

# EXHIBIT A

**Smith et al v. Kellogg Company et al Settlement Agreement**

This Settlement Agreement (the “Agreement”) is voluntarily made and entered into by and between Roseann Miracola, Scotty Poarch, and Mark Young (“Named Plaintiffs”), on behalf of themselves and others allegedly similarly situated, on the one hand, and Kellogg Company and Kellogg Sales Company (“Kellogg”), on the other.

WHEREAS, on July 13, 2017, Brian Smith filed a putative Fair Labor Standards Act (“FLSA”) collective action in the District of Nevada alleging Kellogg improperly classified those who worked in the Kellogg Sales Representative and similar positions (“KSRs”) as exempt from overtime pay under the FLSA, captioned *Smith et al v. Kellogg Company et al*, No. 2:17-cv-01914 in the District of Nevada (the “Action”);

WHEREAS, on February 7, 2018, the District of Nevada compelled Mr. Smith’s claim to individual arbitration;

WHEREAS, on December 3, 2018, the District of Nevada granted leave to amend the Complaint to add Ms. Miracola, Mr. Poarch, and Mr. Young as Named Plaintiffs and then transferred the Action to the Western District of Michigan, No. 1:18-cv-01341-PLM-RSK;

WHEREAS, on January 16, 2019, Named Plaintiffs moved for conditional certification of the Action as a FLSA collective action, asking the Court to authorize notice to everyone who worked in a KSR position within three years of the filing of the Action and inform them of their right to opt in to the case;

WHEREAS, in March 2019, Mr. Smith settled his individual claim in arbitration;

WHEREAS, although the Court did not rule on Named Plaintiffs’ motion for conditional certification, 77 people (inclusive of the Named Plaintiffs) filed consent to join forms opting into this Action;

WHEREAS, Kellogg denies that it misclassified KSRs, denies that it has committed any wrongdoing or violated any law, and denies that it is liable to any KSR with respect to the claims asserted in the Action; and

WHEREAS, to avoid the expense and burden of further litigation, the parties now desire to resolve the claims asserted by the Named Plaintiffs on a collective basis;

NOW, THEREFORE, in consideration of the foregoing and the promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**I. DEFINITIONS.** For purposes of this Agreement, the following definitions apply in addition to the definitions set forth in other sections of this Agreement.

**A. “Final Approval Hearing”** means the date set by the United States District Court for the Western District of Michigan to review and consider final approval of the settlement between Kellogg and Plaintiffs, described herein.

**B. “Final Approval Order and Judgment of Dismissal”** means a Court order (a) finally approving of the parties’ settlement, memorialized in this Agreement, (b) extinguishing the claims against the Released Parties as specified in Section V and VI, and (c) dismissing the claims with prejudice. A proposed Final Approval Order and Judgment of Dismissal shall accompany Plaintiffs’ motion for final approval of the settlement.

**C. “Notice Period”** means the period beginning on the date the Administrator mails notice of the parties’ settlement, as provided for in Section X(B), and ending on the date sixty (60) calendar days thereafter, except that the parties may agree to extend the Notice Period for individuals to whom notice was mailed, and whose notice was returned as undeliverable, to the extent that the Administrator re-sends notice after following up through skip-tracing efforts. The Notice Period may only be extended under these circumstances upon agreement and consent of all parties.

**D. “Opt-in Plaintiffs”** means the 74 people who have already filed consent to sue forms in the Action, identified along with the 3 Named Plaintiffs in Exhibit 1.

**E. “Parties”** means Plaintiffs and Defendants Kellogg Company and Kellogg Sales Company collectively; each may also be referred to separately as a “Party.”

**F. “Plaintiffs”** means the individuals who have filed and not withdrawn consents to sue in the Action and the individuals who file and do not withdraw consents to sue in the Action during the Notice Period, as provided for in Section X(B) below.

**G. “Plaintiffs’ Counsel”** means Getman, Sweeney & Dunn, PLLC.

**H. “Putative Plaintiffs”** means the people who are eligible to file a consent to sue form in the Action, identified in Exhibit 2.

**I. “Preliminary Approval Order”** means a Court order preliminarily approving the Parties’ settlement, memorialized in this Agreement, and requiring any collective group members who wish to opt in to the Action and thereby participate in the settlement to do so no later than sixty (60) calendar days after the Administrator mails notice of the settlement as provided for in Section X(B) below.

