

**Class Action Settlement Agreement**

This Settlement Agreement and Release (“Agreement”), effective upon the date of the signatories below, is made by and between Kellogg Sales Company (“Kellogg”) and the Class Representatives (defined below) on behalf of the Class (defined below) (collectively, the “Parties”), in the matter of *Hadley et al. v. Kellogg Sales Co.*, No. 16-cv-4955-LHK (N.D. Cal.) (“*Hadley*” or the “Action”).

**WHEREAS**, on August 29, 2016, Class Representative Stephen Hadley commenced the *Hadley* lawsuit for violations of California law of unfair competition, false advertising, and breach of warranty in the United States District Court for the Northern District of California;

**WHEREAS**, on October 21, 2019, pursuant to Fed. R. Civ. P. 15(a)(2), Class Representatives Melody DiGregorio, Eric Fishon, Kerry Austin, and Nafeesha Madyun joined the *Hadley* action (having previously brought and voluntarily dismissed without prejudice their claims in a lawsuit in the Northern District of New York styled *DiGregorio v. Kellogg Sales Co.*, No. 19-cv-632-GTS (N.D.N.Y.) (“*DiGregorio*,” together with *Hadley*, the “Actions”);

**WHEREAS**, Kellogg denies the allegations contained in the Actions; and

**WHEREAS**, Kellogg and the Class Representatives on behalf of the Class (as defined below) wish to resolve any and all past, present, and future claims the Class has or may have against Kellogg on a nationwide basis as they relate to the allegations in the Actions regarding the Class Products (as defined below);

**NOW THEREFORE**, the Parties, for good and valuable consideration, the sufficiency of which is hereby acknowledged, understand and agree to the following terms and conditions.

**1. DEFINITIONS.**

As used in this Agreement, the following capitalized terms have the meanings specified below.

**1.1. “Actions”** means the matters of the matters of *Hadley v. Kellogg Sales Co.*, No. No. 16-cv-4955-LHK (N.D. Cal.) (“*Hadley*”), and *DiGregorio v. Kellogg Sales Co.*, No. 19-cv-632-GTS (N.D.N.Y.) (“*DiGregorio*”).

**1.1.1. “DiGregorio”** means *DiGregorio v. Kellogg Sales Co.*, No. 19-cv-632-GTS (N.D.N.Y., filed May 28, 2019).

**1.1.2. “Hadley”** means *Hadley v. Kellogg Sales Co.*, No. No. 16-cv-4955-LHK (N.D. Cal., filed August 29, 2016).

**1.2. “Agreement” or “Settlement Agreement”** means this Class Action Settlement Agreement.

**1.3. “Cash Award”** means a cash payment from the Settlement Fund to a Settlement Class Member with an Approved Claim.

**1.4. “Claim”** means a request for relief submitted by or on behalf of a Class Member on a Claim Form filed with the Class Administrator in accordance with the terms of this Agreement.

**(a) “Approved Claim”** means a claim approved by the Class Administrator, according to the terms of this Agreement.

**(b) “Claimant”** means any Class Member who submits a Claim Form for the purpose of claiming benefits, in the manner described in Section 4 of this Agreement.

**(c) “Claim Form”** means the document to be submitted by Claimants seeking direct monetary benefits pursuant to this Agreement.

**(d) “Claims Deadline”** means the date by which a Claimant must submit a Claim Form to be considered timely. The Claims Deadline shall be sixty-three (63) calendar days after the Settlement Notice Date.

**(e) “Claims Process”** means the process by which Class Members may make claims for relief, as described in Section 4 of this Agreement.

**1.5. “Class” or “Settlement Class”** means all persons in the United States who, between August 29, 2012 and May 1, 2020 (the “Class Period”), purchased in the United States, for household use and not for resale or distribution, one of the Class Products, as defined below.

**1.6. “Class Member”** means any person who is a member of the Class.

**1.7. “Class Period”** means August 29, 2012 to May 1, 2020.

**1.8. “Class Products”** means any of the following:

**1.8.1.** Kellogg’s Original Raisin Bran and Kellogg’s Raisin Bran Crunch cereals in a package stating “heart healthy.”

**1.8.2.** Kellogg’s Smart Start Original Antioxidants cereal in a package stating “heart healthy” and/or “lightly sweetened.”

**1.8.3.** Kellogg’s Frosted Mini-Wheats Bite Size (Original, Maple Brown Sugar, Strawberry, or Blueberry varieties), Big Bites (Original variety), Little Bites (Chocolate or Cinnamon Roll varieties), or Touch of Fruit in the Middle (Mixed Berry and Raspberry varieties) cereals in a package stating “lightly sweetened.”

