

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT KANSAS CITY**

Joseph L. McDonald, Mavis A. McDonald and Lyndon Ellis, On Behalf of Themselves and All Others Similarly Situated,)	
)	
)	
Plaintiffs,)	Case No. 08-CV-2473 JWL-JPO
vs.)	
)	
The Kellogg Company,)	
Defendant.)	

JOINT STIPULATION OF SETTLEMENT AND RELEASE

This Joint Stipulation of Settlement and Release (“Stipulation of Settlement” or “Settlement”) is made and entered into on April 13, 2012, by and between Plaintiffs Joseph McDonald, Mavis McDonald, and Lyndon Ellis, on behalf of themselves and each and every individual who filed a consent form opting-in to this action (collectively, the “Eligible Plaintiffs”), and Defendant The Kellogg Company (“Defendant” or “Kellogg”). This Settlement is subject to the terms and conditions hereof and to the approval of the Court.

DEFINITIONS

1. Joseph L. McDonald, Mavis A. McDonald and Lyndon Ellis are collectively referred to as “The Named Plaintiffs.” The Eligible Plaintiffs (which include the Named Plaintiffs) and Kellogg are collectively referred to as the “Parties.” “Class Counsel” is Brady & Associates.

BACKGROUND

2. On or about September 29, 2008, Named Plaintiffs filed a proposed Collective Action Complaint against Defendant in the United States District Court for the District of Kansas, Case No. 08-CV-2473-JWL on behalf of themselves and other similarly situated

employees (“the Action”). Named Plaintiffs alleged claims under the Fair Labor Standards Act (“FLSA”) and Kansas state wage and hour laws, claiming that Kellogg did not compensate them and others similarly situated for certain time allegedly spent in work or work-related tasks, including among other things, time spent donning and doffing company issued uniforms and personal protective equipment, walking to and from time clocks, to and from their respective locker rooms, and waiting after they had clocked-in but before the actual start of their shift.

3. On October 31, 2008, Named Plaintiffs filed a motion for conditional certification, asking this Court to authorize the sending of notice of this Action to all putative claimants. Ultimately, in exchange for Named Plaintiffs’ agreement to dismiss any and all state law claims from the Action, Kellogg did not contest Plaintiffs’ Motion. Accordingly, on June 16, 2009, the Court approved the Parties’ proposed Notification to Potential Class Members and Consent to Join (Doc. No. 51).

4. The collective action initially approved by the Court consists of “[a]ll current and former individual hourly production workers employed by Kellogg at the 801 Sunshine Road, Kansas City, KS location at any time from September 29, 2005 to the present.”

5. As a result of the mailing of Notice in this Action, approximately 375 individuals filed Consent to Join forms. The Consent to Join form expressly provided that by opting-in to the Action, an individual did “authorize the representative plaintiffs and designate them class representatives as my agents to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiffs’ counsel concerning attorneys’ fees and costs, and all other matters pertaining to this lawsuit.”

6. Thereafter, the Parties engaged in extensive discovery including approximately 350 sets of interrogatories, more than 20 depositions, expert reports, two rounds of

comprehensive briefing on summary judgment, and presentation of, and opposition to, a motion for decertification of the conditionally certified collective action. Ultimately, and in accordance with the Action's pre-trial order, the Parties participated in extensive direct settlement discussions in which the Parties were represented by competent counsel. Two days of formal settlement discussions were presided over by John Phillips, Esq. of Husch Blackwell LLP, a mediator with expertise in FLSA matters. Having fully considered the costs and risks associated with continued litigation of this action, Eligible Plaintiffs and Kellogg enter into this Settlement for the purpose of resolving all claims that were or could have been asserted in the Complaint as amended.

SETTLEMENT CLASS

7. For purposes of this Agreement, the "Settlement Class" consists of all Eligible Plaintiffs, that is, those current and former hourly production workers employed by Kellogg at the 801 Sunshine Road, Kansas City, KS location at any time from September 29, 2005 to the present who filed a valid consent to join in this Action.

COMPROMISE ACKNOWLEDGEMENT

8. Eligible Plaintiffs acknowledge and agree that this Agreement and the consideration provided herein have been and are made and received solely on the basis of a compromise of disputed claims. This Agreement is not, and is not to be construed as, an admission by Kellogg of any liability whatsoever. Nor is this Agreement, nor shall it be construed as, an admission of any act or fact whatsoever, including any violation of federal, state, local or common law, statute, ordinance directive, regulation or order (including executive orders).

