

Sheehan & Associates, P.C.
Spencer Sheehan
60 Cuttermill Rd Ste 409
Great Neck, NY 11021-3104
Telephone: (516) 268-7080
spencer@spencersheehan.com

United States District Court
Eastern District of New York

1:20-cv-05520

Barbara Seaman, Kyle Corbin, individually
and on behalf of all others similarly situated,

Plaintiffs,

- against -

Kellogg Company,

Defendant

Complaint

Plaintiffs by attorneys alleges upon information and belief, except for allegations pertaining to plaintiffs, which are based on personal knowledge:

1. Kellogg's Company ("defendant") runs annual or semi-annual promotions through on-pack promotions offering free merchandise or services to shoppers who purchase their products, including Eggo Waffles, Pop Tarts and iconic cereal brands.

2. These on-pack promotions are significant to shoppers who previously relied on Sunday circulars and in-aisle coupons to influence their decisions on which products to buy.

3. A survey of 1,600+ U.S. residents between 18-65 found 60% of respondents prefer on-pack promotions to other methods of learning of promotions or offers.

4. In fact, according to HelloWorld's Digital and In-Store Engagement Report, shoppers will choose a product three times more often when offered an extra incentive

5. Sixty-seven (67) percent of shoppers said they would take advantage of a guaranteed reward or gift with purchase while in a store.

6. Thirty-seven (37) percent say that a guaranteed reward or gift would most affect their decision when choosing between products.

7. The use of promotions is a key factor in the several seconds it takes for shoppers to choose which of the many products to buy.

8. Unfortunately for consumers, most of them who buy the products will be unable to receive the free offers made by Defendant.

9. Defendant's practice of offering promotions to shoppers is misleading because the promotions expire long before the shelf-life of the Products.

10. Where a shopper views a promotion such as described here, they will have no reason to scrutinize the fine print telling them when the promotion expires.

11. Reasonable consumers are not so innately distrustful of companies and expect that all aspect of consumable items, including promotions, are functional throughout their shelf-life.

12. Defendant can easily cease these practices by printing fewer boxes which contain its promotions, based on the number of products it expects to sell within the time period of the offer.

13. However, defendant is incentivized to print more boxes with promotions than it will sell during the offer period because these offers increase sales of their products.

14. A 2017 promotion offered “\$5 Off Crayola” when buying three packs of Eggo Waffles or Pancakes.



15. The Crayola Promotion prominently tells shoppers they will get five dollars off Crayola crayons when they buy 3 packs of Eggos (at once).

16. However, the fine print only visible at the bottom of the box states “Offer Valid 6/1/17 to 9/30/17. See Details On Back.”



17. The side flaps of this item reveal an expiration date of October 11, 2018, over a year after expiration of the offer.



18. Another on-pack promotion valid between October 16, 2017 and December 31, 2017 for a \$6 movie ticket credit was still available a year later, and the Eggo Waffles upon which it was displayed did not expire until January 2, 2019.



19. A promotion valid between October 2019 and January 2020 offered money towards movie theater concession purchases, "\$6 Movie Snack Cash."



20. However, boxes bearing this promotion were still available on store shelves in September 2020, nine months after the promotion expired.

21. This is despite the boxes being within their expiration date and still suitable for purchase and consumption.

22. A promotion valid between March and July 2020 promised shoppers they would “Get a \$13 [towards a] Movie Ticket” upon buying any five participating Kellogg's products.



23. Products bearing the \$13 Movie Ticket promotion are still for sale on store shelves, even though their expiration dates are far in the future.

24. The offers for money off the products and services are equivalent to Defendant making “free” offers to shoppers.

25. These types of offers have been subject to regulations by the Federal Trade Commission (“FTC”), which recognized “such offers must be made with extreme care so as to avoid any possibility that consumers will be misled or deceived.” 16 C.F.R. § 251.1(a)(2).

