of a proposed class of all other similarly situated persons consisting of:

All Missouri citizens who purchased the Kellogg's® Special K® Fruit & Yogurt cereal in the five years preceding the filing of this Petition (the "Class Period").

28. Plaintiff reserves the right to expand, restrict, or otherwise modify the Class Definition as discovery and/or additional information so indicates.

29. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter, and the members of their immediate families and judicial staff.

30. **Numerosity:** The Class comprises many hundreds of thousands of purchasers. The class is so numerous that joinder of all members is impracticable, and the disposition of their claims in a Class Action will benefit the parties and the Court.

31. **Commonality:** The questions of law and fact common to the Class have the capacity to generate common answers that will drive resolution of the action. Common questions of law and fact include, but are not limited to, the following:

- a. Whether the representations and omissions on Defendant's Product packaging are false and/or misleading;
- b. Whether Defendant has violated the MMPA;
- c. Whether, and to what extent, injunctive relief should be granted to prevent such conduct in the future;
- d. Whether Defendant has been unjustly enriched by the sale of the Products to the Plaintiff and Class; and
- e. Whether Defendant's conduct, as set forth above, injured consumers, and if so, the extent of the injury.

32. **Typicality:** Plaintiff's claims, and Defendant's defenses thereto, are typical of the claims of the Class, as the representations made by Defendant are consistent and uniform and are contained in the advertisements and labels that every

member of the Class was necessarily exposed to in purchasing the Product. Additionally, all Members of the Class have the same or similar injury (loss of purchase price) based on Defendant's false and misleading marketing and advertising.

33. **Adequacy:** Plaintiff does not have any conflicts with any other Members of the Class, and will fairly and adequately represent and protect the interests of the Members of the Plaintiff Class and any subclass. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

34. **Predominance:** As set forth in detail herein, common issues of fact and law predominate because all of the claims are based on a uniform, false, and misleading advertising message, which all Class Members necessarily were exposed to in purchasing the Product. Specifically, the Product label states that it is a "Fruit & Yogurt" cereal and has images of a colorful strawberry and blackberry on the front package of each Product, however, the Product is not made with any strawberries or blackberries; rather, the only "Fruit" contained in the Product is dried apple.

35. **Superiority:** A class action is superior to other available methods for fair and efficient adjudication of this controversy since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exist at all, affecting any individual member of the Class;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;

c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;

d. When the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and

e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendant.

36. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendant.

37. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

COUNT I

Violation of Missouri's Merchandising Practices Act

38. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

39. Plaintiff brings this claim individually and on behalf of the Class for Defendant's violations of the MMPA. The MMPA "is designed to regulate the marketplace to the advantage of those traditionally thought to have unequal bargaining power as well as those who may fall victim to unfair practices." *Huch v. Charter Commc'ns Inc.*, 290 S.W. 3d 721, 725 (Mo. banc. 2009). The MMPA provides that it is unlawful to "act, use or employ . . . deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce" § 407.020.1, RSMo.

40. Defendant's conduct as described above constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce in that Defendant makes material misrepresentations and omissions that the Product contains strawberries and blackberries, when it do not.

41. Defendants' misrepresentations and omissions as set forth in this Complaint are material in that they relate to matters that are important to consumers and/or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff and Class Members.

42. In violation of the MMPA, Defendant employed fraud, deception, false promise, misrepresentation and/or the knowing concealment, suppression or omission of material facts in its sale and advertisement of the Products.

43. Plaintiff and Class Members purchased the Products for personal, family, or household purposes.

44. Plaintiff and Class Members suffered an ascertainable loss as a result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the purchased Products and the value of the Products if they had been as represented. Had Plaintiff and Class Members known the truth about the Products, they would not have purchased the Products, or would have purchased the Products on different terms.

45. In addition, Defendant's conduct has caused Plaintiff and Class Members irreparable injury. As described herein, Defendant has engaged in unlawful and misleading conduct on a routine and automated basis, harming Missouri consumers in a uniform manner. Unless restrained and enjoined, Defendant will continue such conduct. As authorized under § 407.025.2, RSMo., Plaintiff requests injunctive relief, and such other equitable relief as the Court deems just and proper.

COUNT II

Unjust Enrichment

46. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

47. By purchasing the Products, Plaintiff and Class Members conferred a benefit on Defendant in the form of the purchase price of the misrepresented Products.

48. Defendant had knowledge of such benefits.

49. Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

50. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations and omissions.

51. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at the Plaintiff's and Class Members' expense and in violation of Missouri law, and therefore restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons in Missouri, prays the Court:

- a. Grant certification of this case as a class action;
- b. Appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Award compensatory damages to Plaintiff and the proposed Class in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class, or, alternatively, require Defendant to disgorge or pay restitution in an amount which, when aggregated with all other elements of

damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;

- d. Award pre- and post-judgment interest in an amount which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;
- e. Award reasonable and necessary attorneys' fees and costs to Class counsel, which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class; and
- f. For all such other and further relief as may be just and proper.

Dated October 27, 2016

Julie George, Individually, and on Behalf of a Class
of Similarly Situated Individuals, Plaintiff

By: /s/ Matthew H. Armstrong
Matthew H. Armstrong (MoBar 42803)
ARMSTRONG LAW FIRM LLC
8816 Manchester Rd., No. 109
St. Louis, MO 63144
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com

Attorney for Plaintiff and the Putative Class

Exhibit 1

Kellogg's
Special
KD



**120
NOURISHING
CALORIES**

WHOLE GRAIN
FIBER
VITAMIN D
FOLIC ACID



Fruit & Yogurt

Naturally & Artificially Flavored
Crunchy Rice & Wheat Flakes with Oat &
Fruit Clusters & Yogurt-Coated Clusters



120 CALORIES	0g SAT FAT 0% DV	140mg SODIUM 6% DV	10g SUGARS
------------------------	-------------------------------	---------------------------------	----------------------

PER 3/4 CUP SERVING

NET WT 12.5 OZ (354g)

Exhibit 2

Amount in cereal, ½ cup skim milk adds 42 calories, 2mg cholesterol, 51mg sodium, 191mg potassium, 6g total carbohydrate (6g sugars), 4g protein.

** Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Sat. Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Ingredients: Rice, whole grain wheat, sugar, whole grain oats, wheat bran, contains 2% or less of salt, corn syrup, palm kernel and canola oil, dried apples, brown sugar syrup, soluble wheat fiber, malt flavor, oat flour, rice flour, nonfat milk, nonfat yogurt powder (cultured nonfat milk; heat treated after culturing), molasses, natural and artificial flavor, soy lecithin, honey, lactic acid, spice, citric acid, malic acid, red 40, BHT for freshness, sodium sulfite to protect color, blue 1.

Vitamins and Minerals: Vitamin C (ascorbic acid), reduced iron, niacinamide, vitamin B₆ (pyridoxine hydrochloride), vitamin B₂ (riboflavin), vitamin A palmitate, vitamin B₁ (thiamin hydrochloride), folic acid, vitamin B₁₂, vitamin D₃.

CONTAINS WHEAT, MILK AND SOY INGREDIENTS.

Distributed by Kellogg Sales Co.
Battle Creek, MI 49016 USA
®, TM, © 2015 Kellogg NA Co.

Produced with Genetic Engineering.

Questions or Comments?



VISIT kelloggs.com

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

JULIE GEORGE, individually and on)
behalf of all others similarly situated in)
Missouri,)
)
Plaintiff,) No. _____
)
v.)
)
KELLOGG COMPANY,)
)
Defendant.)

NOTICE OF APPEARANCE

COME NOW, Matthew H. Armstrong, of Armstrong Law Firm LLC, and hereby enters
his appearance as attorney of record for the above-named Plaintiff.

Respectfully submitted,

By: /s/ Matthew H. Armstrong
Matthew H. Armstrong (MoBar 42803)
ARMSTRONG LAW FIRM LLC
8816 Manchester Rd., No. 109
St. Louis, MO 63144
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com

One of the Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

JULIE GEORGE, individually and on)
behalf of all others similarly situated in)
Missouri,)
)
Plaintiff,) No. _____
)
v.)
)
KELLOGG COMPANY,)
)
Defendant.)

REQUEST FOR APPOINTMENT OF SPECIAL PROCESS SERVER
TO SERVE DEFENDANT

Pursuant to Missouri Rules of Civil Procedure, by and through her undersigned attorney,
Plaintiff hereby requests that McDowell & Associates be appointed as special process servers for
the purpose of serving Defendant in the above-referenced cause as follows:

Defendant: Kellogg Company
Serve: The Corporation Company RAGT
40600 Ann Arbor Rd. E., Ste. 201
Plymouth MI 48170

Please forward the requested, prepared summons for service to the office of counsel for
Plaintiff referenced below.