**1.9. “Class Administrator”** means the independent company approved by the Court to provide the Class Notice and to administer the Claims Process.

**1.10. “Claims Administration”** means the administration of the Claims Process by the Class Administrator.

**1.11. “Class Counsel”** means the following attorneys of record for the Class Representatives and Class in the Action, unless otherwise modified by the Court:

Jack Fitzgerald  
Trevor M. Flynn  
Melanie Persinger  
The Law Office of Jack Fitzgerald, PC  
Hillcrest Professional Building  
3636 Fourth Avenue, Suite 202  
San Diego, California 92103  
Phone: (619) 692-3840

Sidney W. Jackson, III  
Jackson & Foster, LLC  
75 St. Michael Street  
Mobile, Alabama 36602  
Phone: (251) 433-6699

**1.12. “Class Notice”** means both those documents notifying Class Members, pursuant to the Notice Plan, of the Settlement, and the substance of those documents.

**1.12.1. “Long Form Notice”** refers to the proposed full Class Notice that is attached to this Agreement as Exhibit 1, which the Parties acknowledge may be modified by the Court without affecting the enforceability of this Agreement.

**1.12.2. “Short Form Notice”** means the summary Class Notice that is attached to this Agreement as Exhibit 2, which the Parties acknowledge may be modified by the Court without affecting the enforceability of this Agreement.

**1.12.3. “Notice Plan”** means the plan for dissemination of Class Notice to be submitted to the Court in connection with a motion for preliminary approval of this Settlement.

**1.12.4. “Settlement Notice Date”** means twenty-one (21) calendar days after the date the Court issues the Preliminary Approval Order.

**1.13. “Class Representative(s)”** means named plaintiffs Stephen Hadley, Melody DiGregorio, Eric Fishon, Kerry Austin, and Nafeesha Madyun.

**1.14. “Court”** means the Northern District of California, the Honorable Lucy H. Koh presiding, or any judge who will succeed her as the Judge in this Action.

**1.15. “Effective Date”** means the date on which the Judgment becomes final. For purposes of this definition, the Judgment shall become final: (a) if no appeal from the Judgment is filed, the date of expiration of the time for filing or noticing any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for certiorari seeking review of the appellate judgment is filed and denied, the date the petition is denied; or (d) if a petition for writ of certiorari is filed and granted, the date of final affirmance or final dismissal of the review proceeding initiated by the petition for a writ of certiorari.

**1.16. “Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.17. “Final Approval Hearing”** means the hearing to be conducted by the Court to determine whether to finally approve the Settlement and to enter Judgment.

**1.18. “Final Approval Order”** means the order to be submitted to the Court in connection with a Motion for Final Approval and the Final Approval Hearing, substantially in the form attached hereto as Exhibit 3.

**1.19. “Judgment”** means the Court’s act of entering a final judgment on the docket as described in Federal Rule of Civil Procedure 58.

**1.20. “Notice and Other Administrative Costs”** means all costs and expenses actually incurred by the Class Administrator in administering the Settlement, including the publication of Class Notice, establishment of the Settlement Website, providing CAFA notice, the processing, handling, reviewing, and paying of claims made by Claimants, and paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants), with all such costs and expenses to be paid from the Settlement Fund. All taxes on the income of the Settlement Fund, and any costs or expenses incurred in connection with the taxation of the Settlement Fund shall be paid out of the Settlement Fund, shall be considered to be a Notice and Other Administrative Cost, and shall be timely paid by the Class Administrator without prior order of the Court. The Parties shall have no liability or responsibility for the payment of any such taxes.

**1.21. “Objection Deadline”** means the date by which Class Members must file with the Court a written statement objecting to any terms of the Settlement or to Class Counsel’s request for fees or expenses, and shall be sixty-three (63) calendar days after the Settlement Notice Date.

**1.22. “Opt-Out Deadline”** means the deadline by which a Class Member must exercise his or her option to opt out of the settlement so as not to release his or her claims as part of the Released Claims, and shall be sixty-three (63) days after the Settlement Notice Date.

**1.23. “Party” or “Parties”** means the Class Representatives, on behalf of the Class, and Kellogg.

**1.24. “Person”** means any individual, corporation, partnership, association, or any other legal entity.

**1.25. “Plaintiffs”** means the Class Representatives, either individually or on behalf of the Class.

**1.26. “Kellogg”** means Kellogg Sales Company, the defendant in the Action.

**1.27. “Preliminary Approval Date”** means the date of entry of the Court’s order granting preliminary approval of the Settlement.

**1.28. “Preliminary Approval Order”** means the proposed order to be submitted to the Court in connection with the Motion for Preliminary Approval, substantially in the form attached hereto as Exhibit 4.

