

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STEPHEN HADLEY, et al.,
Plaintiffs,
v.
KELLOGG SALES COMPANY,
Defendant.

Case No. 16-CV-04955-LHK

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Re: Dkt. No. 377

On June 10, 2021, a hearing was held on Plaintiffs’ instant motion for preliminary approval of class action settlement. ECF No. 377. The instant motion is Plaintiffs’ first motion for preliminary approval of the parties’ *second* Settlement Agreement, ECF No. 378-1 (operative Settlement Agreement dated March 9, 2021).

Previously, Plaintiffs filed three motions as to the first settlement agreement: two motions for preliminary approval, ECF Nos. 325, 347; and a motion for settlement enforcement, ECF No. 346. The Court denied those motions and directed the parties to cure defects in the notice forms and settlement. *See, e.g.*, ECF Nos. 339 (denying first motion for preliminary approval), 361 (denying second motion). The instant motion shows that the parties have cured the defects.

Accordingly, having considered all the briefing, the arguments of counsel, the relevant law,

1 and the record in this case, the Court GRANTS the parties’ instant motion for preliminary
2 approval.

3 Moreover, the Court schedules the hearing on final approval of the parties’ proposed class
4 action settlement (“Final Approval Hearing”) on November 18, 2021, at 1:30 p.m.

5 1. Settlement Terms. All capitalized terms herein have the same meanings ascribed
6 to them in the Settlement Agreement, ECF No. 378-1 (hereafter, “Settlement Agreement”).

7 2. Jurisdiction. The Court has jurisdiction over the subject matter of the action and
8 over all parties to the action, including all members of the Settlement Class.

9 3. Preliminary Approval of Settlement Agreement. The Court finds that, subject to
10 the Final Approval hearing, the Settlement Agreement is fair, reasonable, adequate, and within
11 the range of possible approval considering the possible damages at issue and defenses to
12 overcome. The Court also finds that the Settlement Agreement: (a) is the result of serious,
13 informed, non-collusive, arms-length negotiations, involving experienced counsel familiar with
14 the legal and factual issues of this case and made with the assistance and mediation services of
15 Mark Petersen, Hon. James F. Holderman (Ret.), and United States Magistrate Judge Nathanael
16 Cousins; and (b) meets all applicable requirements of law, including Federal Rule of Civil
17 Procedure 23, and the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715. Therefore, the
18 Court grants preliminary approval of the class action settlement.

19 4. Class Certification for Settlement Purposes Only. The Court conditionally
20 certifies, for settlement purposes only, a Settlement Class defined as all persons who, between
21 August 29, 2012 and May 1, 2020 (the “Class Period”), purchased in the United States, for
22 household use and not for resale or distribution, any of the Class Products which include the
23 following:

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

26 b. Kellogg’s Smart Start Original Antioxidants cereal in package stating
27 “heart healthy” and/or “lightly sweetened.”

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

5 5. The Court finds, for settlement purposes only, that class certification under
6 Federal Rule of Civil Procedure 23(b)(3) is appropriate in the settlement context because (a) the
7 Settlement Class Members are so numerous that joinder of all Settlement Class Members is
8 impracticable; (b) there are questions of law and fact common to the Settlement Class which
9 predominate over any individual questions; (c) the claims of the Plaintiffs and proposed Class
10 Representatives are typical of the claims of the Settlement Class; (d) the Plaintiffs and proposed
11 Class Representatives and their counsel will fairly and adequately represent and protect the
12 interests of the Settlement Class Members; (e) questions of law or fact common to the Settlement
13 Class Members predominate over any questions affecting only individual Settlement Class
14 Members; and (f) a class action is superior to other available methods for the fair and efficient
15 adjudication of the controversy.

16 6. Class Representatives. The Court appoints Plaintiffs Stephen Hadley, Melody
17 DiGregorio, Eric Fishon, Kerry Austin, and Nafeesha Madyun as Class Representatives.

18 7. Class Counsel. The Court appoints The Law Office of Jack Fitzgerald, PC and
19 Jackson and Foster, LLC as Class Counsel.

20 8. Settlement Class Administrator. The Court hereby approves Postlethwaite &
21 Netterville (“P&N”) to act as Class Administrator. P&N shall be required to perform all the
22 duties of the Class Administrator as set forth in the Agreement and this Order.

23 9. Class Notice. The Court approves the form and content of the Class Notice in the
24 long form attached to the Settlement Agreement as Exhibit 1, the short form attached to the
25 Settlement Agreement as Exhibit 2, and the other forms of notice submitted with Plaintiffs’
26 Motion for Preliminary Approval. The Court finds that dissemination of the Class Notice as
27 proposed in the Settlement Agreement and in P&N’s Notice Plan as set forth in the March 10,

1 2021 Declaration of Brandon Schwartz meets the requirements of Federal Rule of Civil
2 Procedure 23(c)(2), and due process, and further constitutes the best notice practicable under the
3 circumstances. Accordingly, the Court hereby approves the Notice Plan.