**J. “Released Parties”** means Kellogg Company and Kellogg Sales Company, the Defendants in the Action, and each of their present and former officers, executives, directors, employees, agents, attorneys, predecessors, successors, assigns, shareholders,

parents, subsidiaries, affiliated entities, representatives, transferors, transferees, partners, principals, trustees, executors, members, insurers, investors, servants, beneficiaries, devisees, guardians, heirs, and all other persons, firms, corporations, divisions, associations, limited liability companies, and/or partnerships associated therewith or related thereto.

**K.** “**Administrator**” means Analytics, LLC.

**L.** “**Settlement Effective Date**” shall mean and refer to the later of: (a) if no motion for extension of time to file a notice of appeal is filed and no appeal is filed, the date thirty-three (33) calendar days after the issuance of the Final Approval Order and Judgment of Dismissal, (b) if a motion for extension of time to file a notice of appeal is filed and/or if an appeal is filed, the date on which a court finally disposes of any appeal that has the effect of affirming the Final Approval Order and Judgment of Dismissal in its entirety, or (c) if a motion for extension of time to file a notice of appeal is filed and no appeal is filed within 30 days thereof, the date sixty-three (63) calendar days after the issuance of the Final Approval Order and Judgment of Dismissal.

**II. SETTLEMENT AMOUNT.** In full settlement of all wage and hour claims Plaintiffs asserted or could have asserted in the Action, excluding claims for attorneys’ fees and costs, Kellogg agrees to pay Plaintiffs a total settlement amount of One Million Eight Hundred Fifty-One Thousand, Six Hundred and Eighty-Nine Dollars and Fifty-Six Cents (\$1,851,689.56) (“Plaintiff Settlement Amount”). The Plaintiff Settlement Amount includes all settlement administration costs, addressed in Section IV(C) below, and all service payments, addressed in Section V below. The Plaintiff Settlement Amount less settlement administration costs and service payments shall be allocated among all potential Plaintiffs (the “Individual Allocations,” and each an “Individual Allocation”).

**A.** Individual Allocations attributed to any Opt-in Plaintiff who opts-out shall be used to offset settlement administration costs. To the extent the sum of individual allocations attributable to Opt-In Plaintiffs who opt-out exceed total settlement administration costs, such funds will revert to Kellogg. The total allocation to the Named and Opt-in Plaintiffs is One Million One Hundred and Sixth Thousand Nine Hundred and Twenty-One Dollars and Seventy-Five Cents (\$1,106,971.75).

**B.** Individual Allocations unclaimed by those who fail to return a timely and valid claim form as provided for in Section X(B) shall be redistributed among Plaintiffs who do return a timely and valid claim form. The total allocation to the Putative Plaintiffs, exclusive of administrative costs, is approximately Six Hundred Eighty-Seven Thousand Two Hundred Seventeen Dollars and Eighty Cents (\$687,217.80).

**C.** Any settlement checks left unnegotiated shall be sent to the applicable state department of unclaimed funds in the name of the non-cashing Claimant, to be handled in accordance with the applicable state law for unclaimed funds.

**III. ATTORNEYS’ FEES AND COSTS.** In connection with the settlement, the Parties agree Plaintiffs may petition for attorneys’ fees and litigation costs incurred by Plaintiffs in prosecuting

this Action in accordance with 29 U.S.C. § 216. Kellogg reserves all rights to oppose/challenge such petition on the grounds such fees and/or costs are not reasonable and/or recoverable. Any attorneys' fees and costs awarded by the Court shall be payable separately from and in addition to the Plaintiff Settlement Amount.

**A.** Plaintiffs must file any petition for attorneys' fees and costs no later than seven (7) calendar days before the deadline by which FLSA Settlement Class members must opt-in to the settlement.

**B.** Kellogg will file any opposition to Plaintiffs' petition for attorneys' fees and costs no later than twenty-one (21) calendar days after filing and service of Plaintiffs' petition.

**C.** Plaintiffs will file any reply in support of their petition for attorneys' fees and costs no later than fourteen (14) calendar days after filing and service of Kellogg's opposition.

#### **IV. SETTLEMENT ADMINISTRATION**

**A. Administrator.** The Administrator shall perform services including:

1. Mailing the settlement notices provided for in Section X(B) below;
2. Creating a Qualified Settlement Fund ("QSF") within the meaning of Treasury Regulation § 1.468B-1, *et seq.*;
3. Maintenance of an 800 number for calls about the Action and settlement, which shall go live on the date the Administrator mails settlement notice;
4. Payout of the Plaintiff Settlement Amount as provided for herein;
5. Provision of summaries to Plaintiffs' Counsel and Defense Counsel of all activity, including names and contact information, with respect to claimants participating in the settlement (all communications shall include the Kellogg employee identification number, where applicable);
6. Follow up on returned settlement notices through skip tracing and reasonable efforts to locate all FLSA Settlement Class Members;
7. Mailing of a reminder to any claimant who fails to cash his or her settlement check one, three, and five months after the settlement check was initially mailed.
8. Sending any uncashed checks to the applicable state department(s) of unclaimed funds in the name of the non-cashing claimant, to be handled in accordance with the applicable state law for unclaimed funds.

