

United States District Court
Northern District of California

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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
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; GRANTING
MOTION FOR ATTORNEYS' FEES**

Re: Dkt. Nos. 398, 401

Having considered Plaintiffs' Motion for Final Approval of Class Action Settlement, ECF No. 401, and Motion for Attorneys' Fees, ECF No. 398, including the November 22, 2021 Supplemental Declaration in Support of Plaintiffs' Motion for Final Approval, ECF No. 405, which includes an updated lodestar; the arguments at the November 18, 2021 Final Approval Hearing; and the record in this case, the Court hereby FINDS and ORDERS as follows:

1. Incorporation of Other Documents. The Settlement Agreement dated March 9, 2021, including its exhibits, and the definitions of words and terms contained therein are incorporated by reference in this Order. The terms of this Court's Preliminary Approval Order, ECF No. 395, are also incorporated by reference in this Order.

1 2. Jurisdiction. This Court has jurisdiction over the subject matter of this Action and
2 over the Parties, including all members of the following Settlement Class certified for settlement
3 purposes in this Court’s Preliminary Approval Order: All persons in the United States who,
4 between August 29, 2012 and May 1, 2020 (the “Class Period”), purchased in the United States,
5 for household use and not for resale or distribution, any of the Class Products identified in the
6 Settlement Agreement.¹ Excluded from the Settlement Class are all persons who validly excluded
7 themselves from the Settlement Class according to the terms of this Court’s Preliminary
8 Approval Order.

9 3. Class Certification. For purposes of settlement only, the Settlement Class, as
10 defined in the Settlement Agreement and above, meets the requirements of Federal Rule of Civil
11 Procedure Rule 23(a) and 23(b). Accordingly, for purposes of settlement, the Court finally
12 certifies the Settlement Class.

13 4. Adequate Representation. The Class Representatives and Class Counsel have
14 adequately represented the Settlement Class in accordance with Federal Rule of Civil Procedure
15 23(e)(2)(A).

16 5. Arms-Length Negotiations. The Settlement Agreement is the product of arms-
17 length settlement negotiations between the Plaintiffs and Class Counsel, on the one hand, and
18 Defendant and its counsel, on the other, in accordance with Federal Rule of Civil Procedure
19 23(e)(2)(B).

20 6. Class Notice. The Class Notice and claims submission procedures set forth in
21 Sections 4 and 6 of the Settlement Agreement, and the Notice Plan filed on March 10, 2021, fully
22 satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were
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24 ¹ The Class Products specifically include: (i) Kellogg’s Original Raisin Bran and Kellogg’s Raisin
25 Bran Crunch cereals in a package stating “heart healthy”; (ii) Kellogg’s Smart Start Original
26 Antioxidants cereal in a package stating “heart healthy” and/or “lightly sweetened”; and (iii)
27 Kellogg’s Frosted Mini-Wheats Bite Size (Original, Maple Brown Sugar, Strawberry, or
Blueberry varieties), Big Bites (Original variety), Little Bites (Chocolate or Cinnamon Roll
varieties), or Touch of Fruit in the Middle (Mixed Berry and Raspberry varieties) cereals in a
package stating “lightly sweetened.”

1 the best notice practicable under the circumstances, provided individual notice to all Settlement
2 Class Members who could be identified through reasonable effort, and support the Court’s
3 exercise of jurisdiction over the Settlement Classes as contemplated in the Settlement Agreement
4 and this Order. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

5 7. CAFA Notice. The notice provided by the Class Administrator to the appropriate
6 State and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that
7 statute.

8 8. Settlement Class Response. A total of three Settlement Class Members submitted
9 timely and proper Requests for Exclusion, as reported in the declaration of the Class
10 Administrator submitted to this Court. The Court hereby orders that each of the individuals listed
11 by the Class Administrator as having submitted a valid Request for Exclusion is excluded from
12 the Settlement Class. Those individuals will not be bound by the Settlement Agreement, and
13 neither will they be entitled to any of its benefits.

14 9. Objections. No Settlement Class Members submitted timely and proper Objections
15 to the Settlement Agreement. The Court finds this indicates the Class’s favorable response to the
16 Settlement and supports its final approval.

17 10. Final Settlement Approval. The Court hereby finally approves the Settlement
18 Agreement, the exhibits, and the Settlement contemplated thereby (“Settlement”); finds that the
19 terms constitute, in all respects, a fair, reasonable, and adequate settlement as to all Settlement
20 Class Members in accordance with Rule 23 of the Federal Rules of Civil Procedure; and directs
21 its consummation pursuant to its terms and conditions.

22 11. Attorneys’ Fees and Costs; Service Awards. Class Counsel has engaged in
23 extensive litigation since filing the original complaint on August 29, 2016, including: (1) filing a
24 total of five complaints; (2) opposing two motions to dismiss, resulting in a 41 page order
25 granting the first motion to dismiss and a 64 page order granting in part and denying in part the
26 second motion to dismiss; (3) filing and briefing a motion for class certification, resulting in a 51

1 page order granting in part and denying in part class certification; (4) filing a Rule 23(f) petition
2 in the Ninth Circuit challenging the class certification order; (5) opposing Defendant's Rule 23(f)
3 petition in the Ninth Circuit; (6) filing and briefing a motion for partial summary judgment and
4 motions to strike Defendant's experts' testimony; (7) opposing Defendant's motion for partial
5 summary judgment and motions to strike Plaintiff's experts' testimony; and (8) filing two
6 motions for preliminary settlement approval. Class Counsel also engaged in extensive settlement
7 efforts, including seven mediation sessions and one United States Magistrate Judge settlement
8 conference. These efforts allowed Class Counsel to obtain a significant monetary recovery for
9 the class as well as injunctive relief that provides health benefits to all purchasers of Defendant's
10 products.

11 Thus, the Court approves Class Counsel's application for attorneys' fees and costs in the
12 amount of \$3,900,000 in fees and \$1,157,501 in costs; and approves service awards of \$10,000
13 for Plaintiff Stephen Hadley, and \$5,000 each for Plaintiffs Melody DiGregorio, Eric Fishon,
14 Kerry Austin, and Nafeesha Madyun. The Settlement Agreement provides for Class Counsel's
15 Fee Award to be paid before the time to appeal this Order has expired. If the Fee Award is voided
16 or reduced on appeal, either directly or as a result of the final approval of the Settlement as a
17 whole being vacated, overturned, reversed, or rendered void as a result of an appeal, Class
18 Counsel shall within thirty (30) days repay either to the Settlement Fund or to Kellogg the
19 affected amount of the attorneys' fees and costs paid to Class Counsel, in an amount
20 proportionate to the distribution among Class Counsel's firms, in accordance with the directions
21 in the Settlement Agreement. By receiving any payments pursuant to the Settlement Agreement,
22 The Law Office of Jack Fitzgerald, PC and Jackson & Foster, LLC and their shareholders,
23 members, and/or partners submit to the jurisdiction of this Court for the enforcement of the
24 reimbursement obligation set forth herein and in the Settlement Agreement. If Class Counsel fails
25 to timely repay the attorneys' fees and costs that are owed under this provision, the Court shall be
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1 entitled, upon application of Kellogg and notice to Class Counsel, to summarily issue orders,
2 including but not limited to judgments and attachment orders against each of Class Counsel.

3 12. Dismissal. The Court hereby DISMISSES WITH PREJUDICE, without costs to
4 any party, except as expressly provided for in the Settlement Agreement, the Action, as defined in
5 the Settlement Agreement.

6 13. Release. Upon the Effective Date as defined in the Settlement Agreement, the
7 Plaintiffs and each and every one of the Settlement Class Members unconditionally, fully, and
8 finally releases and forever discharges the Released Parties from the Released Claims.

9 14. Injunction Against Released Claims. Each and every Settlement Class Member,
10 and any person actually or purportedly acting on behalf of any Settlement Class Member(s), is
11 hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing,
12 maintaining, prosecuting, or enforcing any Released Claims (including, without limitation, in any
13 individual, class or putative class, representative or other action or proceeding), directly or
14 indirectly, in any judicial, administrative, arbitral, or other forum, against the Released Parties.
15 This permanent bar and injunction is necessary to protect and effectuate the Settlement
16 Agreement, this Final Order of Dismissal, and this Court's authority to effectuate the Settlement
17 Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

18 15. No Admission of Liability. The Settlement Agreement and any and all
19 negotiations, documents, and discussions associated with it will not be deemed or construed to be
20 an admission or evidence of any violation of any statute, law, rule, regulation, or principle of
21 common law or equity, or of any liability or wrongdoing by Defendant, or the truth of any of the
22 claims. Evidence relating to the Agreement will not be discoverable or admissible, directly or
23 indirectly, in any way, whether in this Action or in any other action or proceeding, except for
24 purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of
25 the Agreement, the Preliminary Approval Order, or this Order.

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1 16. Findings for Purposes of Settlement Only. The findings and rulings in this Order
2 are made for the purposes of settlement only and may not be cited or otherwise used to support
3 the certification of any contested class or subclass in any other action.

4 17. Effect of Termination or Reversal. If for any reason the Settlement terminates or
5 Final Approval is reversed or vacated, the Settlement and all proceedings in connection with the
6 Settlement will be without prejudice to the right of Defendant or the Class Representatives to
7 assert any right or position that could have been asserted if the Agreement had never been
8 reached or proposed to the Court, except insofar as the Agreement expressly provides to the
9 contrary. In such an event, the certification of the Settlement Classes will be deemed vacated. The
10 certification of the Settlement Classes for settlement purposes will not be considered as a factor in
11 connection with any subsequent class certification issues.

12 18. Injunctive Relief. The Court determines that this Final Order complies in all
13 respects with Federal Rule of Civil Procedure 65(d)(1).

14 19. Retention of Jurisdiction. Without affecting the finality of the Judgment, the Court
15 reserves jurisdiction over the implementation, administration, and enforcement of the Judgment
16 and the Agreement and all matters ancillary to the same.

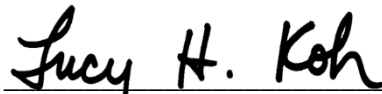
17 20. Post-Distribution Accounting. Within 21 days after the distribution of the
18 settlement funds to Class Members, the parties should file a Post-Distribution Accounting in
19 accordance with the Northern District of California’s Procedural Guidance for Class Action
20 Settlements.

21 **IT IS SO ORDERED.**

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23 Dated: November 23, 2021

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LUCY H. KOH
United States District Judge

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