

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 matters of *Hadley v. Kellogg Sales Co.*, 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*”) (together with *Hadley*, the “Actions”).

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 May 28, 2019, putative Class Representatives Melody DiGregorio, Eric Fishon, Kerry Austin, and Nafeesha Madyun commenced the *DiGregorio* lawsuit for violations of New York law of unfair competition, false advertising, and breach of warranty in the United States District Court for the Northern District of New York;

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, of any nature whatsoever, 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.

A. Definitions. As used in this Agreement, the following capitalized terms enclosed within quotation marks have the meanings specified below.

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

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

2. “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement.

3. “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.

3.1. “Approved Claim” means a claim approved by the Claims Administrator, according to the terms of this Agreement.

3.2. “Claimant” means any Class Member who submits a Claim Form for the purpose of claiming benefits, in the manner described in Section D of this Agreement.

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

3.4. “Claims Deadline” means the date by which a Claimant must submit a Claim Form to be considered timely. The Claims Deadline shall end no earlier than the end of the Notice Period, or such other time as the Court orders.

3.5. “Claims Process” means the process by which Class Members may make claims for relief, as described in Section D of this Agreement.

4. “Class” or “Settlement Class” means all persons in the United States who, between August 29, 2012 and the date a motion for preliminary approval is filed (the “Class Period”), purchased in the United States, for household use and not for resale or distribution, one of the Class Products.

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

4.2. “Class Period” means August 29, 2012 to the date a motion for preliminary approval is filed.

4.3. “Class Products” means any of the specific Kellogg cereal or bar products identified in Appendix 1 hereto.

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

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

4.2. “Claims Administration Expenses” means the fees charged and expenses incurred by the Class Administrator in completing the Claims Administration.

6. **“Class Counsel”** means the following attorneys of record for plaintiffs in the Actions, 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

7. **“Class Notice”** means both those documents notifying Class Members, pursuant to the Notice Plan, of the Settlement, and the substance of those documents, which includes the Long Form Notice and Short Form Notice.

7.1. **“Long Form Notice”** refers to the full Class Notice attached hereto as Exhibit 1.

7.2. **“Short Form Notice”** means the summary Class Notice attached hereto as Exhibit 2.

7.3. **“Notice Period”** means the minimum 60-day period of time following preliminary approval that Class Notice will be made pursuant to the Notice Plan.

7.4. **“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.

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

9. **“Court”** means the Northern District of California.

10. **“Effective Date”** means the date on which the Judgment approving this Agreement 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.

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

12. “Judgment” means the Court’s order approving the Settlement and dismissing the Action(s) with prejudice.

13. “Kellogg” means Kellogg Sales Company, the defendant in the Actions.

14. “Objection Deadline” means the first business day on or after fourteen (14) calendar days from the filing of a motion for final approval of the Settlement and application for fees, or such other date as the Court may order in its Preliminary Approval Order, and is the date by which Class Members must file with the Court and serve on all Parties (i) a written statement objecting to any terms of the Settlement or to Class Counsel’s fees or expenses, and (ii) a written notice of intent to appear if they expect to present in person at the Final Approval Hearing objections to any terms of the Settlement or to Class Counsel’s fees or expenses.

15. “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, which shall be the same deadline as the Claims Deadline, or another date ordered by the Court in its Preliminary Approval Order.

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

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

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

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

20. “Preliminary Approval Order” means the Court’s order granting preliminary approval to this Settlement.

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

22. “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.

23. "Settlement" means the resolution of this action embodied in the terms of this Agreement.

23.1. "Settlement Class" means the Class on whose behalf this Settlement has been reached, as defined in Paragraph 4.

24. "Settlement Fund" means the \$20,250,000 in direct monetary relief provided to the Class by Kellogg as part of the Settlement, which is comprised of a Cash Component and Voucher Component.

25.1. "Cash Component" or "Cash Fund" means the \$12,000,000 cash Kellogg is providing as partial consideration for the Settlement.

25.2. "Voucher Component" or "Voucher Fund" means the \$8,250,000 worth of cash-equivalent Vouchers Kellogg is providing as partial consideration for the Settlement.

25.3. "Voucher" means cash-equivalent relief distributed to certain Claimants, at their election, which can be used to obtain certain Kellogg cereals, as further detailed in Section C below.