4 10. Objection and Exclusion Deadline. Settlement Class Members who wish either to
5 object to the Settlement or to exclude themselves from the Settlement must do so by the
6 Objection Deadline and Exclusion Deadline of September 7, 2021. Settlement Class Members
7 may not both object to and exclude themselves from the Settlement. If a Settlement Class
8 Member submits both a Request for Exclusion and an Objection, the Request for Exclusion will
9 be controlling.

10 11. Exclusion from the Settlement Class. To submit a Request for Exclusion,
11 Settlement Class Members must follow the directions in the Notice and submit the Request for
12 Exclusion online at the Settlement Website by the Exclusion Deadline, or send a compliant
13 request to the Class Administrator at the address designated in the Class Notice, postmarked by
14 the Exclusion Deadline. No Request for Exclusion may be made on behalf of a group of
15 Settlement Class Members.

16 12. All Settlement Class Members who submit a timely, valid Request for Exclusion
17 will be excluded from the Settlement and will not be bound by the terms of the Settlement
18 Agreement and any determinations and judgments concerning it. All Settlement Class Members
19 who do not submit a valid Request for Exclusion by September 7, 2021 in accordance with the
20 terms set forth in the Settlement Agreement, will be bound by all determinations and judgments
21 concerning the Settlement Agreement.

22 13. Objections to the Settlement. To object to the Settlement, Settlement Class
23 Members should follow the directions in the Notice and file with the Court or mail to the Class
24 Administrator a written Objection by the Objection Deadline. In the written Objection, the
25 Settlement Class Member should include (i) a caption or title that clearly identifies the Action
26 and that the document is an objection, (ii) the Settlement Class Member's name, current address,
27 and telephone number, or—if objecting through counsel—his or her lawyer's name, address, and

28

United States District Court
Northern District of California

1 telephone number, (iii) the Class Product(s) the Settlement Class Member bought during the
2 Class Period, (iv) a clear and concise statement of the Class Member’s objection, as well as any
3 facts and law supporting the objection, (v) the objector’s signature, and (vi) the signature of the
4 objector’s counsel, if any.

5 14. If a Settlement Class Member does not submit a written Objection to the
6 Settlement or to Class Counsel’s application for attorneys’ fees and costs or the Service Awards
7 in accordance with the deadline and procedure set forth in the Notice and this Order, but the
8 Settlement Class Member wishes to appear and be heard at the Final Approval Hearing, the
9 Settlement Class Member may do so provided the Objector satisfies the requirements of Federal
10 Rule of Civil Procedure 23(e)(5)(A) at the Final Approval Hearing.

11 15. Objecting Settlement Class Members may appear at the Final Approval Hearing
12 and be heard. Such Class Members are requested, but not required, in advance of the Final
13 Approval Hearing, to file with the Court or mail to the Class Administrator a Notice of Intent to
14 Appear.

15 16. All Members of the Settlement Class, except those who submit timely Requests
16 for Exclusion, will be bound by all determinations and judgments regarding the Settlement,
17 whether favorable or unfavorable to the Settlement Class.

18 17. Submission of Claims. To receive a Cash Award, Settlement Class Members must
19 follow the directions in the Notice and file a claim with the Class Administrator by the Claims
20 Deadline of September 7, 2021. Settlement Class Members who do not submit a claim will not
21 receive a Cash Award, but will be bound by the Settlement.

22 18. Schedule of Future Events. The Court adopts the following schedule (with Day
23 “0” the date of this Order):

Event	Day	Approximate Weeks After Preliminary Approval
Date of Preliminary Approval Order	0	-

28

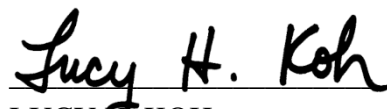
Event	Day	Approximate Weeks After Preliminary Approval
Deadline to commence 63-day notice period	21	3 weeks
Deadline for Plaintiffs to file Motion for Attorneys' Fees, Costs, and Incentive Awards	49	7 weeks
Notice completion date, and deadline to make a claim, opt out, and object	84	12 weeks
Deadline for Plaintiffs to file Motion for Final Approval	103	15 weeks

19. Final Approval Hearing. A Final Approval Hearing is scheduled for November 18, 2021, at 1:30 p.m., for the Court to determine whether the Settlement on the terms and conditions set forth in the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class and should be finally approved by the Court; whether a Judgment should be entered; and to determine any amount of fees, costs, and expenses that should be awarded to Class Counsel and the amount of any service awards to Plaintiffs. The Court reserves the right to adjourn the date of the Final Approval Hearing without further notice to the members of the Settlement Class. The Court may approve the Settlement, with such modifications as may be agreed to by the settling Parties, if appropriate, without further notice to the Settlement Class.

20. Retention of Jurisdiction. The Court retains jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement Agreement and the Settlement described therein.

IT IS SO ORDERED.

Dated: June 15, 2021



LUCY H. KOH
United States District Judge