**B. Settlement Administration.** The Administrator shall be required to agree in writing to treat information it receives or generates as part of its claims

administration process as confidential, and to use such information solely for purposes of claims administration. Plaintiffs' Counsel and Defense Counsel shall have equal access to the Administrator, as well as to all information in possession of the Administrator related to the administration of this settlement.

**C. Settlement Administration Costs.** All costs of administering the parties' settlement, including but not limited to fees and costs paid to the Administrator for issuing checks, mailing, remailing, skip tracing, reminding, and administration, shall be paid from the Plaintiff Settlement Amount, except as otherwise provided for in Section XII(C), related to the voiding of this Agreement.

1. The parties shall instruct the Administrator to prepare an estimate of fees and costs for all services to be provided in conjunction with the settlement and this Agreement, which the Administrator shall provide to the parties no later than the date on which the last party executes this Agreement.
2. The parties shall jointly authorize payment to the Administrator of all settlement administration costs from the monies on deposit in the QSF at an appropriate time.

**V. SERVICE PAYMENTS AND GENERAL RELEASES.** Plaintiffs may petition for an award of service payments to the Named Plaintiffs who have signed this Agreement. In consideration for the general release, Kellogg agrees to pay each Named Plaintiff, subject to court approval, a service payment in the amount of \$7,500 from the Plaintiff Settlement Amount. Any Named Plaintiff who receives a service award is, and agrees to be, bound by the General Release below. Only individuals who receive service awards—and not those who simply opt-into the Action—are bound by this General Release.

**A. General Release.** In consideration for the opportunity to receive a service payment as set forth in this Agreement, Named Plaintiffs release all known and unknown claims, promises, causes of action, or similar rights of any type that they may presently have against the Released Parties, except as otherwise provided for in this paragraph. For example, the Named Plaintiffs are releasing all common law contract, tort, or other claims they may have, as well as claims they may have under the Age Discrimination in Employment Act (ADEA), the WARN Act, Title VII of the Civil Rights Act of 1964, Sections 1981 and 1983 of the Civil Rights Act of 1866, the Americans With Disabilities Act (ADA), the Employee Retirement Income Security Act of 1974 (ERISA), and similar state or local laws. Named Plaintiffs understand and agree that this General Release does not release any claims that the law does not permit them to release. They further understand and agree that they are not releasing any claim that relates to: (i) their rights to enforce this Agreement; (ii) their rights, if any, to claim government-provided unemployment benefits; or (iii) any rights or claims which may arise or accrue after they sign this Agreement.

**B. Service Payments.** Any petition for service payments for those who sign this Agreement and are bound by the General Release shall be filed along with the motion for Final Approval. Any service payments awarded shall be paid from the Plaintiff Settlement Amount. Service payments awarded shall be in addition to, and not in place of, the amount

a Plaintiff would otherwise have received from the Plaintiff Settlement Amount. Unless otherwise required by law, service payments shall be allocated 100% as non-wage income, for which a Form 1099 shall issue to the recipient by the Administrator and which shall be reported to state and federal taxing authorities as such. If the Court denies the Service Payment, then the Named Plaintiff is not bound by the general release. Further, if the Court denies the Service Payment, the amounts are redistributed to all Plaintiffs.

**VI. RELEASE BY PLAINTIFFS NOT ELIGIBLE TO RECEIVE SERVICE PAYMENT.** Upon final Court approval of the Parties' settlement, it is understood and agreed that each Plaintiff for whom Plaintiffs do not petition for an award of service payments as provided for in Section V above, and who did not therefore already agree to the General Release set forth above, regardless of whether he or she cashes his or her settlement check, shall be bound by the following release:

In consideration for the payments provided for in the *Smith et al v. Kellogg Company et al* Settlement Agreement executed on my behalf, the sufficiency of which I hereby acknowledge, I, on behalf of myself and my heirs, estates, representatives, successors, assigns and agents, expressly and unconditionally waive, release, and forever discharge Defendants Kellogg Company and Kellogg Sales Company and all of the Released Parties from any and all wage and hour claims and wage and hour causes of action, known or unknown, that have arisen or could have arisen at any time up to and including the date of final approval of the settlement, including but not limited to: (i) any and all claims for unpaid overtime wages, fines, penalties, or liquidated damages; and (ii) any and all wage and hour claims that I asserted or could have asserted in the Action whether under federal, state, local or other laws or ordinances, or pursuant to contract, tort, or equitable theories ("Released Claims").