25. "Settlement Payment" means the amount to be paid to valid Claimants as detailed in Section D.

26. "Settlement Website" means a website maintained by the Claims Administrator to provide the Class with information relating to the Settlement.

B. Summary of Settlement Benefits. The Settlement provides both direct monetary relief and injunctive relief to the Class.

27. Direct Monetary Relief. The Settlement provides \$20,250,000 in direct monetary relief from Kellogg (the "Settlement Fund"), which is comprised of a Cash Component and a cash-equivalent Voucher Component, as detailed in Section C, below. The Claims Process, through which Claimants may choose as their monetary relief either cash or vouchers, is detailed in Section D, below.

28. Injunctive Relief. Kellogg will modify the labels of the Class Products, and/or will commit not to use certain labeling statements challenged in the Actions, as detailed in Section E, below.

C. Direct Monetary Relief. The direct monetary relief to the Class as part of the Settlement is comprised of a Cash Component and a Voucher Component.

29. Cash Component. The Cash Component of the Settlement Fund is \$12,000,000, and shall be used to pay Class Notice and Claims Administration; attorneys' fees and expenses; incentive awards; and the cash component of Class Member claims.

29.1. Funding. 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 pay \$12,000,000 into a qualified settlement fund created and maintained by the Class Administrator, with a separate tax identification number for purposes of this Agreement only (the "Cash Fund"). Interest on the Cash Fund shall inure to the benefit of the Class.

29.2. Taxes. All taxes on the income of the Cash Fund, and any costs or expenses incurred in connection with the taxation of the Cash Fund shall be paid out of the Cash Fund, shall be considered to be a Claims Administration Expense, 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.

29.3. Attorneys' Fees, Costs, and Service/Incentive Awards. Class Counsel and Class Representatives shall request attorneys' fees and costs, and incentive awards, to be paid from the Cash Fund. The Class Administrator shall pay to Class Counsel from the qualified settlement fund the amount of attorneys' fees and costs awarded by the Court within seven (7) 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; provided, however, that in the event any fee award, either individually or in connection with the entire Settlement is overturned, reduced, vacated, or otherwise modified, Class Counsel shall be obligated to return to the Cash Fund any difference between the amount of the original award and any reduced award.

30. Voucher Component. The Voucher Component of the Settlement Fund shall be \$8,250,000, and shall be used to satisfy certain Class Member claims, as detailed in Section D below. Kellogg represents that, in reimbursing retailers for product obtained by Claimants using Vouchers, Kellogg will incur a cost equivalent to the retail price that the Claimant would otherwise have had to pay absent use of the Voucher.

30.1. Good for Certain Kellogg Products. Vouchers distributed through the Claims Process shall be usable by Claimants to obtain from a retailer one or more of the following Kellogg products:

Product	Size(s)	UPCs	Approximate Average Retail Price
Kellogg's Variety Pack ¹	10.94 oz.	38000178092	\$4.41
Kellogg's Fun Pack ²	8.56 oz.	38000052200	\$2.92
Raisin Bran (Original)	1.25 oz.	38000008610	\$0.62
	16.6 oz.	38000199875	\$2.87
	24.0 oz.	38000199899	\$3.64
	30.3 oz.	38000144813	\$4.07
	76.5 oz.	38000779008	\$7.34
Raisin Bran with Cranberries	14 oz.	38000199837	\$3.32
Raisin Bran with Bananas	15.9 oz.	38000199813	\$3.31
Raisin Bran Crunch	2.8 oz.	38000116308	\$1.00
	15.9 oz.	38000199738	\$2.97
	22.5 oz.	38000199752	\$3.64
Raisin Bran Vanilla Almond	22.2 oz.	38000210174	\$3.63
Smart Start	18.2 oz.	38000200229	\$4.00
All Bran Original	18.6 oz.	38000198410	\$3.66
All Bran Wheat Flakes	18 oz.	38000596674	\$4.60
All Bran Buds	17.7 oz.	38000013027	\$3.42
	22 oz.	38000198434	\$3.68
Crispix	12 oz.	38000035302	\$3.61
	18 oz.	38000924224	\$3.64
Mueslix	16.2 oz.	38000199615	\$4.22

30.2. Expiration. Vouchers shall expire no earlier than four (4) months (*i.e.*, 120 days) after their issuance.

30.3. Single Use. Vouchers must be used in a single transaction, with any unused value forfeited.

¹ Includes some combination of Corn Flakes, Frosted Flakes, Frosted Mini-Wheats Originals, Raisin Bran, Froot Loops, Corn Pops, Rice Krispies, and Special K, but selections may change from time to time.