9. The Parties conducted extensive discovery and independent investigations of the facts and law during this litigation, including, among other things, wide-ranging written discovery (including more than 350 sets of interrogatories to each opt-in Plaintiff), more than 20 depositions, expert reports, extensive briefing on summary judgment including decertification, and careful consideration of applicable law. Class Counsel have further analyzed the applicable law and applied it to the facts and information discovered during the course of this litigation for the purpose of measuring the relative merits of Eligible Plaintiffs' allegations, Kellogg's defenses, and Eligible Plaintiffs' claimed damages. The Eligible Plaintiffs and Class Counsel have concluded that: (i) it is in the best interests of the Eligible Plaintiffs to enter into the Settlement in order to avoid the uncertainties of litigation, and to assure benefits to the Eligible Plaintiffs, and (ii) the terms and conditions of this Settlement, are fair, reasonable and adequate, and in the best interests of all Eligible Plaintiffs.

10. Eligible Plaintiffs and Class Counsel believe that the claims asserted in the instant action have merit. Class Counsel recognizes and acknowledges, however, the expense and length of continued proceedings necessary to prosecute the litigation against Kellogg through trial and possible appeals. Class Counsel has also taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in such litigation and the likelihood of protracted appellate review. As a result of their investigation and analysis, Class Counsel have engaged in intensive arm's length negotiations with counsel for Kellogg with a view to achieving settlement. As a result of these events, and after careful consideration of applicable law, the Eligible Plaintiffs and Class Counsel have concluded that: (i) it is in the best interests of the Eligible Plaintiffs to enter into the Settlement in order to avoid the uncertainties of litigation, and to assure benefits to the Eligible Plaintiffs, and (ii) the terms and conditions of

this Settlement are fair, reasonable and adequate, and in the best interests of all Eligible Plaintiffs.

11. Kellogg and its counsel believe that the claims asserted in the instant actions are without merit. Thus, Kellogg has denied and continues to deny the claims in the Action, and has denied and continues to deny all charges of wrongdoing or liability against it. Although Kellogg has vigorously contested the allegations to date and denies that it committed any wrongful action or violation of law, it has investigated the allegations raised by Plaintiffs in the Action and evaluated the information elicited through its investigation and has concluded that, despite its good faith belief that it is not liable for any of the claims asserted in the Action and that it has good defenses to those claims, it will enter into this Settlement to obtain the conclusive and complete dismissal of the Action, and to avoid: (i) the further expense, inconvenience and burden of litigating the claims asserted in, or which could have been asserted in, the Action, (ii) the distraction and diversion of its personnel and resources, and (iii) the risk and uncertainty of the outcome inherent in any litigation. In light of these realities, Kellogg is willing to enter into this Settlement as a means to resolve fully all claims arising out of and related to the allegations in the Action.

12. The settlement will not be deemed to be a concession or admission by Kellogg of any violation of federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity and will not be used in any proceeding other than the proceedings under or to interpret or enforce this Agreement. Kellogg's agreement to collective treatment under the FLSA of the Eligible Plaintiffs' claims for purposes of this Agreement is not, and will not be deemed to be, an admission or concession by it that class or collective treatment is appropriate in this or any other action.

13. Class Counsel has conducted a thorough investigation into the facts of the Action and has diligently pursued an investigation of the Eligible Plaintiffs' claims. Based on an independent investigation and evaluation, Class Counsel is of the opinion that settlement with Defendant for the consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Eligible Plaintiffs in light of all known facts and circumstances, including the risk of significant delay, defenses asserted, and numerous potential appellate issues.

14. The Parties, through their counsel, hereby seek judicial approval of their compromise and the resolution of the dispute between Kellogg and the Eligible Plaintiffs. In the event the proposed settlement and general release contained in this Agreement does not become effective in accordance with the terms hereof, is not finally approved, is terminated, canceled or otherwise fails to become effective for any reason, this Agreement will no longer have any effect and the Parties will revert to their respective positions as of the date and time immediately before the execution of this Agreement.

15. It is the intention of the Parties that this Stipulation of Settlement shall constitute a full and complete settlement and release of all claims arising from or related to the Action against Kellogg.