26. The FTC’s rules require that “Free” offers disclose all terms and conditions required to obtain the good or service offered “should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.” 16 C.F.R. § 251.1(c).

27. This means that all the relevant terms “should appear in close conjunction with the offer of ‘Free’ merchandise or service.”

28. Though the front of the Products bearing the “free” offers contains small text stating the dates between which the promotions are valid, the font size is miniscule and it is set apart from the more prominent and conspicuous “free” offer.

29. Even though the promotions direct consumers to other parts of the packaging, shoppers are still deceived because the “free” offer specifies what they will receive – money towards Crayola products, concession purchases and movie tickets. 16 C.F.R. § 251.1(c).

30. Further, that the Products are offered for sale long after the promotion is no longer valid causes shoppers to instinctively believe the conspicuous “Free” offers are still valid.

31. If anything, shoppers will expect that large companies like Defendant are capable of adequately estimating the number of Products sold during the period of time the offer is valid, and will not overproduce products with packaging that will remain on store shelves far beyond the dates of the offers.

32. Most shoppers who bought the items in part based on the promotions are not able to take advantage of the free offers.

33. Defendant should offer promotions that expire consistent with the shelf-life of the Products, because not doing so is unfair and misleading to shoppers.

34. Defendant sold more of the Products and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

35. The value of the Products that plaintiffs purchased was materially less than its value as represented by defendant.

36. Had plaintiffs and class members known the truth, they would not have bought the

Products or would have paid less for them.

37. As a result of the false and misleading labeling, the Products are sold at a premium price, approximately no less than \$ 2.99 per Eggo Waffles and Pop Tarts and \$ 4.99 for cereals, excluding tax, compared to other similar Products represented in a non-misleading way, and higher than the price of the Products if represented in a non-misleading way.

Jurisdiction and Venue

38. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2)

39. Under CAFA, district courts have “original federal jurisdiction over class actions involving (1) an aggregate amount in controversy of at least \$5,000,000; and (2) minimal diversity[.]” *Gold v. New York Life Ins. Co.*, 730 F.3d 137, 141 (2d Cir. 2013).

40. Plaintiff Barabara Seaman is a citizen of New York.

41. Defendant Kellogg Company is a Delaware corporation with a principal place of business in Battle Creek, Calhoun County, Michigan and is a citizen of Michigan.

42. “Minimal diversity” exists because plaintiff Barabara Seaman and defendant are citizens of different states.

43. Upon information and belief, sales of the Products in New York exceed \$5 million per year, exclusive of interest and costs, and the aggregate amount in controversy exceeds \$5 million per year.

44. Venue is proper in this judicial district because a substantial part of the events or omissions giving rise to the claim occurred in this District, *viz*, the decision of plaintiff to purchase the Products and the misleading representations about the promotions and/or their recognition as such.

45. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within New York.

Parties

46. Plaintiff Barabara Seaman is a citizen of New York, Brooklyn, Kings County.

47. Plaintiff Kyle Corbin is a citizen of North Carolina, Raleigh, Wake County.

48. Defendant Kellogg Company is a Delaware corporation with a principal place of business in Battle Creek, Michigan, Calhoun County and is a citizen of Michigan.

49. Defendant sells packaged food products under many of the nation's most well-known and respected brands, like Eggo Waffles, Pop Tarts and cereals like Apple Jacks and Corn Pops.

50. During the relevant statutes of limitations for each cause of action alleged, plaintiffs purchased Products bearing on-pack promotions, within their district and/or State for personal and household consumption and/or use in reliance on the representations.

51. Plaintiff Barabara Seaman purchased one of Defendant's cereals between August and October 2020, with a movie ticket promotion that had expired by the time she purchased it.

52. Plaintiff Seaman purchased the item at Target, 1598 Flatbush Ave, Brooklyn, NY 11210.

53. After she purchased the Product and brought it home, she realized the promotion was no longer valid upon reading the fine print.