**VII. RELEASE BY KELLOGG OF ARBITRATION PLAINTIFFS.** Upon final Court approval of the Parties' settlement, it is understood and agreed that Kellogg releases each Plaintiff who is party to an arbitration agreement with Kellogg from any and all claims that were asserted or that could have been asserted against the Plaintiffs that the Plaintiffs breached their arbitration agreements with Kellogg, and any other claims arising out of the same common nucleus of operative facts, from the beginning of time to the date the Court finally approves the Parties' settlement.

**VIII. REASONABLE COMPROMISE OF BONA FIDE DISPUTE.** The Parties agree that the terms of this Agreement represent a reasonable compromise of disputed claims and issues arising from a bona fide dispute over FLSA coverage and agree to represent the same to the Court. The Parties further agree that the settlement is a fair and reasonable resolution of Plaintiffs' claims.

**IX. NO ADMISSION.** The Parties agree and acknowledge that this Agreement shall not be alleged or construed by anyone to be an admission of any violation of any federal, state, or local statute, or ordinance or regulation, or of any duty owed by Kellogg to current or former employees,

and that the sole purpose of this Agreement and the specific settlements and releases provided for herein is to avoid the cost of further litigation.

**X. APPROVAL OF SETTLEMENT; NOTICE OF SETTLEMENT.**

**A. Preliminary Approval and Conditional Certification.** All terms of this Agreement are contingent upon the Court's preliminary and subsequent final approval of the Parties' settlement.

1. No later than November 25, 2020, Plaintiffs will file a joint motion for preliminary approval of the Parties' collective action settlement in the United States District Court for the Western District of Michigan. The motion for preliminary approval will include the proposed settlement notice and claim form, attached as Exhibit 3, to be mailed to Putative Plaintiffs of the *Smith et al v. Kellogg Company et al.* stipulated collective action ("Putative Plaintiff Notice"), and a proposed settlement notice, attached as Exhibit 4, to be mailed to Opt-in Plaintiffs. Both notices will advise Putative Plaintiffs and Opt-in Plaintiffs, respectively, that Plaintiffs' Counsel will petition the Court for their lodestar attorneys' fees and any costs in connection with the litigation, and that any fees and costs awarded to Plaintiffs' Counsel will be in addition to the Plaintiff Settlement Amount and thus will not impact any individual Plaintiff's recovery. The notices may state that Plaintiffs' Counsel only evaluated KSR wage and hour claims up through August 2017, and should any Plaintiff believe he or she has other viable wage and hour claims against Kellogg, they may consult with Plaintiffs' Counsel. Plaintiffs' Counsel will attempt to confer with the Plaintiff, and if there is a potential claim, the parties will confer in good faith in an effort to resolve the claims.

2. Kellogg stipulates for settlement purposes only to permit notice of this Action and Settlement to be mailed to the collective groups identified in Exhibits 1 and 2. Kellogg does not, however, waive—and instead expressly reserves—the right to challenge the propriety of conditional or final certification, as if this Agreement had not been entered into by the Parties, in the event the Court does not approve the settlement or the Settlement Effective Date does not occur.

a. The form order authorizing notice of this Action shall expressly state that the Court is authorizing notice for settlement purposes only.

b. The Parties and Plaintiffs' Counsel agree that, if approved, notice of this collective action settlement is in no way an admission by Kellogg that class or collective certification is proper in the Action or in any other action against Kellogg.

3. Preliminary approval shall be deemed to occur on the date the Court issues a Preliminary Approval Order, as defined above.



**B. Settlement Notice and Claim Forms.**

1. No later than fourteen (14) calendar days after the Court issues the Preliminary Approval Order, the Administrator shall mail the Putative Plaintiff Notice approved by the Court and a copy of the claim form approved by the Court (the “Claim Form”) to all Putative Plaintiffs of the *Smith et al v. Kellogg Company et al* collective action, identified in Exhibit 2. The Claim Form shall denote that the individual returning the form 1) consents to sue as a Plaintiff in the Action, 2) authorizes Plaintiffs’ Counsel to file with the Court the Claim Form containing the individual’s written consent, and, 3) upon the Settlement Effective Date, will release the Released Parties from all Released Claims as defined in Section VI.