16. The Parties agree to cooperate and take all necessary and appropriate steps to dismiss the Action with prejudice.

17. The maximum total payment by Kellogg under the Settlement to Eligible Plaintiffs, including Incentive Awards to the Named Plaintiffs, is \$221,620.37. This maximum total payment does not include any provision for attorneys' fees, expenses and costs, which

reasonable amount shall be determined by the Court in accordance with L.R. 54.2 and Section 216(b) of the FLSA.

TERMS OF SETTLEMENT

18. In consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

a) It is agreed that the Action, and any claims, damages, or causes of action arising out of or related to the disputes, whether known or unknown, asserted or not, which are the subject of the Action, be settled and compromised as between the Eligible Plaintiffs and Kellogg, subject to the terms and conditions set forth in this Stipulation of Settlement and the approval of the Court.

b) Settlement Payments: The maximum total payment by Kellogg under the Settlement to Eligible Plaintiffs, including Incentive Awards to the Named Plaintiffs, is \$221,620.37. This maximum total payment does not include any provision for third party administrator costs, attorneys' fees, expenses or costs, which reasonable amount shall be determined by the Court in accordance with L.R. 54.2 and Section 216(b) of the FLSA. The amount shall be allocated as follows:

i) Incentive Award: Subject to Court approval, Kellogg agrees to pay Named Plaintiffs Joseph McDonald, Mavis McDonald and Lyndon Ellis an incentive award no greater than three thousand five hundred dollars (\$3,500) each, in cash, for their service as Named Plaintiffs in this FLSA collective action (the "Incentive Award"). This payment is in addition to a settlement payment to which the Named Plaintiffs are entitled along with other Eligible Plaintiffs.

a. Each Incentive Award shall be reported on an IRS Form 1099. The Named Plaintiffs and Kellogg will each bear their respective share of state and federal payroll taxes with regard to the Incentive Award.

b. The Named Plaintiffs agree to execute a general release of all claims of every type and character in favor of Kellogg and its employees, agents, successors and assigns. Kellogg will pay the Incentive Award within fifteen (15) calendar days following the Settlement Effective Date, which is defined as the date on which the Court issues an Order finally approving this settlement and dismissing this Action, including the claims of each and every Eligible Plaintiff, in its and their entirety and with prejudice.

ii) Attorney's Fees and Costs: Kellogg agrees to pay reasonable attorney's fees and costs incurred by Plaintiffs in pursuing this litigation as provided in Section 216(b) of the FLSA in an amount to be determined by the Court. The Parties will meet and confer as required by L.R. 54.2, after which Plaintiffs shall file a motion for fees, expenses and costs. Kellogg will pay any Attorney's Fees and Costs awarded within fifteen (15) calendar days following the Settlement Effective Date.

iii) Payments To Eligible Plaintiffs. Kellogg has agreed to pay two hundred twenty one thousand six hundred twenty dollars and thirty seven cents (\$221,620.37) to cover costs of individual settlement payments, inclusive of Incentive Awards ("the Settlement Fund"). The amount of the Settlement Fund will be distributed as follows:

a. Payments to Eligible Plaintiffs are dependent on the Court entering an Order fully and finally approving the dismissal with prejudice of each and every claim that was, or could have been asserted, in the Action by each and every Eligible Plaintiff, as well as an Order fully and finally approving the release of claims contained herein as to each and every Eligible Plaintiff. Each Eligible Plaintiff must be deemed to have released all claims consistent with the terms of this Agreement in order to receive any payment per the settlement.

b. The amount of individual payments to Eligible Plaintiffs will be determined as follows: A “per week” amount is determined by dividing the Settlement Fund amount of \$221,620.37, less incentives of \$10,500, for a total of \$211,120.37, by the gross number of work weeks for all Eligible Plaintiffs during the applicable time period. Each Eligible Plaintiff will be eligible to receive a settlement payment in an amount equal to the “per week” amount multiplied by the number of weeks that individual was employed during the Class Period.

c. Each Eligible Plaintiffs’ settlement payment shall be deemed payment of alleged unpaid wages, subject to appropriate payroll withholdings, and reported on an IRS Form W-2. Eligible Plaintiffs who receive settlement payments, and Kellogg, will each bear their respective statutory share of state and federal payroll taxes.