**1.29. “Released Claims”** means the claims released by the Class Members via this Agreement.

**1.30. “Released Kellogg Persons”** means Kellogg, and any past, current, or future parent companies (including intermediate parents and ultimate parents) and subsidiaries, affiliates, predecessors, successors, and assigns, and each of their respective officers, directors, employees, agents, attorneys, insurers, stockholders, representatives, heirs, administrators, executors, successors and assigns, and any other person or entity acting on Kellogg’s behalf.

**1.31. “Request for Exclusion”** means the written submission submitted by a Settlement Class Member to be excluded from the Settlement consistent with the terms of this Agreement.

**1.32. “Service Award”** means any award approved by the Court that is payable to the Class Representatives from the Settlement Fund.

**1.33. “Settlement”** means the resolution of this Action embodied in the terms of this Agreement.

**1.34. “Settlement Fund”** means the qualified settlement fund this Agreement obligates Kellogg to fund in the amount of \$13,000,000, which is in the form of a non-reversionary common fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

**1.35. “Settlement Payment”** means the amount to be paid to valid Claimants as detailed in Section 4.

**1.36. “Settlement Website”** means a website maintained by the Class Administrator to provide the Class with information relating to the Settlement.

## **2. SETTLEMENT FUND**

**2.1. Settlement Consideration.** Kellogg agrees to establish a non-reversionary common fund of \$13,000,000 (the “Settlement Fund”), which shall be used to pay all Settlement expenses, including Notice and Other Administrative Costs; Fee Award; Service Awards; and Class Members’ Claims.

**2.2. Creation and Administration of Qualified Settlement Fund.** The Class Administrator is authorized to establish the Settlement Fund under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Settlement Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Class Administrator operating as administrator of the Settlement Fund shall be construed as costs of Claims Administration and shall be borne solely by the Settlement Fund. Interest on the Settlement Fund shall inure to the benefit of the Class.

**2.3. Kellogg’s Payment into Settlement Fund.** Within seven (7) calendar days after Class Notice commences, or another date agreed upon by the Parties in writing or ordered by the Court, Kellogg shall establish the Settlement Fund by paying \$13,000,000 into the qualified settlement fund established by the Class Administrator pursuant to Paragraph 2.2.

## **3. ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS.**

**3.1. Application for Attorneys’ Fees and Costs and Service Awards.** At least 35 days before the Objection Deadline, Class Counsel and Class Representatives shall file a motion, set for hearing on the same date as the Final Approval Hearing, requesting a Fee Award and Service Awards, to be paid from the Settlement Fund.

**3.2. Distribution of Attorneys’ Fees and Costs.** The Class Administrator shall pay to Class Counsel from the Settlement Fund the amount of attorneys’ fees and costs awarded by the Court within twenty-one (21) calendar days of entry of Judgment, notwithstanding the filing of any appeals, or any other proceedings which may delay the Effective Date of the Settlement or a final Judgment in the case, subject to Class Counsel providing all payment routing information and tax ID numbers for The Law Office of Jack Fitzgerald, as agent for Class Counsel. Payment of the Fee Award will be made from the Settlement Fund by wire transfer to The Law Office of Jack Fitzgerald, as agent for Class Counsel, for distribution to and among Class Counsel, in accordance with the wire instructions to be provided by The Law Office of Jack Fitzgerald, and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason, the Fee Award is overturned, reduced,

vacated, or otherwise modified, Class Counsel shall be obligated to return any difference between the amount of the original award and any reduced award, in an amount proportionate to the distribution among Class Counsel's firms.

**3.3. Distribution of Service Awards.** Any Service Award approved by the Court for the Class Representatives shall be paid from the Settlement Fund in the form of a check to the Class Representatives that is sent care of Class Counsel within the earlier of thirty (30) days after the Effective Date, or the date the Class Administrator begins making distributions to claimants.

**3.4. Settlement Independent of Award of Fees, Costs, and Service Awards.** The awards of attorneys' fees and costs, and payment to the Class Representatives are subject to and dependent upon the Court's approval. However, this Settlement is not dependent or conditioned upon the Court's approving Class Counsel's and Class Representatives' requests for such payments or awarding the particular amounts sought by Class Counsel and Class Representatives. In the event the Court declines Class Counsel's or Class Representatives' requests or awards less than the amounts sought, this Settlement will continue to be effective and enforceable by the Parties, provided, however, that the Class Representatives and Class Counsel retain the right to appeal any decision by the Court regarding attorneys' fees and costs, and service awards, even if the Settlement is otherwise approved by the Court.

#### **4. CLAIMS PROCESS.**

**4.1. General Process.** To obtain monetary relief as part of the Settlement, a Class Member must fill out and submit a Claim Form, completed online or in hard copy mailed to the Class Administrator. The claim made via the Claim Form will proceed through the following general steps:

(a) The Claimant will be asked to provide identifying information.