54. Plaintiff Kyle Corbin purchased the Eggo Waffles offering five dollars off Crayola crayons in December 2017.

55. Plaintiff Corbin also purchased Pop Tarts and cereals with "free" on-pack promotions offering money towards movie theater concessions and movie tickets in 2019 and 2020.

56. Plaintiff Corbin was unable to receive the "free" promotions because he purchased

these items after the offers were no longer valid, even though the items were still fit for consumption as indicated by their expiration dates.

57. Plaintiff Corbin later would have to squint to see the small print on the front of the label saying when the offer was valid until, after he already purchased the item and brought it home.

58. Plaintiff Corbin notified Defendant's agents through online correspondence that their actions were unfair, deceptive and misleading to hardworking consumers who have trusted Defendant to be forthright and fully honest with them.

59. Plaintiffs bought the Products at or exceeding the above-referenced price because they wanted to receive the free offers.

60. Plaintiffs were deceived by and relied upon the Products' deceptive labeling.

61. Plaintiffs would not have purchased the Products in the absence of Defendant's misrepresentations and omissions.

62. The Products were worth less than what Plaintiffs paid for it and they would not have paid as much absent Defendant's false and misleading statements and omissions.

63. Plaintiffs intends to, seeks to, and will purchase the Products again when they can do so with the assurance that Products' labels are consistent with the Program's components.

Class Allegations

64. The class will consist of all purchasers of the Products who reside in New York and North Carolina during the applicable statutes of limitations.

65. Plaintiffs seek class-wide injunctive relief based on Rule 23(b) in addition to a monetary relief class.

66. Common questions of law or fact predominate and include whether defendant's

representations were and are misleading and if plaintiffs and class members are entitled to damages.

67. Plaintiffs' claims and basis for relief are typical to other members because all were subjected to the same unfair and deceptive representations and actions.

68. Plaintiffs are adequate representatives because their interests do not conflict with other members.

69. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

70. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

71. Plaintiffs' counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

72. Plaintiffs seek class-wide injunctive relief because the practices continue.

New York General Business Law ("GBL") §§ 349 & 350 and North Carolina General Statute, Monopolies, Trusts and Consumer Protection, § 75-1.1 et seq. (Consumer Protection Statutes)

73. Plaintiffs incorporate by reference all preceding paragraphs.

74. Defendant's acts and omissions are not unique to the parties and have a broader impact on the public.

75. Defendant knew or should have known roughly how many items it would sell in the time period during which the offers were valid.

76. Defendant has a highly sophisticated ability to estimate product movement through its life cycle and produce packaging that would be sold during the relevant valid offer periods.

77. Defendant chose to overproduce such packaging because it knew consumers would be at a big disadvantage to try and get it to cease such practices.

78. Plaintiffs relied on the statements, omissions and representations of defendant, and defendant knew or should have known the falsity of same.

79. Plaintiffs and class members would not have purchased the Products or paid as much if the true facts had been known, suffering damages.

Negligent Misrepresentation

80. Plaintiffs incorporate by reference all preceding paragraphs.

81. Defendant knew or should have known roughly how many items it would sell in the time period during which the offers were valid.

82. Defendant has a highly sophisticated ability to estimate product movement through its life cycle and produce packaging that would be sold during the relevant valid offer periods.

83. Defendant chose to overproduce such packaging because it knew consumers would be at a big disadvantage to try and get it to cease such practices.

84. The representations took advantage of consumers' cognitive shortcuts made at the point-of-sale and their trust in defendant, a well-known and respected brand or entity in this sector.

85. Plaintiffs and class members reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, the purchase of the Products.

86. Plaintiffs and class members would not have purchased the Products or paid as much if the true facts had been known, suffering damages.

Breaches of Express Warranty, Implied Warranty of Merchantability and Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.

87. Plaintiffs incorporate by reference all preceding paragraphs.

88. Defendant knew or should have known roughly how many items it would sell in the time period during which the offers were valid.