iv) No Representations Regarding Tax Treatment. Eligible Plaintiffs acknowledge that they have not relied on any statements or representations from Kellogg or its attorneys with respect to the tax treatment of the settlement payments, and that Eligible Plaintiffs are solely responsible for determining the tax consequences of such payments and are obligated to make payment of taxes, if any, which are determined to be owed (including penalties and interest relating thereto) by any taxing authority.

v) Tax Reporting of Attorneys' Fees and Costs. Much of the time and costs incurred in this litigation were expended on behalf of a few Eligible Plaintiffs, even though there was a direct benefit to all Eligible Plaintiffs as a whole. As such, Class Counsel cannot meaningfully allocate its fees and costs among individual Eligible Plaintiffs. Therefore, Kellogg agrees that it will issue a Form 1099 related to Class Counsel's legal fees and costs to Class Counsel and not to any individual Eligible Plaintiff(s).

c) Settlement Administration. Each Eligible Plaintiff will be sent, by first class mail, a court-approved Notice of Collective Action Settlement ("Collective Action Settlement Notice") informing them of the Settlement and a description of the individual amount they will receive as a result of the Settlement in exchange for the dismissal with prejudice and Court-ordered release of their respective claims. The Parties will jointly review the Collective Action Settlement Notice and documentation, based on Kellogg's records, and will calculate the amount due to each Eligible Plaintiff in accordance with this Stipulation of Settlement. Kellogg will cooperate with Class Counsel and provide reasonable records so that Class Counsel can perform its duties. Kellogg will issue and

send out settlement payments to the Eligible Plaintiffs in accordance with this Stipulation of Settlement. All disputes relating to the settlement process shall be referred to the Court, if necessary, which shall have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Stipulation of Settlement have been fully carried out.

d) Resolution of Disputes. In the event an Eligible Plaintiff disputes the underlying data upon which his or her specified payment is based or the manner in which the settlement amount was derived from the agreed-upon formulas, Kellogg's counsel and Class Counsel will seek to resolve the dispute. An Eligible Plaintiff must give notice to Class Counsel of such dispute by correspondence postmarked no later than thirty (30) days from the date the Notice is mailed. In the event of a dispute being asserted, Kellogg's regularly maintained business records shall be deemed to control such dispute. If a dispute cannot be resolved amongst counsel for the Parties, notice will be given to the Eligible Plaintiff and the Parties will present the dispute to the Court for resolution. The Eligible Plaintiff must submit information or documents supporting his or her position to the Court within fourteen (14) days of the Eligible Plaintiff's correspondence to the Court asserting the dispute. Information or documents submitted after fourteen (14) days will not be considered by the Court or Parties, unless otherwise agreed to by the Parties.

e) Notice To The Class. Within fifteen (15) days of the execution date of this Agreement, Kellogg will provide Class Counsel with a list of each Eligible Plaintiffs' name, last known address, dates of employment in a covered position during the class period, and number of weeks worked. This data shall be used solely for the purposes of effectuating this Settlement and in compliance with all state and federal laws that protect

the privacy of current and former Kellogg employees. This information shall be based on Kellogg's payroll and other business records.

i) Within thirty (30) calendar days after the Settlement Effective Date, Kellogg will mail the appropriate Collective Action Settlement Notice to each Eligible Plaintiff. Notices returned as non-delivered shall be resent within seven (7) calendar days to the forwarding address, if any, on the returned envelope. The Parties will resend a returned Notice to a forwarding address only one time per Eligible Plaintiff. If there is no forwarding address, Kellogg will do a computer search for a new address using the Eligible Plaintiff's social security number; this search will be performed only once per Eligible Plaintiff by Kellogg. Upon completion of these steps, the Parties shall be deemed to have satisfied their obligation to provide the applicable Notice to that Eligible Plaintiff.

ii) Within ninety (90) days after the Settlement Effective Date, Kellogg shall provide Class Counsel with a listing of all payments not cashed by Eligible Plaintiffs. Kellogg shall retain such unclaimed funds for an additional ninety (90) day period, after which Kellogg shall pay any such remaining unclaimed funds to a non-profit legal aid organization of its choosing.