(b) The Claimant will be asked to identify which of the Class Products he or she has purchased since August 2012. For each Class Product purchased since August 2012, the Claimant will be asked to state his or her approximate number of purchases over a typical three-month period. The Claimant will be asked to identify the year he or she began purchasing the product.

(c) An equation running "behind the scenes" will calculate the extrapolated number of units of each Class Product purchased by the Claimant during the Class Period, taking into account the year the Claimant began purchasing the Class Product. Settlement Class Members' claims without proof of purchase will be subject to per-product caps based on a reasonable average use for the products, but Settlement Class Members' claims with proof of purchase will have no cap. The equation will then calculate a dollar amount of "Base Damages" by multiplying the number of units of each Class Product purchased, by a standardized refund for that product based on the Class's damages models in the Action. To account for the "heart health" limitation on Raisin

Bran, the equation will discount from the Base Damages a proportion of Raisin Bran purchases consistent with the proportion of time during the Class Period when the claim was not on the packaging, as derived from labeling proofs provided by Kellogg, and taking into account all relevant box sizes. The refund amounts and caps that will apply to calculate the Base Damages are as follows:

<b>Product</b>	<b>Amount Per Box</b>	<b>Box Cap</b>
Raisin Bran	16 cents	2 per month
Smart Start	17 cents	1 per month
Frosted Mini-Wheats	5 cents	2 per month

Based on the distribution of Base Damages calculated for all Claimants, each Claimant will be placed into one of five quintiles. Each quintile will be assigned a standardized Cash Award, calculated by taking the average Base Damages amount for that quintile.

**(d)** All Cash Awards will be adjusted pro rata up or down as described in Section 4.5 below.

**4.2. The Claim Form and Timing.** The Claim Form will be available on the Settlement Website, and may be submitted to the Class Administrator online. A maximum of one Claim Form may be submitted for each household. Claim Forms must be submitted or postmarked on or before the Claims Deadline to be considered timely. The Claims Deadline shall be clearly and prominently stated in the Preliminary Approval Order, the Class Notice, on the Settlement Website, and on the Claim Form.

**4.3. Substance of the Claim Form.** In addition to information about the Class Products as set forth in Paragraph 4.1 above, the Claim Form will request customary identifying information (including the Claimant's name, address, email address, and telephone number), and may seek limited additional information from Claimants to provide reasonable bases for the Class Administrator to monitor for and detect fraud. Such additional information may include, for example, retailers and locations (city and state) at which the Class Products were purchased. In addition, the Claim Form will require the Claimant to declare that the information provided is true and correct to the best of the Claimant's memory and understanding.

**4.4. Claim Validation.** The Class Administrator shall be responsible for reviewing all claims to determine their validity. The Class Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of this Section 4, that is submitted after the Claims Deadline, or that the Class Administrator identifies as fraudulent. The Class Administrator shall retain sole discretion in accepting or rejecting claims and shall have no obligation to notify Claimants of rejected claims unless otherwise ordered by the Court.



**4.5. Pro Rata Adjustment of Cash Awards.** If the total value of all approved Claims either exceeds or falls short of the funds available for distribution to Class Members, then the amounts of the cash payments will be reduced or increased pro rata, as necessary, to use all of the funds available for distribution to Class Members. Any such pro rata adjustment will be calculated prior to distribution of funds (*i.e.*, will be made in a single distribution).

**4.6. Timing of Distribution.** The Class Administrator shall pay out Approved Claims in accordance with the terms of this Agreement commencing within thirty (30) days after the Effective Date, or as otherwise ordered by the Court. The Parties shall work with the Class Administrator to choose a manner of payment that is secure, cost-effective, and convenient for Claimants.

**4.7. Uncleared Payments: Second Distribution and Cy Pres.** Those Class Members whose payments are not cleared within one hundred and eighty (180) days after issuance will be ineligible to receive a cash settlement benefit and the Class Administrator will have no further obligation to make any payment from the Settlement Fund pursuant to this Settlement Agreement or otherwise to such Class Member. Any funds that remain unclaimed or remain unused after the initial distribution will be distributed to Class Members who cashed the initial payment, on a pro rata basis, to the extent the cost of such redistribution is considered economical by the Class Administrator, Class Counsel, and Kellogg. If such redistribution is not considered economical, or if unpaid funds remain after a second distribution, any unpaid funds will be donated *cy pres* in equal shares to the American Heart Association and the UCLA Resnick Center for Food Law and Policy, or, if not approved by the Court, one or more other Court-approved non-sectarian, not-for-profit firms whose work is sufficiently tethered to the allegations in this action.