2. Individuals who receive the Putative Plaintiff Notice and Claim Form may return a completed copy of the Claim Form to the Administrator to opt into this collective action settlement. To be effective, the Claim Form must be completed in full (valid) and postmarked or otherwise returned to the Administrator no later than sixty (60) calendar days after mailing of the Putative Plaintiff Notice (timely). By submitting a valid and timely Claim Form, individuals become Plaintiffs in the Action and shall receive a portion of the Plaintiff Settlement Amount and be bound by the release set forth in Section VI.

3. Upon receipt of a timely unsigned, incomplete, altered, or otherwise deficient Claim Form, the Administrator shall promptly apprise the individual who returned the Claim Form of its deficiency and provide such individual with a substitute Claim Form that the individual may use to cure the deficiency by the close of the Notice Period. A Claim Form that remains deficient as of the close of the Notice Period shall be void, absent a showing of good cause as determined by the Court. The Parties shall work together to cure any deficiencies associated with mis-filed or deficient Claim Forms.

4. On a weekly basis, or on a more frequent basis if requested by Counsel, the Administrator shall compile and transmit the timely and valid Claims Forms it has received to Plaintiffs’ Counsel (with a copy of all such materials to Defense Counsel), in both an unredacted form and in a form redacted as to the social security numbers of Plaintiffs, and Plaintiffs’ Counsel shall within seven (7) calendar days thereafter file the redacted Claim Forms with the Court. The Administrator also shall compile and transmit any untimely and invalid Claims Form to Plaintiffs’ Counsel (with a copy of all such materials to Defense Counsel) so Plaintiffs’ Counsel, with the cooperation of Defense Counsel per Section B(3). above, can attempt to cure any deficiencies before the end of the Notice Period.

5. Upon the expiration of the Notice Period, the Administrator shall provide a spreadsheet to Plaintiffs’ Counsel and Defense Counsel that contains the following information: (i) identifying information for each claimant who submits a Claim Form, including name, address, and the last four digits of his/her Social Security number; (ii) the date each Claim Form was postmarked; (iii) whether the Claim

Form was complete or incomplete (and if incomplete, what information was missing).

6. Individuals to whom the Putative Plaintiff Notice is sent, but who do not timely file a valid Claim Form shall not receive any portion of the Plaintiff Settlement Amount and shall not be bound by or benefit from the releases set forth in Section V.

7. Named Plaintiffs and Opt-in Plaintiffs need not submit a completed Claim Form to opt into this collective action settlement, because they already filed consents to sue opting into the Action. Thus, Named Plaintiffs and Opt-in Plaintiffs will not receive a copy of the Putative Plaintiff Notice or Claim Form. Plaintiffs' Counsel will separately mail and/or email the Opt-In Plaintiff Notice approved by the Court to Named Plaintiffs and Opt-in Plaintiffs. Plaintiffs' Counsel may also contact Named Plaintiffs and Opt-in Plaintiffs to discuss their rights and options (*i.e.*, the right to opt-out) vis-à-vis the settlement.

**C. Final Approval of Settlement.** No later than fourteen (14) calendar days following the close of the Notice Period, the Parties will file a joint motion for final approval of the Parties' collective action settlement in the United States District Court for the Western District of Michigan. The motion for final approval will seek a Final Approval Order and Judgment of Dismissal. Kellogg's payment of the Plaintiff Settlement Amount and any other amount under this Agreement is contingent upon the Court's final approval of the Parties' settlement, which shall be deemed to occur on the Settlement Effective Date, as defined above, and subject to a resolution of Plaintiffs' Counsel motion attorneys' fees and costs as defined in this Agreement.

## **XI. DISTRIBUTION OF PLAINTIFF SETTLEMENT AMOUNT.**

### **A. Individual Settlement Allocations.**

1. On October 23, 2020, Kellogg produced to Claimant's Counsel the employment history of all putative members of the *Smith et al v. Kellogg Company et al* collective action, identified in Exhibits 1 and 2.

2. Plaintiffs' Counsel has sole discretion over how the Plaintiff Settlement Amount will be allocated among Plaintiffs.

3. No later than seven (7) calendar days after the close of the Notice Period, Plaintiffs' Counsel shall inform Kellogg and the Administrator of the final allocation of the Plaintiff Settlement Amount among Plaintiffs, including all Named Plaintiffs and Opt-in Plaintiffs, *i.e.*, the dollar amount of service payments and individual settlement payments to each Plaintiff.