² Includes some combination of Frosted Flakes, Apple Jacks, Froot Loops, Corn Pops, and Cocoa Krispies, but selections may change from time to time.

30.4. Transferrable and Stackable. Vouchers shall be fully transferrable; and stackable to the extent permitted by retailers.

D. Claims Process.

31. General Process. To obtain monetary relief as part of the Settlement, a Class Member must make a claim by filling out and submitting an online Claim Form. 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 six 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 in the last three months (or in the last three months it was sold, in the case of Crunchy Nut cereal). 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 (which is approximately 7 years, 2 months), subject to per-product caps based on a reasonable average use for the products. The equation will then calculate a dollar amount of a “Base Refund” 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 Actions. The refund amounts and caps that will apply to calculate the Base Refund are as follows.

Product	Refund Amount Per Box	Box Cap
Raisin Bran	16 cents	2 per month
Smart Start	17 cents	1 per month
Frosted Mini-Wheats	5 cents	2 per month
Krave	3 cents	2 per month
Crunchy Nut	3 cents	0.5 per month
Nutri-Grain	3 cents	3 per month

- (d) Based on the amount of the Base Refund calculated, the Claimant will be placed into one of four possible “buckets,” with each bucket providing the Claimant a standardized refund offer in both Cash and Voucher value, as follows:

Base Refund Range	\$0 - \$10.00	\$10.01 - \$32.50	\$32.51 - \$55.00	\$55.01+
Cash Offer	\$2.50	\$5	\$7.50	\$10
Voucher Offer	\$5	\$10	\$15	\$20

- (e) The Claimant will then be required to choose either the Voucher or Cash relief, being advised that, based on the number of claims received, the actual amount of Cash or Voucher value may increase or decrease in a *pro rata* manner, as set forth in Paragraph 35 below.

32. The Claim Form and Timing. The Claim Form will be available on the Settlement Website, for online submission to the Class Administrator. Claim Forms must be submitted 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.

33. Substance of the Claim Form. In addition to information about the Class Products as set forth in Paragraph 31 above, the Claim Form will request customary information (including the Claimant's name, address, email address, and telephone number), in order to mail vouchers, 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.

34. Claim Validation. The Class Administrator shall be responsible for monitoring the claims for fraud, and shall retain sole discretion in accepting or rejecting claims. The Class Administrator shall have no obligation to notify Claimants of rejected claims unless otherwise ordered by the Court.

35. Supplemental Distributions and *Pro Rata* Reductions. Claimants' cash or voucher refund amounts are subject to supplemental distributions or *pro rata* reductions if, in the case of the Cash Fund, claims exceed or are less than money remaining in the Cash Fund after subtraction of all Cash Expenses (including costs of Notice and Administration, attorneys' fees and costs, and service awards); or in the case of the Voucher Fund, the value of Vouchers claimed exceed or is less than the amount of the Voucher Fund. Any such "supplemental" distribution will be calculated prior to distribution of funds (*i.e.*, will be made in a single distribution).

36. Timing of Distribution of Direct Monetary Relief. The Class Administrator shall pay out Approved Claims in accordance with the terms of this Agreement commencing ten (10) days after the Effective Date, or as otherwise ordered by the Court.

36.1. Distribution of Voucher Relief. Claimants who elect to receive Vouchers for their relief will receive their Vouchers by mail. Vouchers will be provided in

increments, up to the amount to which the claimant is entitled. Kellogg will be solely responsible for printing the Vouchers, and the cost shall be borne by Kellogg separate and apart from the Settlement Fund.

36.2. Distribution of Cash Relief. Claimants who elect to receive Cash for their relief will receive their cash by email, via a “digital check,” which can either be deposited electronically, or printed and deposited at a bank, like a traditional check.

E. Injunctive Relief.

37. “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:

37.1. Smart Start. Kellogg will remove and, for a period of no less than two (2) years, not use any heart health references on Smart Start’s packaging.