**4.8. Taxes on Distribution.** Any person that receives a Cash Award will be solely responsible for any taxes or tax-related expenses owed or incurred by that person by reason of that Award. Such taxes and tax-related expenses will not be paid from the Settlement Fund. In no event will Kellogg, the Class Representatives, Class Counsel, the Class Administrator, or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Cash Awards or other payments made from the Settlement Fund to Class Representatives, Settlement Class Members, or any other person or entity.

**5. INJUNCTIVE RELIEF.**

**5.1. "Heart Healthy."** So long as more than 10% of their calories per serving come from added sugar, Kellogg will remove or modify references to heart health on Smart Start and Raisin Bran as follows:

**5.1.1. Smart Start.** In approximately November 2019, Kellogg removed and, for a period of no less than one (1) year after the Preliminary Approval Date, will not use any heart health references on Smart Start's packaging.

**5.1.2. Raisin Bran.** Starting in approximately April 2020 Kellogg limited, and for a period of no less than one (1) year after the Preliminary Approval Date, Kellogg will continue to limit any "heart health" claims on Raisin Bran's packaging to approximately the bottom half of the principal and reverse display panels. In so doing:

**5.1.2.1. No Increase in Font Size.** Kellogg shall not increase the size of any "heart health" claim beyond what was in use relative to a given box size during the Class Period. For illustration *only*, if a "heart health" claim on an 18 oz. Raisin Bran box appeared in font that is approximately 2 inches tall during the Class Period, Kellogg shall not increase the font size beyond that same approximate 2 inches when moving the claim from the top-half to the bottom-half of the box.

**5.1.2.2. No Breach for Non-Material Deviations.** Non-material deviations from the "bottom half" and font-size rules shall not constitute a breach of this Agreement.

**5.2. "Healthy."** Except as set forth in paragraph 5.1, above, for a period of no less than one (1) year from the Preliminary Approval Date, so long as more than 10% of their calories per serving come from added sugar, Kellogg will use the term "healthy" on the Class Products *only* consistently with 21 C.F.R. § 101.65(d)(ii), *i.e.*, in connection with an explicit or implicit claim about a nutrient of the type required to be labeled in the Nutrition Facts Box.

**5.3. "Lightly Sweetened."** In approximately December 2019, Kellogg removed, and, for a period of no less than one (1) year after the Preliminary Approval Date, will not use the term "lightly sweetened" to describe Frosted Mini-Wheats and Smart Start cereals, so long as more than 10% of their calories per serving come from added sugar.

**5.4. "No High Fructose Corn Syrup."** For a period of no less than one (1) year after the Preliminary Approval Date, Kellogg will not use the statement, "No High Fructose Corn Syrup" (or any equivalent phrases, such as "No HFCS," or "made without high fructose corn syrup") on any Class Product, so long as more than 10% of its calories per serving come from added sugar.

**5.5. "Wholesome," "Nutritious," and "Benefits."** For a period of no less than one (1) year after the Preliminary Approval Date, Kellogg will only use the words "wholesome," "nutritious," or "benefits" (and variations, such as "wholesomeness," "nutrition," or "beneficial") on the Class Products in connection with a specific ingredient or nutrient, and shall not use those words to describe any Class Product as a whole, so long as more than 10% of its calories per serving come from added sugar. A typical permitted use would be "[made with] or [contains] \_\_\_\_\_ [ingredient] or [nutrient]," where the "wholesome," "nutritious," or "beneficial" would appear in the blank.

**5.6. Reasonable Time and Conditions for Implementing Injunctive Relief.** Kellogg shall have a reasonable period of time to make and implement the injunctive relief noted in this Section E, and shall be permitted to “sell through” all existing inventory, *i.e.*, need not recall or destroy packaging already in the marketplace or printed. The time periods noted in Paragraphs 5.1-5.5 refer to time in market, and may be measured from the date of one relevant final label proof to another. For example, if the final label proof for new Smart Start packaging that does not contain any heart health claims is dated June 30, 2021, then—to the extent Kellogg resumes using heart health claims on Smart Start after the one-year injunctive relief period noted in Paragraph 5.1.1 has expired—the final label proof for the subsequent packaging should be dated June 30, 2022 or later.

**5.7. Notice and Opportunity to Cure in Event of Breach.** If Class Counsel on behalf of any Class Representative believes Kellogg is in breach of any of the injunctive relief provisions, they shall be obligated to give Kellogg reasonable notice and a reasonable opportunity to cure following a “meet and confer” conference before seeking any related relief.

**6. CLASS NOTICE AND CLAIMS ADMINISTRATION.**

**6.1. Class Administrator.** The Class Administrator shall assist with various administrative tasks including, without limitation:

**6.1.1** Establishing and operating the Settlement Fund;

**6.1.2** Arranging for the dissemination of the Class Notice pursuant to the Notice Plan agreed to by the Parties and approved by the Court;

**6.1.3** Making any mailings required under the terms of this Agreement or any Court order or law, including handling returned mail;

**6.1.4** Answering inquiries from Class Members and/or forwarding such inquiries to Class Counsel;

**6.1.5** Receiving and maintaining Requests for Exclusion;

**6.1.6** Establishing a Settlement Website;

**6.1.7** Establishing a toll-free informational telephone number for Class Members;

**6.1.8** Receiving and processing (including monitoring for fraud and validating or rejecting) Class Member claims and distributing payments to Class Members;

**6.1.9** Providing regular updates on the claims status to counsel for all Parties;  
and

**6.1.10** Otherwise assisting with the implementation and administration of the Settlement.

**6.2. Notice.** Notice of the Settlement will be made to the Class, and to certain federal and state officials.

**6.3. To the Class.** Class Notice will be effectuated through advertisement in suitable print publications and through targeted internet and social-media based advertisements. The Class Notice will conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and will otherwise be in the manner and form approved by the Parties and Court.

**6.4. Timing of Class Notice.** Class Notice will commence no later than twenty-one (21) calendar days following entry of the Preliminary Approval Order (“Settlement Notice Date”).

**6.5. CAFA Notice.** The Class Action Fairness Act of 2005 (“CAFA”) requires Kellogg to inform certain federal and state officials about this Agreement and proposed Settlement. See 28 U.S.C. § 1715. Under the provisions of CAFA, the Class Administrator, on behalf of Kellogg, will serve notice upon the appropriate officials within ten (10) calendar days after the Parties file the proposed Agreement with the Court. See 28 U.S.C. § 1715(b). The costs of such notice will be paid from the Settlement Fund.

**6.6. Opt-Out Procedures.** Class Members who wish to opt out of and be excluded from the Settlement must submit a Request for Exclusion to the Class Administrator, postmarked or submitted online no later than the Opt-Out Deadline. The Request for Exclusion must be personally completed and submitted by the Class Member or his or her attorney, and so-called “mass” or “class” opt-outs shall not be permitted or recognized. The Class Administrator shall periodically notify Class Counsel and Kellogg’s counsel of any Requests for Exclusion. All Class Members who submit a timely, valid Request for Exclusion will be excluded from the Settlement and will not be bound by the terms of this Agreement, and all Class Members who do not submit a timely, valid Request for Exclusion will be bound by this Agreement and the Judgment, including the release in Paragraph 8.1 below.

**6.7. Procedures for Objecting to the Settlement.** Class Members have the right to appear and show cause why the Settlement should not be granted final approval, subject to each of the provisions of this paragraph:

**6.7.1 Timely Written Objection Required.** Any objection to the Settlement must be in writing and must be filed with the Court or postmarked on or before the Objection Deadline. Written objections not filed with the Court may be mailed to the Class Administrator, who will provide them to Class Counsel for filing with the Court.

**6.7.2 Form of Written Objection.** Any objection regarding or related to the Agreement must contain (i) a caption or title that clearly identifies the Action and that

the document is an objection, (ii) information sufficient to identify and contact the objecting Class Member or his or her attorney if represented, (iii) information sufficient to establish the person's standing as a Settlement Class Member, (iv) a clear and concise statement of the Class Member's objection, as well as any facts and law supporting the objection, (v) the objector's signature, and (vi) the signature of the objector's counsel, if any (the "Objection").

**6.7.3 Authorization of Objections Filed by Attorneys Representing Objectors.**

Class Members may object either on their own or through an attorney hired at their own expense, but a Class Member represented by an attorney must sign either the Objection itself, or execute a separate declaration stating that the Class Member authorizes the filing of the Objection.

**6.7.4 Effect of Both Opting Out and Objecting.** If a Class Member submits both an Opt-Out Form and Objection, the Class Member will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class Member who has not timely submitted a completed Opt-Out Form will be bound by the terms of the Agreement upon the Court's final approval of the Settlement.

**6.7.5 Appearance at Final Approval Hearing.** Objecting Class Members may appear at the Final Approval Hearing and be heard. Such Class Members are requested, but not required, in advance of the Final Approval Hearing, to file with the Court or mail to the Class Administrator a Notice of Intent to Appear.

**6.7.6 Right to Discovery.** Upon Court order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Class Member on topics relevant to the Objection.

**6.7.7 Response to Objections.** The Parties shall have the right, but not the obligation, either jointly or individually, to respond to any objection, with a written response due the same day as the Motion for Final Approval, or as otherwise ordered by the Court.