**B. Distribution Process.** The Administrator shall be responsible for distributing the Plaintiff Settlement Amount.

1. By the Settlement Effective Date, Kellogg shall transmit to the Administrator the Plaintiff Settlement Amount, less any amounts that revert to Kellogg as a result of Plaintiffs who previously opted-in to the case having opted-out, for deposit into the QSF, as approved by the Court.
2. No later than the fifteenth (15<sup>th</sup>) calendar day after Kellogg transmits the Plaintiff Settlement Amount for deposit into the QSF to the Administrator, the Administrator shall: (a) issue settlement checks paying each Plaintiff their Individual Allocation, and (b) notify Kellogg of the amount of Employer Taxes due on the wage portion of each Plaintiff's Individual Allocation.
3. All checks issued pursuant to this Agreement shall be valid for six (6) months from the date of issuance.
4. The Administrator shall follow up on returned Notices and any returned settlement checks through skip tracing and reasonable efforts to locate all Plaintiffs.
5. The Administrator shall mail reminders to Plaintiffs who have not yet cashed checks one and three months after the settlement checks are mailed.
6. The Administrator shall provide Plaintiffs' Counsel and Defense Counsel with a list of those Plaintiffs who have not cashed their checks beginning 30 days after mailing the settlement checks and continuing on a bi-weekly basis until five (5) months after mailing the checks.
7. Six (6) months and fifteen (15) calendar days after the Settlement Effective Date, the Administrator shall transfer any amounts attributable to uncashed Settlement Checks remaining in the QSF to the appropriate state department of unclaimed funds.

**C. Effect of QSF Sending Settlement Check.** As ordered and approved by the Court, each potential Plaintiff who returns a timely and valid Claim Form thereby opts into the Action and becomes a Plaintiff. Each such Plaintiff shall be mailed a settlement check as provided for in Section XI(B) and releases the Released Parties as set forth in Section VI regardless of whether he or she actually receives or cashes a settlement check.

**D. Designation Of Types Of Payment.** Because Plaintiffs' claims include claims for liquidated damages, the Parties agree that of the portion of the Individual Allocation not consisting of a service payment, 50% shall be treated as wages and 50% shall be treated as payment for liquidated damages. One hundred percent (100%) of all service payments shall be treated as payment for liquidated damages. The Administrator shall prepare the appropriate IRS Form W-2 and IRS Form 1099 statements and provide them to the respective Plaintiffs and applicable government authorities as set forth below.

1. **Wage Payments.** Wage payments shall be reported on an IRS Form W-2. From the wage portion of each Plaintiff's Individual Allocation, the Administrator shall withhold all applicable federal, state, and local income and employment taxes

required to be withheld and cause the appropriate deposits of taxes and other withholdings to occur.

a. Each Plaintiff's share of applicable federal, state, and local income and employment taxes withheld from his or her Individual Allocation and deposited with the applicable governmental authorities in accordance with this Agreement ("Employee Taxes") shall be a part of and paid out of and shall not be in addition to, the Plaintiff Settlement Amount.

b. The Administrator shall pay all applicable federal, state, and local taxes that are normally payable by an employer from the employer's funds, for example, FUTA/SUTA and the employer's portion of FICA ("Employer Taxes") due on the wage portion of each Plaintiff's Individual Allocation. The Administrator shall calculate the amount of Employer Taxes owed, and Kellogg shall transmit funds to the Administrator sufficient to pay the Employer Taxes no later than forty-five (45) calendar days after the Settlement Effective Date. Employer Taxes are in addition to, and not included in, the Plaintiff Settlement Amount.

2. **Non-Wage Payments.** Non-wage payments, including approved service payments, shall be reported on an IRS Form 1099.

## **XII. VOIDING THE AGREEMENT**

**A. Kellogg's Rights.** If more than five (5) Named and/or Opt-in Plaintiffs who have timely claims opt out of the settlement described in this Agreement, Kellogg has the right to void the Agreement in its entirety by emailing notice of its election to do so to Plaintiffs' Counsel no later than seven (7) calendar days after the close of the Notice Period.

**B. Agreement Void Absent Court Approval.** If the Court declines to approve any material term in the Parties' preliminary or final motions for approval of settlement or requires as a condition to granting such motions modification of any term that materially changes this Agreement, then Kellogg or Named Plaintiffs shall have the right to terminate this Agreement in its entirety by providing written notice of their election to do so to counsel for the other Party within fourteen (14) calendar days of the Court's ruling.

1. In the event a Party sends notice of intent to terminate, the Parties agree to confer and negotiate in good faith to resolve any issues that resulted from the Court's denial in an effort to obtain Court approval of the settlement of the Action.