f) Release By The Eligible Plaintiffs. Upon approval by the Court of this Stipulation of Settlement, and except as to such rights or claims as may be created by this Stipulation of Settlement, each Eligible Plaintiff, on his or her behalf, and behalf of his or her respective current, former and future heirs, spouses, executors, administrators, agents, and attorneys, fully releases and discharges Kellogg and its present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors,

employees, members, managers, co-joint venturers, employees, fiduciaries, trustees, employee benefit plan administrators, agents, attorneys, insurers, successors and assigns, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity which could be jointly liable with any of them (“Releasees”), from any and all legally waivable claims, debts, losses, demands, obligations, liabilities, causes of action, charges, grievances, complaints or suits of any type or nature which relate to the nonpayment or inaccurate payment of overtime, wages and/or other work-related consideration under any federal, state or local law, and any other claims whatsoever alleged in the Action and all wage and hour related claims which could have been alleged under state, federal, or local law, including without limitation all claims for restitution and other equitable relief, liquidated damages, compensatory damages, punitive damages, wages, waiting time penalties, penalties of any nature whatsoever, interest, reimbursement of expenses, other compensation or benefits, retirement or deferred compensation benefits claims on account of unpaid wages and/or overtime, attorneys’ fees and costs, and any other benefit or compensation that would accrue on account of time worked, whether known or unknown, to the date of the Court’s order granting final approval of this Settlement, arising from the Eligible Plaintiffs’ employment by Kellogg. Each and every Eligible Plaintiff agrees that, except as provided in this Agreement, he or she is not entitled to any monetary payment arising out of or related to his or her employment with Kellogg and that he or she shall not institute, nor accept, any other relief from any other suit, class or collective action, administrative claim or other claim of any sort or nature whatsoever against Releasees, relating to the claims being settled herein for any period up to and including the date of the Court’s

order granting final approval of this Settlement.

g) The Eligible Plaintiffs expressly waive any claim or right to assert hereafter that any claim, demand, obligation, and/or cause of action has, through ignorance, oversight, or error, been omitted from the terms of this Agreement.

h) If the Settlement is approved by the Court and not otherwise terminated, the Court will enter a judgment dismissing the Action with prejudice.

DUTIES OF THE PARTIES BEFORE COURT APPROVAL

19. The Parties shall move the Court for approval of the Settlement. The Parties shall apply to the Court for the entry of an order substantially in the following form:

a) Requesting that the Court finally approve the Settlement, including the Named Plaintiffs' Incentive Awards, as fair, reasonable and adequate as to the Eligible Plaintiffs and dismissing the Action with prejudice;

b) Approving as to form and content the proposed Notice of Collective Action Settlement;

c) Approving as to form and content the Release of Claims contained herein, further ordering that each Eligible Plaintiff is bound by said Release of Claims;

d) Directing the mailing of the Notice of Collective Action Settlement and settlement checks by first class mail to the Eligible Plaintiffs;

e) Enjoining all Eligible Plaintiffs from filing or prosecuting any claims, suits or administrative proceedings regarding claims released by the Settlement.

REVOKING/VOIDING THE SETTLEMENT AGREEMENT

20. Any failure of the Court to approve any material condition of this Settlement Agreement which effects a change in the Parties' settlement, including a condition that affects

the settlement amount, the allocation of the settlement amount, or the scope of the corresponding release/waiver of claims, shall render the entire Settlement Agreement voidable and unenforceable to all Parties at the option of any Party.

PARTIES' AUTHORITY

21. The signatories hereto hereby represent that they are fully authorized to enter into this Stipulation of Settlement and bind the Parties hereto.

REPRESENTATIONS AND COVENANTS

22. Eligible Plaintiffs agree not to solicit or take any action to encourage or aid another individual, directly or indirectly, to file a complaint, charge or lawsuit against Kellogg as a result of this Agreement. Consistent with governing ethical rules, Class Counsel agrees that they will not solicit, as that term is defined in governing ethical rules, in-person or by intermediary, professional employment from any prospective client employed, formerly employed or otherwise associated with Kellogg with whom Class Counsel has no family, close personal, or prior professional relationship.

23. Eligible Plaintiffs direct Class Counsel, and Class Counsel consequently agree, not to publicize any of the negotiations relating, or leading, to this Agreement in any way. This includes, but is not limited to, a direction not to communicate with the press in any way, issue any press release or otherwise promote the Action, its resolution and/or the alleged results achieved in any marketing materials, including any web site or other public media. Class Counsel may disclose the fact of the lawsuit, that they represented Eligible Plaintiffs and that the lawsuit has been resolved.

24. Class Counsel represents and warrants that as of the date of execution of this Agreement, they do not represent any other individuals who are Eligible Plaintiffs or putative plaintiffs to the Action whose claims are not resolved and/or addressed by this Agreement.