**7. COURT APPROVAL**

**7.1. Preliminary Approval.** After executing this Agreement, the Parties will submit to the Court the Agreement, and will request that the Court enter the Preliminary Approval Order in substantially similar form as the proposed order attached as Exhibit 4. In the Motion for Preliminary Approval, Plaintiffs will request that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Class for settlement purposes and appoint Class Counsel, approve the forms of Notice and find that the Notice Plan satisfies Due Process and Rule 23 of the Federal Rules of Civil Procedure, and schedule a Final Approval Hearing to determine whether the Settlement should be granted final approval, whether an application for attorneys' fees and costs should be granted, and whether an application for service awards should be granted.

**7.2. Final Approval.** A Final Approval Hearing to determine final approval of the Agreement shall be scheduled as soon as practicable, subject to the calendar of the Court, but no sooner than 116 days after the Preliminary Approval Date. If the Court issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than fourteen (14) calendar days before the Final Approval Hearing and eighteen (18) days after the Objection Deadline all Parties will request, individually or collectively, that the Court enter the Final Approval Order in substantially similar form as the proposed order attached as Exhibit 3, with Class Counsel filing a memorandum of points and authorities in support of the motion. Kellogg may, but is not required to, file a memorandum in support of the motion.

**7.3. Failure to Obtain Approval.** If this Agreement is not given preliminary or final approval by the Court, or if an appellate court reverses final approval of the Agreement, the Parties will seek in good faith to revise the Agreement as needed to obtain Court approval. Failing this, the Parties will be restored to their respective places in the litigation. In such event, the terms and provisions of this Agreement will have no further force or effect with respect to the Parties and will not be used in this or any other proceeding for any purposes, and any Judgment or Order entered by the Court in accordance with the terms of this Agreement will be treated as vacated. The Parties agree that, in the event of any such occurrence, the Parties shall stipulate or otherwise take all necessary action to resume in the Northern District of New York the action *DiGregorio v. Kellogg Sales Company* for all further pre-trial and trial proceedings, and to resume this Action at the procedural posture it occupied immediately prior to the filing of Plaintiffs' Third Amended Complaint, as though this Agreement had never been reached.

**8. RELEASE.**

**8.1. Release of Kellogg and Related Persons.** Upon the Effective Date, each Class Member who has not opted out will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged the Released Kellogg Persons (including, without limitation, all past, current, or former agents, employees, contractors, affiliates, heirs, attorneys, insurers, and assignees thereof) from any and all claims, demands, rights, suits, liabilities, injunctive and/or declaratory relief, and causes of action, including costs, expenses, penalties, and attorneys' fees, whether known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that any Class Member has or may have against the Released Kellogg Persons that, as set forth in *Hesse v. Sprint Corp.*, 598 F.3d 581 (9th Cir. 2010), are based on the identical factual predicate, or depend on the same set of facts alleged in the Actions regarding the Class Products, which have been, or which could have been asserted in the Actions, and in connection with the conduct of the Actions, that have been brought, could have been brought, or are currently pending in any forum in the United States.

**8.2. Covenant Not to Sue.** Plaintiffs agree and covenant, and each Class Member who has not opted out will be deemed to have agreed and covenanted, not to sue any of Released Parties, with respect to any of the Released Claims, or otherwise to assist others in

doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

**8.3. Release of Plaintiffs and Related Persons.** Upon the Effective Date, Kellogg will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged Class Representatives, the Class, and Class Counsel from any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, whether known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that Kellogg has or may have against any of them arising out of the transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in the Actions regarding the Class Products, and in connection with the filing and conduct of the Actions, that have been brought, could have been brought, or are currently pending in any forum in the United States.

**9. MISCELLANEOUS.**

**9.1. Change of Time Periods.** The time periods and/or dates described in this Settlement Agreement are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

**9.2. Time for Compliance.** If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

**9.3. Entire Agreement.** This Agreement shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of the Agreement has been made or relied upon except as expressly set forth herein.

**9.4. Notices Under Agreement.** All notices or mailings required by this Agreement to be provided to or approved by Class Counsel and Kellogg, or otherwise made pursuant to this Agreement, shall be provided as follows:

***Class Counsel***

Jack Fitzgerald  
*jack@jackfitzgeraldlaw.com*  
The Law Office of Jack Fitzgerald, PC

***Kellogg***

Dean N. Panos  
*dpanos@jenner.com*  
Jenner & Block LLP

Hillcrest Professional Building  
3636 Fourth Avenue, Suite 202  
San Diego, CA 92103

353 North Clark Street  
Chicago, IL 60654

**9.5. Good Faith.** The Parties acknowledge that each intends to implement the Agreement. The Parties have at all times acted in good faith and shall continue to, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement.