2. The Parties agree that requiring Kellogg to pay any amount greater than the sum of the Plaintiff Settlement Amount, Employer Taxes, and fees and costs awarded by the Court shall be deemed a material change to this Agreement.

3. Any disagreement as to what constitutes a material term or material modification shall be resolved the Court.

**C. Effect of Voiding the Agreement.** If a Party voids this Agreement as described above, the Agreement shall thereafter be deemed null and void, of no force and effect, inadmissible as evidence, and of no probative value. In the event of such, the Parties hereby represent, warrant, and covenant that they will not use this Agreement or refer to it for any purpose whatsoever; provided, however, that notwithstanding any contrary provisions of this Agreement, the provisions of Sections XIII and XIV shall survive termination. In the event this Agreement is voided, it is the Parties' intention that no amount will be paid by Kellogg or Plaintiffs with the exception of any costs incurred by the Administrator, which the Parties agree they will share equally (50% paid by Plaintiffs and 50% paid by Kellogg), and that Plaintiffs, Kellogg, and the Released Parties shall be restored with all rights they possessed before the execution of this Agreement.

**XIII. INADMISSIBILITY OF THIS AGREEMENT.** This Agreement is a settlement document and shall be inadmissible as evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its terms.

**XIV. NO PUBLICITY/SOLICITATION**

**A. No Publicity.** To the extent permissible under governing ethical rules or laws, Plaintiffs and Plaintiffs' Counsel agree not to publicize the Parties' settlement in the press/media and agree not to issue any press release regarding the Action, its resolution, or this Agreement. Plaintiffs and Plaintiffs' Counsel agree to respond to any press inquiries related to this Agreement and/or the Action solely with the statement that the Action has been resolved.

**B. No Solicitation.** Plaintiffs' Counsel agree not to solicit any current or former Kellogg employees by referencing this Agreement or its terms, provided such restriction is permitted by applicable ethical rules or laws.

**XV. MUTUAL AND FULL COOPERATION**

**A. Generally.** Plaintiffs' Counsel and Defense Counsel agree to use their best efforts to fully cooperate with each other and to take all actions reasonably necessary to implement the terms of this Agreement and obtain approval of the settlement. No Party shall take any action to oppose implementation of this Agreement or any of its terms. Plaintiffs' Counsel will recommend settlement to Named Plaintiffs and Opt-in Plaintiffs. Defense Counsel shall provide Plaintiffs' Counsel with reasonable assistance necessary to draft all papers to be filed in conjunction with seeking approval of the settlement.

**B. Plaintiffs Seeking To Reject Or Contest The Settlement Or Opt Out.** To the extent not otherwise in violation of an applicable professional rule or law, Plaintiffs' Counsel stipulate they will not solicit or encourage any putative collective group member in seeking to reject or contest this settlement or to opt out of the Action in light of this Agreement. To the extent a potential Plaintiff believes they have a viable wage and hour claim against Kellogg that is outside of the claims alleged in this case and consults with Plaintiffs' Counsel, and to the extent Plaintiffs' Counsel agrees there is a potential claim, Plaintiffs' Counsel and Defense Counsel shall meet and confer in good faith to resolve the

claim. Plaintiffs' Counsel further stipulates that, to the extent not otherwise in violation of an applicable professional rule or law, Plaintiffs' Counsel will not represent, encourage, solicit, or otherwise assist any person who contests the settlement or attempts to litigate with Kellogg over the Released Claims. Additionally, to the extent not prohibited by applicable professional rules or law, Plaintiffs' Counsel agrees not to represent, encourage, solicit, or otherwise assist any Plaintiff, as defined herein, in any future litigation against Kellogg regarding the Released Claims. Nothing in this paragraph is intended to prevent or restrain Plaintiffs' Counsel from: (i) suggesting to any rejecting, contesting, or opt-out claimant the option of obtaining separate counsel; (ii) performing ministerial acts necessary to secure the rejecting or opt-out claimant's withdrawal from the Action (e.g., filing an opt-out form); or (iii) acting to enforce or defend themselves or their rights in any action to enforce or rescind this Settlement or this Agreement, or representing, consulting, encouraging, or assisting any Plaintiff in any such action threatened or filed in any court or arbitration.