37.2. Raisin Bran. For a period of no less than two (2) years, Kellogg will 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:

37.2.1. 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.

37.2.2. 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.

38. “Healthy.” Except as set forth in paragraph 37, above, for a period of no less than three (3) years, 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.

39. “Lightly Sweetened.” Kellogg will remove, and, for a period of no less than three (3) years, 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.

40. “No High Fructose Corn Syrup.” For a period of no less than three (3) years, 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.

41. “Wholesome,” “Nutritious,” and “Benefits.” For a period of no less than three (3) years, 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.

42. 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 37-41 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, 2020, then—to the extent Kellogg resumes using heart health claims on Smart Start after the two-year injunctive relief period noted in Paragraph 37.1 has expired—the final label proof for the subsequent packaging should be dated June 30, 2022 or later.

43. 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.

F. Class Notice and Claims Administration

44. Class Administrator. Subject to the Court’s approval, the Parties agree to retain Postlethwaite & Netterville (“P&N”) as the Class Administrator to effect Class Notice and Claims Administration. The Class Administrator shall assist with various administrative tasks including, without limitation:

- (a) Arranging for the dissemination of the Class Notice pursuant to the Notice Plan agreed to by the Parties and approved by the Court;
- (b) Making any mailings required under the terms of this Agreement or any Court Order or law, including handling returned mail;
- (c) Answering inquiries from Class Members and/or forwarding such inquiries to Class Counsel;

- (d) Receiving and maintaining forms of Class Members who wish to opt out of and be excluded from the Settlement;
- (e) Establishing a Settlement Website;
- (f) Establishing a toll-free informational telephone number for Class Members;
- (g) Receiving and processing (including monitoring for fraud and validating or rejecting) Class Member claims and distributing payments to Class Members; and
- (h) Otherwise assisting with the implementation and administration of the Settlement.

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

45.1. To the Class. Class Notice will be effectuated through digital publication notice according to a Notice Plan designed by the Class Administrator to comply with the applicable requirements of Rule 23, and approved by the Parties and Court.

45.2. 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).

46. Opt-Out Procedures. Class Members who wish to opt out of and be excluded from the Settlement must download from the Settlement Website an Opt-Out Form (substantially in the form of the Opt-Out Form attached hereto as Exhibit 3), and Class Members must print, complete, and mail the form to the Class Administrator, postmarked no later than the end of the 60-day Notice Period, or as otherwise ordered by the Court in its Preliminary Approval Order (the “Opt-Out Deadline”). The Opt-Out Form must be personally completed and submitted by the Class Member, and so-called “mass” or “class” opt-outs shall not be permitted. The Class Administrator shall periodically notify Class Counsel and Kellogg’s counsel of any opt-outs.

47. 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:

47.1. Written Objection Required. Any objection to the Settlement must be in writing, filed with the Court, with a copy served on Class Counsel and counsel for Kellogg at the addresses set forth in the Notice and below, by the Objection Deadline.

47.2. 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, and (iii) a clear and concise statement of the Class Member's objection, as well as any facts and law supporting the objection (the "Objection").

47.3. 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.

47.4. 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.

47.5. 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 to file a Notice of Intent to Appear.

47.6. Response to Objections. The Parties shall have the right, but not the obligation, either jointly or individually, to respond to any objection, with any written response due 7 days after the Objection Deadline, or as otherwise ordered by the Court.

G. Court Approval

48. Preliminary Approval. After executing this Agreement, and no later than October 21, 2019 unless otherwise agreed in writing, the Parties will submit to the Court this Agreement, together with its exhibits, and will request that the Court grant preliminary approval of the proposed Settlement, issue a Preliminary Approval Order, 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 incentive awards should be granted. As part of the preliminary approval motion, the Parties will request the Court to provisionally certify the Class for settlement purposes and appoint Class Counsel.

49. 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 130 days after the Preliminary Approval Date. Upon final approval of the Agreement by the Court at or after the Final Approval Hearing, the Parties shall seek and obtain a Judgment from the Court.

50. Failure to Obtain Approval. If this Agreement is not given preliminary or final approval by the Court, 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 and effect with respect to the Parties and will not be used in this or in 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 *DiGregorio* action for all further pre-trial and trial proceedings, and to resume the action at the procedural posture as though this Agreement had never been reached.