MUTUAL FULL COOPERATION

25. The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Stipulation of Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As soon as practicable after execution of this Stipulation of Settlement, Counsel for the Eligible Plaintiffs shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's approval of this Stipulation of Settlement. As a material term of this agreement, and consistent with Class Counsel's obligations to the Eligible Plaintiffs, Class Counsel agree that their duties and responsibilities contemplated by this paragraph require their full and vigorous defense of all aspects of this Settlement by Class Counsel from any objecting party or individual including Class Counsel's full and vigorous defense of all aspects of this Settlement through final adjudication.

26. It is understood that Class Counsel may provide legal advice and counsel to those Eligible Plaintiffs who seek such advice from Class Counsel.

NO PRIOR ASSIGNMENTS

27. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

NO ADMISSION

28. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Kellogg or any of the Releasees. The signatories (which include all Parties) have entered into this Stipulation of Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expense.

ENFORCEMENT ACTIONS

29. In the event that one or more signatories (which includes all Parties) to this Stipulation of Settlement institutes a legal action or other proceeding against any other party or parties to enforce the provisions of this Stipulation of Settlement or to declare rights and/or obligations under this Stipulation of Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

NOTICES

30. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Eligible Plaintiffs:

Michael F. Brady
Brady & Associates
10901 Lowell Ave., Ste. 280
Overland Park, KS 66210

To Defendant:

James N. Boudreau
Greenburg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103

All notices, demands or other communications by and between counsel for the Parties shall be in writing, transmitted via e-mail or facsimile, and shall be deemed to have been duly given as of the third business day after transmission.

CONSTRUCTION

31. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties, and this Stipulation of Settlement 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 Stipulation of Settlement.

CAPTIONS AND INTERPRETATIONS

32. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation of Settlement or any provision hereof. Each term of this Stipulation of Settlement is contractual and not merely a recital.

MODIFICATION

33. This Stipulation of Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

BINDING ON ASSIGNS

34. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

SIGNATORIES

35. Due to the large number of Eligible Plaintiffs, it is impractical to have each Eligible Plaintiff sign this Settlement Agreement. The Class Action Notice will advise all Eligible Plaintiffs of the binding nature of the release, and the release shall have the same force and effect as if this Stipulation of Settlement were executed by each Eligible Plaintiff.

COMMUNICATIONS REGARDING SETTLEMENT

36. Except as required by law with respect to the identity of the Action, or in connection with court filings that are necessary to obtain approval of this Settlement, the Eligible Plaintiffs and Class Counsel, and any consultant or other person acting on their behalf, shall not discuss with third parties the Action or any terms of the Settlement of the Action beyond a statement that the Action has been settled on terms mutually agreeable to the Parties. The Parties, on their own behalf, and other persons acting on their behalf, agree that they will not publicize, on the internet or elsewhere, contact any representative of the media (press, television, radio or internet) or make any press release or public statement concerning this Settlement.

37. Pending completion of the settlement process, the Parties agree to stay all proceedings in the Action, except such as are necessary to implement the settlement itself.

38. This Stipulation of Settlement may be executed in counterparts, and when each party has 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 Stipulation of Settlement, which shall be binding upon and effective as to the Parties and each of them.

THIS AGREEMENT has been read, understood, and agreed to by:

4-10-2012
Date

Joseph A. McDonald
Joseph McDonald

4-10-2012
Date

Mavis A. McDonald
Mavis McDonald

04-09-2012
Date

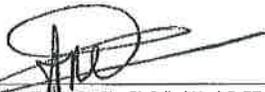
Lyndon W. Ellis
Lyndon Ellis

APPROVED AS TO FORM:

4/9/2012
Date

Michael F. Brady
BRADY & ASSOCIATES
By: Michael Brady
Attorneys for Plaintiffs

4/13/12
Date



THE KELLOGG COMPANY
By: Alistair Hirst
Senior Vice President
North America Supply Chain

APPROVED AS TO FORM:

4-13-2012
Date



GREENBURG TRAUERIG, LLP
By: James N. Boudreau
Attorneys for Kellogg

Respectfully submitted,

s/ Michael F. Brady

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 13, 2012, the foregoing was electronically filed with the Clerk of the Court via the CM/ECF system, which will send notice of the filing to all counsel of record.

s/ Michael F. Brady _____
Michael F. Brady