**XVI. COMMUNICATIONS.** Unless otherwise specifically provided, all notices, demands, or other communications given under this Agreement shall be in writing addressed as follows:

**To Plaintiffs:**

Matt Dunn  
mdunn@getmansweeney.com  
Getman, Sweeney & Dunn, PLLC  
260 Fair Street  
Kingston, NY 12401

**To Kellogg:**

James N. Boudreau  
boudreauj@gtlaw.com  
Greenberg Traurig  
1717 Arch Street  
Suite 400  
Philadelphia, PA 19103

and

Norma Barnes-Euresti  
Norma.Barnes-Euresti@kellogg.com  
Kellogg Company  
One Kellogg Square, 5S  
Battle Creek, MI 49017

**XVII. CONSTRUCTION.** The Parties agree the terms and conditions of this Agreement are the result of lengthy and intensive arms' length negotiations between the Parties and this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her, or its counsel participated in the drafting of this Agreement. The Parties request that before declaring any provision of this Agreement invalid, any court first attempt to construe all

provisions valid to the fullest extent possible consistent with applicable precedents and the intent expressed in this Agreement.

**XVIII. CAPTIONS AND INTERPRETATIONS.** Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any of its provisions.

**XIX. MODIFICATION.** Except as the Court may so order, this Agreement, including the attached Exhibits, may not be changed, altered, or modified, except in writing and signed by counsel for each of the Parties. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for each of the Parties.

**XX. SEVERABILITY.** If any part of this Agreement is found to be illegal, invalid, inoperative, or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Agreement, which shall be construed, reformed, and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent permitted under the applicable law.

**XXI. BINDING ON ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the Parties, including the Released Parties as third-party beneficiaries to this Agreement, and their respective heirs, trustees, executors, administrators, successors, and assigns.

**XXII. COUNTERPARTS AND FACSIMILE SIGNATURES.** This Agreement may be executed in counterparts, and when counsel have signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement. This Agreement may be executed by facsimile signatures or email, which shall be deemed to be originals.

**XXIII. APPLICABLE LAW, VENUE SELECTION AND CONSENT TO JURISDICTION.** This Agreement shall be governed by the laws of Michigan, without regard to that state's choice of law provisions or those of any other jurisdiction, and, when applicable, the laws of the United States, irrespective of where any action may arise or whether any jurisdiction other than Michigan has accepted jurisdiction of this matter. Any disputes regarding this Agreement shall be resolved in the United States District Court for the Western District of Michigan, or if federal subject matter jurisdiction is lacking, a state court within the vicinage of Battle Creek, Michigan. The Parties also hereby submit to the jurisdiction of such Michigan courts for all purposes relating to the review, approval, and enforcement of the terms of this Agreement.

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PLAINTIFFS' COUNSEL:

KELLOGG COMPANY AND KELLOGG  
SALES COMPANY:

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Matt Dunn, Esq.  
Getman, Sweeney & Dunn, PLLC

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Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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ROSEANN MIRACOLA, on behalf of herself  
and others similarly situated

Dated: \_\_\_\_\_

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SCOTTY POARCH, on behalf of himself and  
others similarly situated

Dated: \_\_\_\_\_

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MARK YOUNG, on behalf of himself and  
others similarly situated

Dated: \_\_\_\_\_



PLAINTIFFS' COUNSEL:



\_\_\_\_\_  
Matt Dunn, Esq.  
Getman, Sweeney & Dunn, PLLC

Dated: 11/25/20

KELLOGG COMPANY AND KELLOGG  
SALES COMPANY:

\_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
ROSEANN MIRACOLA, on behalf of herself  
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Dated: \_\_\_\_\_

\_\_\_\_\_  
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Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Roseann Miracola  
\_\_\_\_\_  
ROSEANNE MIRACOLA, on behalf of herself  
and others similarly situated

Dated: 11-25-2020

\_\_\_\_\_  
SCOTTY POARCH, on behalf of himself and  
others similarly situated

Dated: \_\_\_\_\_

\_\_\_\_\_  
MARK YOUNG, on behalf of himself and  
others similarly situated

Dated: \_\_\_\_\_

PLAINTIFFS' COUNSEL:

KELLOGG COMPANY AND KELLOGG  
SALES COMPANY:

\_\_\_\_\_  
Matt Dunn, Esq.  
Getman, Sweeney & Dunn, PLLC

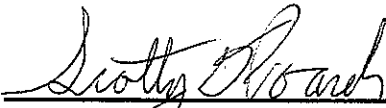
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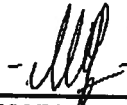
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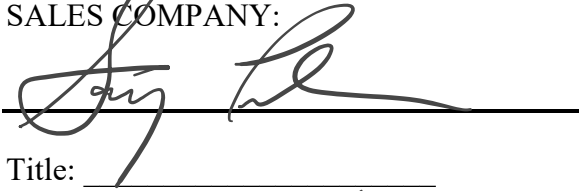
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