H. Releases

51. 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 of every nature and description whatsoever, 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 arising out of or related in any way to the transactions, occurrences, events, behaviors, conduct, practices, and policies 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.

52. 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 or related in any way to 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.

I. Miscellaneous

53. 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. This Agreement supersedes any prior agreement between the parties, including the Confidential Term Sheet executed by the Parties on September 16, 2019.

54. 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

Kellogg

Jack Fitzgerald (jack@jackfitzgeraldlaw.com)
The Law Office of Jack Fitzgerald, PC
Hillcrest Professional Building
3636 Fourth Avenue, Suite 202
San Diego, CA 92103

Dean N. Panos (dpanos@jenner.com)
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654

55. 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.

56. 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.

57. 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 mediation session with Mark Peterson, of Farella, Braun & Martel LLP; and by the Parties' five mediation sessions with the Honorable James Holderman (Ret.), former Chief Judge of the Northern District of Illinois, of JAMS, both experienced mediators. 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. All Parties agree that this Agreement was drafted by Class Counsel and Kellogg's counsel at arms' length, and that no parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their attorneys, or the circumstances under which the Agreement was negotiated, made, or executed.

58. 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.

59. Modification in Writing Only. This Agreement and any and all parts of it may be amended, modified, changed, or waived only by an express instrument in writing signed by the Parties.

60. 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.

61. 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.

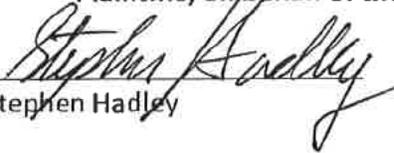
62. Continuing Jurisdiction. After entry of the Judgment, the Court shall have continuing jurisdiction over the Action solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

63. 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.

[signatures appear on following page]

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: 10/21, 2019

Melody DiGregorio

Dated: _____, 2019

Eric Fishon

Dated: _____, 2019

Kerry Austin

Dated: _____, 2019

Nafeesha Madyun

Dated: _____, 2019

Class Counsel

Jack Fitzgerald

Dated: _____, 2019

Defendant Kellogg Sales Company

Name:
Position:

Dated: _____, 2019

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Plaintiffs, on behalf of the Class

Stephen Hadley Dated: _____, 2019

Melody D. Gregorio
Melody D. Gregorio Dated: 10-21, 2019

Eric Fishon Dated: _____, 2019

Kerry Austin Dated: _____, 2019

Nafeesha Madyun Dated: _____, 2019

Class Counsel

Jack Fitzgerald Dated: _____, 2019

Defendant Kellogg Sales Company

Name: _____ Dated: _____, 2019
Position: _____

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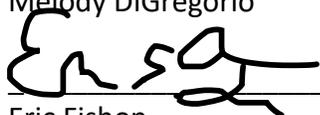
Plaintiffs, on behalf of the Class

Stephen Hadley

Dated: _____, 2019

Melody DiGregorio

Dated: _____, 2019



Eric Fishon

Dated: October 21st, 2019

Kerry Austin

Dated: _____, 2019

Nafeesha Madyun

Dated: _____, 2019

Class Counsel

Jack Fitzgerald

Dated: _____, 2019

Defendant Kellogg Sales Company

Name:
Position:

Dated: _____, 2019

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Stephen Hadley

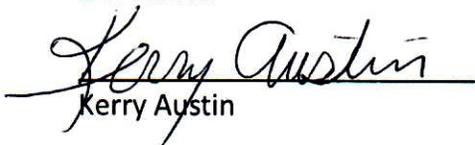
Dated: _____, 2019

Melody DiGregorio

Dated: _____, 2019

Eric Fishon

Dated: _____, 2019


Kerry Austin

Dated: 10-21, 2019

Nafeesha Madyun

Dated: _____, 2019

Class Counsel

Jack Fitzgerald

Dated: _____, 2019

Defendant Kellogg Sales Company

Name:
Position:

Dated: _____, 2019

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Stephen Hadley

Dated: _____, 2019

Melody DiGregorio

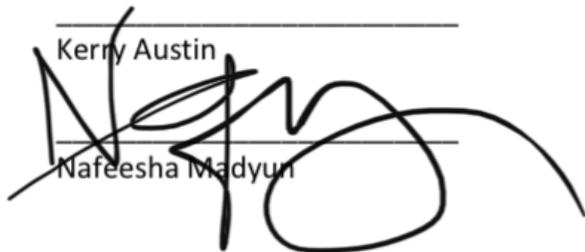
Dated: _____, 2019

Eric Fishon

Dated: _____, 2019

Kerry Austin

Dated: _____, 2019


Nafeesha Madyun

Dated: 10/21, 2019

Class Counsel

Jack Fitzgerald

Dated: _____, 2019

Defendant Kellogg Sales Company

Name:
Position:

Dated: _____, 2019

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Plaintiffs, on behalf of the Class

Stephen Hadley Dated: _____, 2019

Melody DiGregorio Dated: _____, 2019

Eric Fishon Dated: _____, 2019

Kerry Austin Dated: _____, 2019

Nafeesha Madyun Dated: _____, 2019

Class Counsel



Jack Fitzgerald

Dated: October 21, 2019

Defendant Kellogg Sales Company

Name: _____ Dated: _____, 2019
Position: _____

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Plaintiffs, on behalf of the Class

Stephen Hadley Dated: _____, 2019

Melody DiGregorio Dated: _____, 2019

Eric Fishon Dated: _____, 2019

Kerry Austin Dated: _____, 2019

Nafeesha Madyun Dated: _____, 2019

Class Counsel

Jack Fitzgerald Dated: _____, 2019

Defendant Kellogg Sales Company



Name: Gary H. P. Luick
Position: President

Dated: _____, 2019



Appendix 1: Class Products

Product	Sizes				
Raisin Bran Original Crunch Apple Strawberry Vanilla Almond Cinnamon Almond Omega-3 With Cranberries	13.5 oz.	15 oz.	20.3 oz.	29 oz.	76.5 oz.
Krave Chocolate S'mores Double Chocolate	11 oz.	14.1 oz.	15.5 oz.	18.5 oz.	22.8 oz.
Frosted Mini-Wheats Bite Size Original Maple Brown Sugar Strawberry Strawberry Delight Blueberry Blueberry Muffin Cinnamon Streusel	14 oz.	16 oz.	18 oz.	21 oz.	30 oz.
Frosted Mini-Wheats Big Bite Original	15.2 oz.	18 oz.			
Frosted Mini-Wheats Little Bites Original Chocolate Cinnamon Roll	15.2 oz.	15.8 oz.			
Frosted Mini-Wheats Touch of Fruit in the Middle Mixed Berry Raspberry Raisin	15 oz.	18 oz.	24 oz.		

Product	Sizes
<i>Frosted Mini-Wheats Harvest Delights</i> Blueberry with Vanilla Drizzle Cranberry with Yogurt Drizzle	14.3 oz.
<i>Smart Start – Original Antioxidants</i>	17.5 oz. 15.2 oz.
<i>Crunchy Nut</i>	13.2 oz. 13.4 oz. 13.6 oz. 14.1 oz. 20.8 oz.
<i>Nutri-Grain Cereal Bars</i> Apple Cinnamon Blueberry Strawberry Cherry Mixed Berry Strawberry Greek Yogurt	10.4 oz. 20.8 oz.
<i>Nutri-Grain Soft Baked Breakfast Bars</i> Apple Cinnamon Blueberry Strawberry Cherry Raspberry Mixed Berry Strawberry Greek Yogurt Variety Pack	10.4 oz. 11.7 oz. 20.8 oz. 31.2 oz.
<i>Nutri-Grain Fruit & Oat Harvest Bars</i> Blueberry Bliss Country Strawberry	8.8 oz.
<i>Nutri-Grain Harvest Hearty Breakfast Bars</i> Blueberry Bliss Country Strawberry Apple Cinnamon	8.8 oz.

Product	Sizes
<p><i>Nutri-Grain Fruit Crunch Granola Bars</i> Apple Cobbler Strawberry Parfait</p>	<p>7.4 oz.</p>
<p><i>Nutri-Grain Crunch Crunchy Breakfast Bars</i> Apple Cobbler Strawberry Parfait</p>	<p>8.8 oz.</p>
<p><i>Nutri-Grain Fruit & Nut Chewy Breakfast Bars</i> Blueberry Almond Cherry Almond</p>	<p>6 oz.</p>