**9.6. Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of the Parties to the Agreement and the released Parties and persons.

**9.7. Arms'-Length Negotiations.** This Agreement compromises claims that are contested, and the Parties agree that the consideration provided to the Class and other terms of this Agreement were negotiated in good faith and at arms' length by the Parties, and reflect an Agreement that was reached voluntarily, after consultation with competent legal counsel, and guided in part by the Parties' private Settlement Conference with Magistrate Judge Nathanael Cousins; and by the Parties' previous private mediation sessions with the Honorable James Holderman (Ret.), former Chief Judge of the Northern District of Illinois, of JAMS, and court-appointed mediator, Mark Peterson, both experienced mediators. The parties reached the Agreement after considering the risks and benefits of litigation. The determination of the terms of, and the drafting of, this Agreement, has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. Accordingly, the rule of construction that any ambiguities are to be construed against the drafter shall have no application.

**9.8. Waiver.** The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

**9.9. Modification in Writing Only.** This Agreement and any and all parts of it may be amended, modified, changed, or waived only by a writing signed by duly authorized agents of Kellogg and Plaintiffs.

**9.10. Headings.** The descriptive headings of any paragraph or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

**9.11. Governing Law.** This Agreement shall be interpreted, construed and enforced according to the laws of the State of California, without regard to conflicts of law.

**9.12. Continuing Jurisdiction.** After entry of the Judgment, the Court shall have continuing jurisdiction over the Action solely for purposes of (i) enforcing this Agreement, (ii)

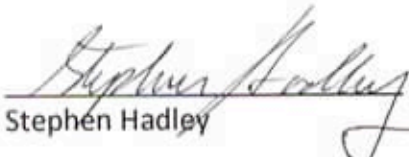


addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

**9.13. Execution.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Photocopies and electronic copies (e.g., PDF copies) shall be given the same force and effect as original signed documents.

**IN WITNESS WHEREOF**, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

**Plaintiffs, on behalf of the Class**

  
\_\_\_\_\_  
Stephen Hadley

Dated: March 9<sup>th</sup>, 2021

\_\_\_\_\_  
Melody DiGregorio

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Eric Fishon

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Kerry Austin

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Nafeesha Madyun

Dated: \_\_\_\_\_, 2021

**Class Counsel**

\_\_\_\_\_  
Jack Fitzgerald

Dated: \_\_\_\_\_, 2021

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**Plaintiffs, on behalf of the Class**

\_\_\_\_\_  
Stephen Hadley Dated: \_\_\_\_\_, 2021

  
\_\_\_\_\_  
Melody DiGregorio Dated: 3/9/2021, 2021

\_\_\_\_\_  
Eric Fishon Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Kerry Austin Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Nafeesha Madyun Dated: \_\_\_\_\_, 2021

**Class Counsel**

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Melody DiGregorio Dated: \_\_\_\_\_, 2021

  
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Eric Fishon Dated: March 9, 2021

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Kerry Austin Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Nafeesha Madyun Dated: \_\_\_\_\_, 2021

**Class Counsel**

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Melody DiGregorio

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Eric Fishon

Dated: \_\_\_\_\_, 2021

  
Kerry Austin

Dated: 3-9-, 2021

\_\_\_\_\_  
Nafeesha Madyun

Dated: \_\_\_\_\_, 2021

**Class Counsel**

\_\_\_\_\_  
Jack Fitzgerald

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Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Melody DiGregorio

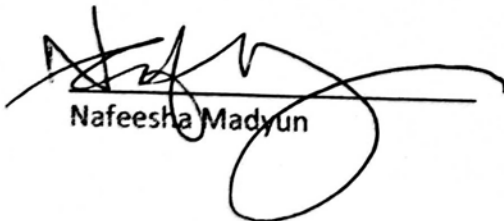
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Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
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Dated: \_\_\_\_\_, 2021

  
\_\_\_\_\_  
Nafeesha Madyun

Dated: 3/9, 2021

**Class Counsel**

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Stephen Hadley

Dated: \_\_\_\_\_, 2021

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Melody DiGregorio

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Eric Fishon

Dated: \_\_\_\_\_, 2021


\_\_\_\_\_  
Kerry Austin

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Nafeesha Madyun

Dated: \_\_\_\_\_, 2021

**Class Counsel**

  
\_\_\_\_\_  
Jack Fitzgerald

Dated: March 9, 2021

**Defendant Kellogg Sales Company**

Dated: March 9, 2021

\_\_\_\_\_  
Name: Gary Pilnick  
Position: Vice Chairman - Corporate Development  
and Chief Legal Officer