Dated: October 27, 2016 Respectfully submitted,

By: /s/ Matthew H. Armstrong
Matthew H. Armstrong, MoBar 42803
ARMSTRONG LAW FIRM LLC
8816 Manchester Rd., No. 109
St. Louis MO 63144
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com
One of the Attorneys for Plaintiff



IN THE 22ND JUDICIAL CIRCUIT COURT OF CITY OF ST LOUIS, MISSOURI

Judge or Division: BRYAN L HETTENBACH	Case Number: 1622-CC10943	
Plaintiff/Petitioner: JULIE GEORGE	Plaintiff's/Petitioner's Attorney/Address: MATTHEW HALL ARMSTRONG 8816 MANCHESTER RD SUITE 109 SAINT LOUIS, MO 63144	Process Server 1
vs.		Process Server 2
Defendant/Respondent: KELLOGG COMPANY	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	Process Server 3
Nature of Suit: CC Other Tort		(Date File Stamp)

Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)

The State of Missouri to: **KELLOGG COMPANY**

Alias:

THE CORPORATION COMPANY, RAGT
40600 ANN ARBOR RD E STE 201
PLYMOUTH, MI 48170

SPECIAL PROCESS SERVER

COURT SEAL OF



CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

November 1, 2016

Date

Thomas Kloeppinger

Thomas Kloeppinger
Circuit Clerk

Further Information:

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other (describe) _____.

Served at _____ (address)
in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

- I am: (check one)
- ☐ the clerk of the court of which affiant is an officer.
 - ☐ the judge of the court of which affiant is an officer.
 - ☐ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
 - ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Clerk

Personal service outside the State of Missouri is permitted only upon certain conditions set forth in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff's/Petitioner has no attorney, the Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate square on the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than 30 days from the date the Defendant/Respondent is to appear in court. The return should be made promptly and in any event so that it will reach the Missouri Court within 30 days after service.

STATE OF MISSOURI
22nd JUDICIAL CIRCUIT COURT
ST LOUIS, MISSOURI

JULIE GEORGE, *et al*,

V.

KELLOGG COMPANY, *et al*,

Case No: **1622-CC10943**

Date Issued/Filed: 11-01-16

AFFIDAVIT OF SERVICE

DEFENDANT: Kellogg Company

Being duly sworn on my oath, I *GINA SHARBOWSKI*, special process server, declare that I am a citizen of the United States, over the age of eighteen, authorized to serve process in this jurisdiction, and not a party to or interested in the proceedings of this action. I received this process / assignment on 11-01-16, and that I personally executed service of the following: SUMMONS FOR PERSONAL SERVICE OUTSIDE THE STATE OF MISSOURI (date filed: 11-01-16); PETITION AND JURY DEMAND; EXHIBITS 1 & 2; in regards to the above case, by delivering a true copy of said documents in accordance with state statutes, upon:

KELLOGG COMPANY

as follows:

CORPORATE SERVE: by serving: JAMES GREENOUGH, Auth Agent @The Corporation Company, R/A, *personally*, *by identifying him and handing him the papers*

Age: 18-20 Sex: M Race: W Hair: Brn
at:

Complete Address of Service

THE CORPORATION COMPANY, R/A's Address:

40600 Ann Arbor Rd, E., Ste 201

Plymouth, Michigan 48170

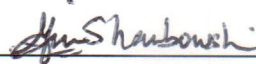
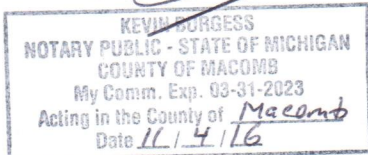
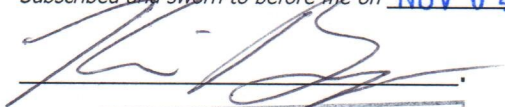
WAYNE County, Michigan.

Day, Date, Time of Service

Wed. NOV 02 2016 @ 3:59pm

I declare under the penalty of perjury that the information contained in this Affidavit of Service is true and correct.

Subscribed and sworn to before me on NOV 04 2016



Gina Sharbowski
Process Server

42309 Bobjean Street, Ste 1500
Sterling Heights, MI 48314





IN THE 22ND JUDICIAL CIRCUIT COURT OF CITY OF ST LOUIS, MISSOURI

Judge or Division: BRYAN L HETTENBACH	Case Number: 1622-CC10943	
Plaintiff/Petitioner: JULIE GEORGE	Plaintiff's/Petitioner's Attorney/Address: MATTHEW HALL ARMSTRONG 8816 MANCHESTER RD SUITE 109 SAINT LOUIS, MO 63144	Process Server 1
	vs.	Process Server 2
Defendant/Respondent: KELLOGG COMPANY	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	Process Server 3
Nature of Suit: CC Other Tort		(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: KELLOGG COMPANY

Alias:

THE CORPORATION COMPANY, RAGT
40600 ANN ARBOR RD E STE 201
PLYMOUTH, MI 48170

SPECIAL PROCESS SERVER

COURT SEAL OF



CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

November 1, 2016

Date

Thomas Kloeppinger
Circuit Clerk

Further Information:

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is PROCESS SERVER of _____ County, MI (state).
- I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.

- ☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to JAMES GREENOUGH (name) Auth Agent @ the Corp. Co, R/A (title).
- ☐ other (describe) _____

Served at 40600 ANN ARBOR RD, E, Ste 201, Plymouth, MI 48170 (address)
in Wayne County, MI (state), on 11-2-16 (date) at 3:59pm (time).

Gina Sharbowski

Printed Name of Sheriff or Server
Process Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this NOV 04 2016 (day) (month) (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- ☒ authorized to administer oaths. (use for court-appointed server)

(Seal) *SEE NOTARIZED
AFFIDAVIT
ATTACHED

Signature and Title

Service Fees, if applicable

Summons \$ _____

Non Est \$ _____

Mileage \$ _____ (_____ miles @ \$ _____ per mile)

Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

KEVIN BURGESS
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF MACOMB
My Comm. Exp. 03-31-2023
Acting in the County of Macomb
Date 11/4/16

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JULIE GEORGE, individually and on behalf of all others similarly situated in Missouri,)	Case No.
)	
Plaintiff,)	DECLARATION OF JOHN K. MIN
v.)	
)	
KELLOGG COMPANY,)	
)	
Defendant.)	

I, John K. Min, declare as follows:

1. I am Corporate Counsel for Defendant Kellogg Company and have worked at Kellogg Company since July 2010. I have personal knowledge of the facts set forth herein, and I could and would testify competently thereto if called as a witness.
 2. Kellogg Company is incorporated in Delaware and has its corporate headquarters in Battle Creek, Michigan.
 3. I have personal knowledge of, among other things, the marketing of Kellogg's Special K Fruit & Yogurt cereal and other Kellogg products. I also have access to Kellogg's financial information, including revenue from the sales of Special K Fruit & Yogurt cereal.
 4. Between 2012 and November 2016, Kellogg's nationwide sales of Special K Fruit & Yogurt Cereal to retailers and distributors totaled approximately \$374,437,485. Kellogg does not track sales of its cereal products by state because, among other things, it sells directly to distributors and retailers, who may distribute the products to various states.
 5. According to the 2015 U.S. Census, available online at www.census.gov, on July 1, 2015, the population of Missouri was 6,083,672, and the population of the United States was 321,418,820. See *Missouri QuickFacts*, <http://www.census.gov/quickfacts/table/PST045215/29>; *United States QuickFacts*, <https://www.census.gov/quickfacts/table/PST045215/00>.
 6. Based on these population statistics, I estimate that approximately \$7,087,185.63 (or approximately 1.89%) of Kellogg's nationwide sales of Special K Fruit & Yogurt cereal were sold in
-

Missouri. These figures reflect Kellogg's sales to distributors and retailers; the sales figure for the amount paid by consumers will be higher because distributors and retailers will typically sell Kellogg's products to consumers with a price mark-up.

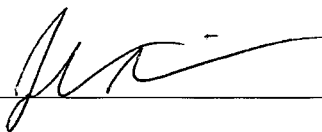
7. It is my understanding that the plaintiff in this case seeks injunctive relief requiring Kellogg to discontinue its current packaging for Special K Fruit & Yogurt cereal in Missouri. Kellogg does not have a Missouri-only production line for Special K cereal products. Rather, various Kellogg facilities produce and package Special K cereal products, which then distributed in Missouri and other states. For this reason, Kellogg would have to change its entire packaging process for Special K cereals in order to comply with the plaintiff's proposed injunction.

8. If the Court granted the plaintiff's proposed injunctive relief, Kellogg would incur significant costs in complying with such an order. Based on past experience with recalls, I estimate that such costs would be approximately \$1 million. For example:

- a. Tens of thousands of boxes of Special K Fruit & Yogurt cereal would be recalled and removed from the shelves of supermarkets and other stores – all at Kellogg's expense. Further, it would require destroying the on-shelf products and inventory.
- b. Additionally, it is my understanding that in the event of a recall, Kellogg would have to hire an outside vendor to visit every store in Missouri that carries Special K Fruit & Yogurt cereal and remove each box from the shelves. Alternatively, those stores that carry Special K Fruit & Yogurt cereal would handle the removal of the products from the shelves and would charge Kellogg for the cost of doing so. In either case, Kellogg would incur costs for labor, transportation, and other logistical aspects associated with repurchasing product from retailers, destroying product, and providing in-store notices regarding the recall.
- c. Kellogg would also have to re-design its packaging Special K Fruit & Yogurt cereal boxes. This would require Kellogg to change the graphics for each package at issue.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 1st day of December, 2016, in Battle Creek, Michigan.

By: _____