89. Defendant has a highly sophisticated ability to estimate product movement through its life cycle and produce packaging that would be sold during the relevant valid offer periods.

90. Defendant chose to overproduce such packaging because it knew consumers would be at a big disadvantage to try and get it to cease such practices.

91. Defendant had a duty to not overproduce packaging so that most shoppers who bought the items in part based on the promotions would not be able to take advantage of the free offers.

92. This duty is based, in part, on defendant's position as one of the most recognized companies in the nation in this sector.

93. Plaintiff Corbin provided written notice to defendant, its agents, representatives, retailers and/or their employees, through Defendant's online messaging function.

94. Defendant received notice and should have been aware of these misrepresentations due to numerous complaints by consumers to its main office over the past several years regarding the on-pack promotions, of the type described here.

95. The Products did not conform to their affirmations of fact and promises due to defendant's unfair actions with respect to the promotions and were not merchantable.

96. Plaintiffs and class members would not have purchased the Products or paid as much if the true facts had been known, suffering damages.

Fraud

97. Plaintiffs incorporate by reference all preceding paragraphs.

98. Defendant knew or should have known roughly how many items it would sell in the time period during which the offers were valid.

99. Defendant has a highly sophisticated ability to estimate product movement through

its life cycle and produce packaging that would be sold during the relevant valid offer periods.

100. Defendant chose to overproduce such packaging because it knew consumers would be at a big disadvantage to try and get it to cease such practices.

101. Plaintiffs and class members would not have purchased the Products or paid as much if the true facts had been known, suffering damages.

Unjust Enrichment

102. Plaintiffs incorporate by reference all preceding paragraphs.

103. Defendant obtained benefits and monies because the Products were not as represented and expected, to the detriment and impoverishment of plaintiffs and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiffs demand a jury trial on all issues.

WHEREFORE, Plaintiffs pray for judgment:

1. Declaring this a proper class action, certifying plaintiffs as representatives and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;
3. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, and restitution and disgorgement for members of the class pursuant to the applicable laws;
4. Awarding monetary damages and interest pursuant to the common law and other statutory claims;
5. Awarding costs and expenses, including reasonable fees for plaintiffs' attorneys and experts; and

6. Other and further relief as the Court deems just and proper.

Dated: November 13, 2020

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan

60 Cuttermill Rd Ste 409

Great Neck NY 11021-3104

Tel: (516) 268-7080

Fax: (516) 234-7800

spencer@spencersheehan.com

E.D.N.Y. # SS-8533

S.D.N.Y. # SS-2056

1:20-cv-05520
United States District Court
Eastern District of New York

Barbara Seaman, Kyle Corbin, individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

Kellogg Company,

Defendant

Complaint

Sheehan & Associates, P.C.
60 Cuttermill Rd Ste 409
Great Neck NY 11021-3104
Tel: (516) 268-7080
Fax: (516) 234-7800

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: November 13, 2020

/s/ Spencer Sheehan
Spencer Sheehan

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

Barbara Seaman, Kyle Corbin, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Kings
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

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)

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

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 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 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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <hr/> PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<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	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	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))
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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

- | | | | | | |
|---|---|--|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation |
|---|---|--|---|--|---|

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 1332

Brief description of cause:

False advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

DATE 11/13/2020 JUDGE _____ DOCKET NUMBER _____
SIGNATURE OF ATTORNEY OF RECORD /s/ Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Spencer Sheehan, counsel for plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/Spencer Sheehan

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of New York

Barbara Seaman, Kyle Corbin, individually and on
behalf of all others similarly situated,

Plaintiff(s)

v.

Kellogg Company,

Defendant(s)

Civil Action No. 1:20-cv-05520

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Kellogg Company
c/o The Corporation Trust Company
1209 N Orange St
Wilmington DE 19801-1120

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-
3104 (516) 268-7080

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk