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BY 

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAXED

Case No. **CV09 08102 MMM (RZx)**

Sabena Lakshmi Kammula, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

KELLOGG COMPANY, a Delaware
Corporation; KELLOGG USA, INC., a
Michigan Corporation; KELLÖGG
SALES COMPANY, a Delaware
Corporation; and DOES 1 through 10
inclusive,

Defendants.

CLASS ACTION COMPLAINT

1. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*
2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500, *et seq.*
3. UNJUST ENRICHMENT
4. VIOLATION OF CALIFORNIA CIVIL CODE § 1750, *et seq.* (Consumers Legal Remedies Act)

DEMAND FOR JURY TRIAL

Milstein, Adelman & Kreger, LLP
2800 Donald Douglas Loop North
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IS
20

1 Plaintiff Sabena Lakshmi Kammula (“Plaintiff”), individually and on behalf of
2 all other similarly situated purchasers of Kellogg Company’s Cocoa Krispies (the
3 “Class”), brings this complaint against Kellogg Company, a Delaware corporation,
4 Kellogg USA, Inc., a Michigan corporation, Kellogg Sales Company, a Delaware
5 corporation (collectively “Kellogg”) and Does 1 through 100, inclusive (collectively
6 referred to herein as “Defendants”) and allege as follows:
7

8 **JURISDICTION**

9 1. This Court has subject matter jurisdiction pursuant to the Class Action
10 Fairness Act (“CAFA”), codified in part 28 U.S.C. §§ 1332(d) and 1453.
11 Jurisdiction under CAFA is met because: (1) the proposed number of putative class
12 members exceeds 100; (2) at least one plaintiff and one defendant are citizens of
13 different states, and in some instances, the principal defendant is not a citizen of the
14 forum state; and (3) the amount in controversy, including, but not limited to the
15 aggregate amount of relief sought by absent class members, exceeds \$5 million. 28
16 U.S.C. § 1332(d)(2).
17

18 **VENUE**

19 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2)
20 because events giving rise to the claims, including, *inter alia*, Kellogg’s false and
21 misleading advertising and marketing, occurred and arose in this District.
22

23 **NATURE OF THE ACTION**

24 3. Defendants made and continue to make false and misleading statements
25 in their advertising and packaging of Kellogg’s Cocoa Krispies (hereinafter “Cocoa
26 Krispies Immunity” or the “Product”). Cocoa Krispies is a “chocolatey, sweetened
27 rice cereal” packaged and marketed by Defendants.
28

1 4. According to Defendants' uniform and consistent claims, eating just
2 three-quarters (¾) cup of Cocoa Krispies will boost a family's immunity.
3 Specifically, Defendants market and advertise that Cocoa Krispies "NOW HELP
4 SUPPORT YOUR CHILD'S IMMUNITY." Defendants, through a variety of
5 advertising, including but not limited to print, internet, and the packaging and
6 labeling of Cocoa Krispies, make false regarding the benefits of Cocoa Krispies,
7 including but not limited to the following:

8 a. FRONT LABEL OF PRODUCT:

- 9 • "NOW HELPS SUPPORT YOUR CHILD'S IMMUNITY"
10 • "25% DAILY VALUE OF ANTIOXIDANTS & NUTRIENTS
11 VITAMINS A, B, C & E"

12 b. BACK LABEL OF PRODUCT:

- 13 • "WITH ANTIOXIDANTS AND NUTRIENTS"
14 • "Helping to support your family's IMMUNITY"
15 • "Kellogg's Cocoa Krispies has been improved to include antioxidants
16 and nutrients that your family needs to help them stay healthy."
17 • "Excellent source of vitamins A, B, C, and E – antioxidants and
18 nutrients that help support the body's immune system"
19 • "Enjoy this wholesome breakfast and help keep your family healthy."

20 c. INTERNET:

- 21 • "And now each and every box is fortified with vitamins and nutrients
22 that work together to help support your child's immunity."
23

24 5. These consistent and uniform claims are false. Indeed, there is no
25 known clinical study that adequately supports Defendants' claims. Plaintiff
26 therefore brings this class action to secure injunctive relief and restitution for the
27 Class against Defendants for false and misleading advertising in violation of CAL.
28

1 BUS. & PROF. CODE § 17200, *et seq.* (2009), CAL. BUS. & PROF. CODE § 17500, *et*
2 *seq.* (2009), and CAL. CIV. CODE § 1750, *et seq.* (2009), among other laws.

3 6. Additionally, Defendants fail to adequately disclose that other
4 ingredients, including but not limited to sugar, chocolate, high-fructose corn syrup
5 and/or partially-hydrogenated oils, may not “help support” a child’s immunity.
6 Defendants also fail to adequately disclose whether inclusion of such ingredients
7 may outweigh the benefits, and thus render the “immunity” claims false and/or
8 misleading.

9 7. Defendants further failed and continue to fail to adequately disclose
10 whether the form of the “antioxidants and nutrients” purportedly added to the box
11 may not render the health benefits Defendants claim. Defendants also failed and
12 continue to fail to adequately disclose whether “antioxidants and nutrients” are
13 synthetic and/or unnatural in form.

14 8. Accordingly, Defendants’ advertising, including but not limited to print,
15 packaging and internet advertising, conveys a single, consistent false and
16 misleading message to consumers: that Defendants’ Cocoa Krispies cereal will
17 boost a child’s immune system. This is particularly egregious, especially in light of
18 the current H1N1 (‘swine’) flu epidemic in California and the rest of the nation.

19 9. During the course of this deception, Defendants have sold hundreds of
20 thousands of units of the Cocoa Krispies cereal based upon the false promises and
21 misleading advertisements targeted at vulnerable and worried parents, children
22 and/or those individuals desiring to boost their immune systems.

23 10. Plaintiff and the Class have suffered injury in fact and have lost money
24 as a result of Defendants’ false misrepresentations. Plaintiff purchased the Product
25 because of the claims by Defendants that Cocoa Krispies contains twenty-five
26 percent (25%) daily value of antioxidants and nutrients and would support her
27 family’s immune system, among other claims. Plaintiff would not have purchased
28 the Product if she had known that this advertising was false.

1 14. Defendant Kellogg USA, Inc. is a corporation organized under the laws
2 of the State of Michigan. Kellogg USA, Inc. maintains its principal business office
3 at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan 49016-3599.
4 Kellogg USA, Inc., directly and through its agents, has substantial contacts with
5 and receives benefits and income from and through the State of California. Kellogg
6 USA, Inc., is the owner, manufacturer and distributor of the Cocoa Krispies
7 Products, and/or is the company that created and/or authorized the false, misleading
8 and deceptive advertisements and/or packaging for the Cocoa Krispies Products.

9 15. Defendant Kellogg Sales Company is a corporation organized under the
10 laws of the State of Delaware. Kellogg Sales Company maintains its principal
11 business office at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan
12 49016-3599. Kellogg Sales Company, directly and through its agents, has
13 substantial contacts with and receives benefits and income from and through the
14 State of California. Kellogg Sales Company, is the owner, manufacturer and
15 distributor of the Cocoa Krispies Products, and/or is the company that created
16 and/or authorized the false, misleading and deceptive advertisements and/or
17 packaging for the Cocoa Krispies Products.

18 16. The true names and capacities, whether individual, corporate,
19 associated or otherwise of certain manufacturers, distributors, or their alter egos
20 sued herein as DOES 1 through 100 inclusive are presently unknown to Plaintiff
21 who therefore sue these Defendants by fictitious names. Plaintiff will seek leave of
22 this Court to amend the Complaint to show their true names and capacities when the
23 same have been ascertained. Plaintiff is informed and believes and based thereon
24 alleges that DOES 1 through 100 were authorized to do and did business in Los
25 Angeles County. Plaintiff is further informed and believes and based thereon
26 alleges that DOES 1 through 100 were or are, in some manner or way, responsible
27 for and liable to Plaintiff for the events, happenings, and damages hereinafter set
28 forth below.

1 17. Plaintiff is informed and believes and based thereon alleges that at all
2 times relevant herein each of the Defendants was the agent, servant, employee,
3 subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego, or other
4 representative of each of the remaining Defendants and was acting in such capacity
5 in doing the things herein complained of and alleged.

6 18. In committing the wrongful acts alleged herein, Defendants planned
7 and participated in and furthered a common scheme by means of false, misleading,
8 deceptive, and fraudulent representations to induce members of the public to
9 purchase Cocoa Krispies. Defendants participated in the making of such
10 representations in that each did disseminate or cause to be disseminated said
11 misrepresentations.

12 19. Defendants, upon becoming involved with the manufacture,
13 distribution, advertising, marketing, and sale of Cocoa Krispies knew or should
14 have known that the claims about Cocoa Krispies and, in particular, the claims
15 suggesting that Cocoa Krispies "NOW HELPS SUPPORT YOUR CHILD'S
16 IMMUNITY" and includes antioxidants and nutrients that a family needs to help
17 them stay healthy were and are false, deceptive, and misleading. Indeed, since the
18 first time that Cocoa Krispies was advertised, Defendants have been aware that
19 they, individually and/or collectively, do not possess the requisite competent and
20 reliable scientific evidence to substantiate their bold claims about the purported
21 benefits and effects of Cocoa Krispies. Defendants affirmatively misrepresented the
22 "benefits" of Cocoa Krispies in order to convince the public to purchase and use
23 that product, resulting in profits of hundreds of thousands of dollars or more to
24 Defendants, all to the damage and detriment of the consuming public. Thus, in
25 addition to the wrongful conduct herein alleged as giving rise to primary liability,
26 Defendants further aided and abetted and knowingly assisted each other in breach of
27 their respective duties and obligations as herein alleged.

28 //

1 **FACTUAL ALLEGATIONS**

2 20. With the ever-increasing health concerns and scientific revelations
3 regarding the nutritional content of food, the marketing of food as healthy has
4 exploded in recent years. In an effort to “grab” some of those billions,
5 unscrupulous companies routinely toss a small amount of a particular substance into
6 a preexisting product and advertise said product as though it could provide results
7 beyond what would be a reasonable expectation. Often such substances contribute
8 no scientifically proven health benefits or contain dosages that are so small in
9 proportion to that recommended for daily intake as to make any real benefit
10 illusory.

11 21. These marketing companies engage in campaigns that suggest to health
12 conscious consumers that a particular product will “SUPPORT YOUR CHILD’S
13 IMMUNITY” and keep the consumer’s family healthy, while, in fact, what the
14 product provides is either not what it purports to be, has not been generally accepted
15 within the scientific community, or is otherwise far too minimal to be adequate, let
16 alone profound.

17 22. In their marketing of Cocoa Krispies, Defendants have “followed the
18 playbook” to the letter. Defendants’ television commercials, website
19 (<http://www.ricekrispies.com/products/cocoa-krispies-cereal.aspx>), and its
20 packaging and labeling reiterate those very same claims, and state:

21 a. FRONT LABEL OF PRODUCT:

- 22 • “NOW HELPS SUPPORT YOUR CHILD’S IMMUNITY”
23 • “25% DAILY VALUE OF ANTIOXIDANTS & NUTRIENTS”
24 • “VITAMINS A, B, C & E”

25 b. BACK LABEL OF PRODUCT:

- 26 • “WITH ANTIOXIDANTS AND NUTRIENTS”
27 • “Helping to support your family’s IMMUNITY”
28

- 1 • “Kellogg’s Cocoa Krispies has been improved to include antioxidants
- 2 and nutrients that your family needs to help them stay healthy.”
- 3 • “Excellent source of vitamins A, B, C, and E – antioxidants and
- 4 nutrients that help support the body’s immune system”
- 5 • “Enjoy this wholesome breakfast and help keep your family healthy.”

6 c. INTERNET:

- 7 • And now each and every box is fortified with vitamins and nutrients
- 8 that work together to help support your child’s immunity.

9 23. Defendants’ claims about Cocoa Krispies lead parents to believe that
10 the antioxidants and nutrients contained therein will have the tangible result of
11 helping to support their child’s immunity. These claims are false, deceptive, and
12 misleading. Defendants do not have competent and reliable scientific evidence to
13 support their claims about Cocoa Krispies. Indeed, Kellogg does not cite to a single
14 clinical trial or study it has conducted or commissioned on the benefits of Cocoa
15 Krispies because, presumably, Kellogg has not conducted or commissioned any. A
16 true and correct copy of the front and back of the Product’s packaging is attached
17 hereto as Exhibit “1” and Exhibit “2”, respectively.

18 24. In spite of its lack of competent and reliable scientific evidence to
19 support its claims about Cocoa Krispies, Kellogg has introduced products including
20 but not limited to Cocoa Krispies into the marketplace to profit from a growing
21 trend in the manufacturing, advertising, and sales of “functional” foods. Kellogg
22 has prioritized profits ahead of its customers by altogether failing to conduct or
23 commission any clinical trials or studies whatsoever concerning the benefits and
24 risks of Cocoa Krispies.

25 25. Contrary to its consistent and uniform claims, Defendants fail to
26 adequately disclose that other ingredients, including but not limited to sugar,
27 chocolate, high-fructose corn syrup and/or partially-hydrogenated oils, may not
28 “help support” a child’s immunity. Defendants also fail to adequately disclose

1 whether inclusion of such ingredients may outweigh the benefits, and thus render
2 the “immunity” claims false and/or misleading.

3 26. Defendants further failed and continue to fail to adequately disclose
4 whether the form of the “antioxidants and nutrients” purportedly added to the box
5 may not render the health benefits Defendants claim.

6 27. Defendants’ claims about Cocoa Krispies lead parents and those
7 seeking to boost their immune systems, to believe that the dosage of antioxidants
8 and nutrients contained therein will have the tangible result of helping to support
9 their child’s immunity. These claims are false, deceptive, and misleading.
10 Defendants do not have competent and reliable scientific evidence to support such
11 claims.

12 28. During the course of their false, misleading, and deceptive advertising
13 campaign, Defendants have sold hundreds of thousands of units or more of Cocoa
14 Krispies Immunity based upon Defendants’ false promises. Plaintiff and the Class
15 have suffered injury in fact and have lost money as a result of Defendants’ false
16 representations. The Product as purchased by the Plaintiff and the Class was and is
17 unsatisfactory and worth less than the amount paid for.

18
19 **CLASS ACTION ALLEGATIONS**

20 29. Plaintiff brings this action on behalf of herself and the proposed
21 plaintiff Class members under Federal Rule of Civil Procedure Rule 23(b)(2) and
22 (b)(3). The proposed Class consists of:

23
24 All persons residing in the State of California who purchased Cocoa
25 Krispies for personal use and not for resale during the time period
26 November 4, 2005, through the present. Excluded from the Class are
27 Kellogg’s officers, directors, and employees, and any individual who
28 received remuneration from Kellogg in connection with that
individual’s use or endorsement of Cocoa Krispies Immunity.

1 Said definition may be further defined or amended by additional pleadings,
2 evidentiary hearings, a class certification hearing, and orders of this Court.

3 30. The Class comprises many thousands of persons throughout California,
4 the joinder of whom is impracticable, and the disposition of their claims in a Class
5 Action will benefit the parties and the Court. The Class is sufficiently numerous
6 because millions of units of Cocoa Krispies have been sold in the State of California
7 during the Class Period.

8 31. There is a well-defined community of interest in the questions of law
9 and fact involved affecting the parties to be represented. The questions of law and
10 fact common to the Class predominate over questions which may affect individual
11 Class members. Common questions of law and fact include, but are not limited to,
12 the following:

- 13 a. Whether Defendants' conduct is an unlawful business act or practice
14 within the meaning of CAL. BUS. & PROF. CODE § 17200, *et seq.*;
- 15 b. Whether Defendants' conduct is a fraudulent business act or practice
16 within the meaning of CAL. BUS. & PROF. CODE § 17200, *et seq.*;
- 17 c. Whether Defendants' advertising is untrue or misleading within the
18 meaning of CAL. BUS. & PROF. CODE § 17500, *et seq.*;
- 19 d. Whether Defendants possess competent and reliable scientific evidence
20 to support their label and advertising claims;
- 21 e. Whether Defendants made false and misleading representations in their
22 advertising and labeling of Cocoa Krispies;
- 23 f. Whether Defendants knew or should have known that the
24 representations were false;
- 25 g. Whether Defendants represented that Cocoa Krispies was of a particular
26 standard, quality, or grade when they are of another; and
- 27 h. Whether Defendants represented that Cocoa Krispies has
28 characteristics, benefits, uses, or quantities which it does not have.

1 32. Plaintiff's claims are typical of the claims of the Class, and Plaintiff
2 will fairly and adequately represent and protect the interests of the Class. Plaintiff
3 does not have any interests which are antagonistic to those of the proposed Class.
4 Plaintiff has retained competent and experienced counsel in class action and other
5 complex litigation. The questions of law and fact common to the Class members,
6 some of which are set out above, predominate over any questions affecting only
7 individual Class members.

8 33. Plaintiff and the Class have suffered injury in fact and have lost money
9 as a result of Defendants' false, deceptive, and misleading representations.

10 34. The Product as purchased by the Plaintiff and the Class was and is
11 unsatisfactory and worth less than the amount paid for.

12 35. The Class is identifiable and readily ascertainable. The names and
13 addresses of the class members are available through business or public records.
14 Notice can be provided to such purchasers via first class mail using techniques and
15 a form of notice similar to those customarily used in class actions, and by internet
16 publication, radio, newspapers, and magazines.

17 36. A class action is superior to other available methods for fair and
18 efficient adjudication of this controversy. The expense and burden of individual
19 litigation would make it impracticable or impossible for proposed members of the
20 Class to prosecute their claims individually.

21 37. The trial and the litigation of Plaintiff's claims are manageable.
22 Individual litigation of the legal and factual issues raised by Defendants' conduct
23 would increase delay and expense to all parties and the court system. The class
24 action device presents far fewer management difficulties and provides the benefits
25 of a single, uniform adjudication, economies of scale, and comprehensive
26 supervision by a single court.

27 38. Defendants have acted on grounds generally applicable to the entire
28 Class, thereby making final injunctive relief or corresponding declaratory relief

1 appropriate with respect to the Class as a whole. The prosecution of separate
2 actions by individual Class members would create the risk of inconsistent or
3 varying adjudications with respect to individual member of the Class that would
4 establish incompatible standards of conduct for Defendants.

5 39. Absent a class action, Defendants will likely retain the benefits of their
6 wrongdoing. Because of the small size of the individual Class members' claims,
7 few, if any, Class members could afford to seek legal redress for the wrongs
8 complained of herein. Absent a representative action, the Class members will
9 continue to suffer losses and Defendants will be allowed to continue these
10 violations of law and to retain the proceeds of their ill-gotten gains.

11
12 **FIRST CAUSE OF ACTION**

13 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS**

14 **AND PROFESSIONS CODE § 17200, et seq.**

15 **(By Plaintiff and the Class Against All Defendants)**

16 40. Plaintiff repeats and re-alleges the allegations set forth in the preceding
17 paragraphs and incorporates the same as if set forth herein at length.

18 41. This cause of action is brought pursuant to CAL. BUS. & PROF. CODE §
19 17200, *et seq.*, on behalf of Plaintiff and a Class consisting of all persons residing in
20 the State of California who purchased Cocoa Krispies for personal use and not for
21 resale.

22 42. Defendants in their advertising and packaging of Cocoa Krispies
23 Immunity make false and misleading statements regarding the benefits and the
24 efficacy of Cocoa Krispies, particularly as it applies to a supporting a child's
25 immunity and helping to keep family members healthy, all as set forth in the
26 examples above.

1 43. Defendants do not have any competent and reliable scientific evidence
2 to support the claims about Cocoa Krispies made in Defendants' advertising and on
3 Defendants' packaging and label.

4 44. Defendants are aware that the claims that they make about Cocoa
5 Krispies Immunity are false, misleading, and unsubstantiated.

6 45. As alleged in the preceding paragraphs, the misrepresentations by
7 Defendants of the material facts detailed above constitutes an unfair, unlawful, and
8 fraudulent business practice within the meaning of CAL. BUS. & PROF. CODE §
9 17200.

10 46. In addition, Defendants' use of various forms of advertising media to
11 advertise, call attention to, or give publicity to the sale of goods or merchandise
12 which are not as represented in any manner constitutes unfair competition, unfair,
13 deceptive, untrue, or misleading advertising, and an unlawful business practice
14 within the meaning of CAL. BUS. & PROF. CODE §§ 17531 and 17200, which
15 advertisements have deceived and are likely to deceive the consuming public, in
16 violation of CAL. BUS. & PROF. CODE § 17500.

17 47. There were reasonably available alternatives to further Defendants'
18 legitimate business interests, other than the conduct described herein.

19 48. All of the conduct alleged herein occurs and continues to occur in
20 Defendants' business. Defendants' wrongful conduct is part of a pattern or
21 generalized course of conduct repeated on thousands of occasions daily.

22 49. Pursuant to CAL. BUS. & PROF. CODE §§ 17203 and 17535, Plaintiff and
23 the members of the Class seek an order of this Court enjoining Defendants from
24 continuing to engage, use, or employ their practice of advertising the sale and use of
25 Cocoa Krispies. Likewise, Plaintiff and the members of the Class seek an order
26 requiring Defendants to disclose such misrepresentations, and additionally request
27 an order awarding Plaintiff and the Class restitution of the money wrongfully
28

1 acquired by Defendants by means of responsibility attached to Defendants' failure
2 to disclose the existence and significance of said misrepresentations.

3 50. Plaintiff and the Class have suffered injury in fact and have lost money
4 or property as a result of Defendants' false representations. The Product as
5 purchased by the Plaintiff and the Class was and is unsatisfactory and worth less
6 than the amount paid for.

7
8 **SECOND CAUSE OF ACTION**

9 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS**
10 **AND PROFESSIONS CODE § 17500, et seq.**

11 **(By Plaintiff and the Class Against All Defendants)**

12 51. Plaintiff repeats and re-alleges the allegations set forth in the preceding
13 paragraphs and incorporates the same as if set forth herein at length.

14 52. This cause of action is brought pursuant to CAL. BUS. & PROF. CODE §
15 17500, *et seq.*, on behalf of Plaintiff and the Class consisting of all persons residing
16 in the State of California who purchased Cocoa Krispies for personal use and not
17 for resale.

18 53. In its advertising of Cocoa Krispies, Defendants knowingly make false
19 and misleading statements regarding the benefits and the effects of Cocoa Krispies
20 Immunity, particularly as it applies to a supporting a child's immunity and helping
21 to keep family members healthy, all as set forth in the examples above.

22 54. Defendants do not have any competent and reliable scientific evidence
23 to support the claims about Cocoa Krispies made in Defendants' advertising and on
24 the packaging and labels of the Product.

25 55. Defendants are aware and knew that the claims that they make about
26 Cocoa Krispies are false, misleading, and unsubstantiated.

27 56. As alleged in the preceding paragraphs, the misrepresentations by
28 Defendants of the material facts detailed above constitutes an unfair, unlawful, and

1 fraudulent business practice within the meaning of CAL. BUS. & PROF. CODE §
2 17200.

3 57. In addition, Defendants' use of various forms of advertising media to
4 advertise, call attention to or give publicity to the sale of goods or merchandise
5 which are not as represented in any manner constitutes unfair competition, unfair,
6 deceptive, untrue, or misleading advertising, and an unlawful business practice
7 within the meaning of CAL. BUS. & PROF. CODE §§ 17531 and 17200, which
8 advertisements have deceived and are likely to deceive the consuming public, in
9 violation of CAL. BUS. & PROF. CODE § 17500.

10 58. Pursuant to CAL. BUS. & PROF. CODE §§ 17203 and 17535, Plaintiff and
11 the members of the Class seek an order of this Court enjoining Defendants from
12 continuing to engage, use, or employ their practice of advertising the sale and use of
13 Cocoa Krispies. Likewise, Plaintiff and the members of the Class seek an order
14 requiring Defendants to disclose such misrepresentations, and additionally request
15 an order awarding Plaintiff and the Class restitution of the money wrongfully
16 acquired by Defendants by means of responsibility attached to Defendants' failure
17 to disclose the existence and significance of said misrepresentations.

18 59. Plaintiff and the Class have suffered injury in fact and have lost money
19 or property as a result of Defendants' false representations. The Product as
20 purchased by the Plaintiff and the Class was and is unsatisfactory and worth less
21 than the amount paid for.

22
23 **THIRD CAUSE OF ACTION**

24 **UNJUST ENRICHMENT**

25 **(By Plaintiff and the Class Against All Defendants)**

26 60. Plaintiff repeats and realleges the allegations set forth in the preceding
27 paragraphs and incorporates the same as if set forth herein at length.

1 induce Plaintiff and the Class to act in reliance on the misrepresentations and
2 statements and to collect more money for the products than they were entitled to.

3 69. Due to the uniformity of Defendants' misrepresentations to all Class
4 members, the Class at all times is presumed to have reasonably and justifiably relied
5 both directly and indirectly on the actions and representations of Defendants.

6 70. As a direct and proximate result of Defendants' fraud, Plaintiff and the
7 Class have suffered actual damages in an amount not presently known, but which
8 will be shown by proof at time of trial, including incidental and consequential
9 damages, interest, and reasonable attorneys' fees.

10 71. Plaintiff is informed and believes, and upon such information and belief
11 alleges, that Defendants undertook the aforesaid illegal acts intentionally or with
12 conscious disregard of the rights of Plaintiff and the Class, and did so with fraud,
13 oppression, and malice. Therefore, Plaintiff and the Class are also entitled to
14 punitive damages against Defendants in an amount that will be shown by proof at
15 trial.

16
17 **FIFTH CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA CIVIL CODE § 1750, et seq.**

19 **(By Plaintiff against all Defendants)**

20 72. Plaintiff repeats and realleges the allegations set forth in the preceding
21 paragraphs and incorporates the same as if set forth herein at length.

22 73. This cause of action is brought pursuant to CAL. CIV. CODE § 1750, *et*
23 *seq.*, the CLRA, on behalf of Plaintiff and a Class consisting of all persons residing
24 in the State of California who purchased Cocoa Krispies for personal use and not
25 for resale.

26 74. The Class consists of thousands of persons, the joinder of whom is
27 impracticable.

28

1 75. There are questions of law and fact common to the class, which
2 questions are substantially similar and predominate over questions affecting the
3 individual members, including but not limited to: (a) Whether Defendants
4 represented that Cocoa Krispies has characteristics, benefits, uses, or quantities
5 which they do not have; (b) Whether the existence, extent, and significance of the
6 major misrepresentations regarding the purported benefits, characteristics, and
7 efficacy of Cocoa Krispies violate the Act; and (c) Whether Defendants knew of the
8 existence of these misrepresentations.

9 76. The policies, acts, and practices heretofore described were intended to
10 result in the sale of Cocoa Krispies to the consuming public, particularly those
11 concerned about boosting their immunity and that of their children, and violated and
12 continue to violate CAL. CIV. CODE § 1770(a)(5) by representing that Cocoa
13 Krispies Immunity has characteristics, benefits, uses, or quantities which it does not
14 have.

15 77. The policies, acts, and practices heretofore described were intended to
16 result in the sale of Cocoa Krispies to the consuming public, particularly those
17 concerned about boosting their immunity and that of their children, and violated and
18 continue to violate CAL. CIV. CODE § 1770(a)(7) by representing that Cocoa
19 Krispies Immunity is of a particular standard, quality, or grade, or that Cocoa
20 Krispies Immunity is of a particular style or model, when they are of another.

21 78. Defendants fraudulently deceived Plaintiff and the Class by
22 representing that Cocoa Krispies has certain characteristics, benefits, uses, and
23 qualities which it does not have. In doing so, Defendants intentionally
24 misrepresented and concealed material facts from Plaintiff and the Class,
25 specifically, that Cocoa Krispies helps to support a person's immunity and keep
26 them healthy. Said misrepresentation and concealment were done with the intention
27 of deceiving Plaintiff and the Class and depriving them of their legal rights and
28 money.

1 79. Defendants knew that the dosage of antioxidants and nutrients in Cocoa
2 Krispies are not scientifically proven to substantially help to support the body's
3 immune system.

4 80. Defendants' actions as described herein above were done with
5 conscious disregard of Plaintiff's rights and Defendants were wanton and malicious
6 in their concealment of same.

7 81. Plaintiff and the Class have suffered injury in fact and have lost or
8 property as a result of Defendants' false representations.

9 82. The Product as purchased by the Plaintiff and the Class was and is
10 unsatisfactory and worth less than the amount paid for.

11 83. Pursuant to CAL. CIV. CODE § 1780(a), Plaintiff seeks injunctive relief
12 only, in the form of an order enjoining the above-described wrongful acts and
13 practices of Defendants, including, but not limited to, an order:

14 A. Enjoining Defendants from continuing to make the statements set
15 forth above;

16 B. Enjoining Defendants from continuing to offer for sale any unit
17 of Cocoa Krispies that contains any false, misleading and/or
18 unsubstantiated statements and claims on its packaging and/or its
19 label, including, without limitation, those statements and claims
20 set forth above;

21 C. Ordering that Defendants immediately recall any and all units of
22 Cocoa Krispies that contain any false, misleading and/or
23 unsubstantiated statements and claims on them and/or their
24 labels, including, without limitation, those statements and claims
25 set forth above;

26 D. Enjoining Defendants from continuing to use the packaging and
27 label that it presently uses for Cocoa Krispies; and
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E. Enjoining Defendants from distributing such false advertising and misrepresentations.

84. In accordance with Cal. Civ. Code § 1780(a) and (d), Plaintiff will subsequently amend this class action Complaint without leave of Court to include a request for damages. Pursuant to Section 1782 of the CLRA, Plaintiff is simultaneously notifying Defendants in writing of the particular violations of Section 1770 of the CLRA (the Notice) and demanded, among other things, that Defendants cease making the misrepresentations alleged herein, and that Defendants provide restitution to consumers who purchased the Product. Plaintiff will send Notice by means of by certified mail, return-receipt requested, to Defendants at their principal places of business. If Defendants fail to respond to Plaintiff's demand within thirty days of receipt of the Notice, pursuant to section 1782(a) and (d) of the CLRA, Plaintiff will amend this Complaint to request statutory damages, actual damages, plus punitive damages, interest and attorney's fees. Plaintiff requests that this Court enter such orders or judgments as may be necessary to restore any person in interest any money which may have been acquired by means of such unfair business practices, and for such relief as provided in CAL. CIV. CODE § 1780 and the Prayer for Relief.

85. Plaintiff requests that this Court enter such orders or judgments as may be necessary to restore any person in interest any money which may have been acquired by means of such unfair business practices, and for such relief as provided in CAL. CIV. CODE § 1780(a) and the Prayer for Relief.

86. Plaintiffs shall be irreparably harmed if such an order is not granted.

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PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
3 situated, prays for judgment and relief as to the FIRST, SECOND, THIRD, AND
4 FOURTH CAUSES OF ACTION as follows:

- 5 A. An order certifying that the action may be maintained as a Class
6 Action;
7 B. For an award of compensatory damages in an amount according
8 to proof at trial;
9 C. For punitive damages in an amount sufficient to deter, punish,
10 and make an example of Defendants;
11 D. An order enjoining Defendants from pursuing the policies, acts,
12 and practices complained of herein and requiring Defendants to
13 pay restitution to Plaintiff and all members of the Class;
14 E. For pre-judgment interest from the date of filing this suit;
15 F. Reasonable attorneys' fees;
16 G. Costs of this suit; and
17 H. Such other and further relief as the Court may deem necessary or
18 appropriate.

19 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
20 situated, prays for judgment and relief as to the FIFTH CAUSE OF ACTION as
21 follows:

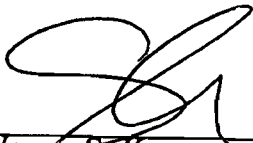
- 22 A. An order certifying that the action may be maintained as a Class
23 Action;
24 B. An order enjoining Defendants from pursuing the policies, acts,
25 and practices complained of herein, and requiring Defendants to
26 pay restitution to Plaintiff and all members of the Class;
27 C. For pre-judgment interest from the date of filing this suit;
28 D. Reasonable attorneys' fees and costs of this suit;

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- F. That each senior citizen and disabled person who is a plaintiff be awarded \$5,000 as authorized by sections 1780(b) and 3345(b) of the Civil Code; and,
- F. Such other and further relief as the Court may deem necessary or appropriate.

DATED: November 4, 2009

MILSTEIN, ADELMAN & KREGER,
LLP

By: 
Wayne S. Kreger
Sara D. Avila
Attorneys for Plaintiff

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED: November 4, 2009

MILSTEIN, ADELMAN & KREGER,
LLP

By:


Wayne S. Kreger

Sara D. Avila

Attorneys for Plaintiff

Milstein, Adelman & Kreger, LLP
2800 Donald Douglas Loop North
Santa Monica, California 90405

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EXHIBIT 1

Kellogg's

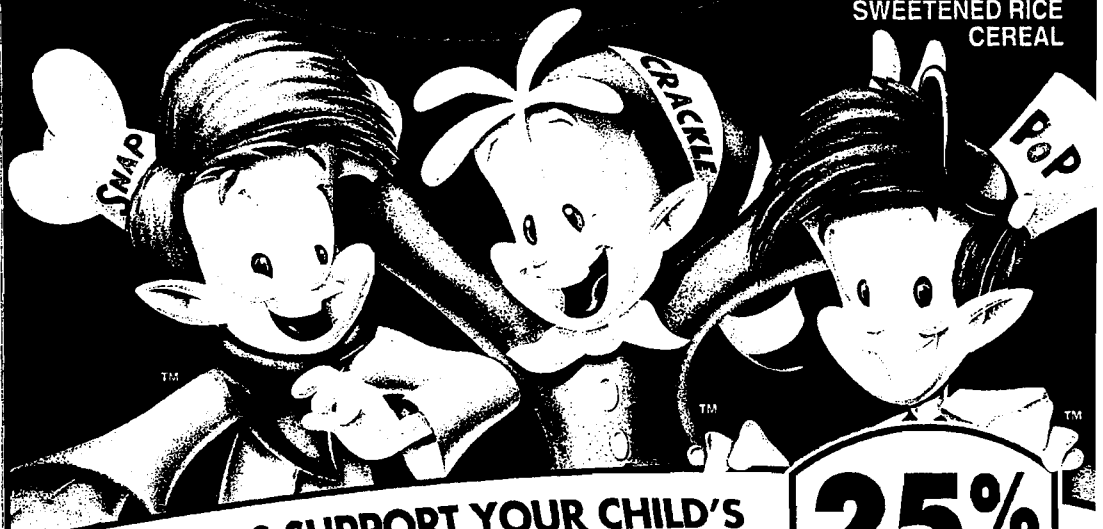
Each 3/4 cup (18g) serving provides 10% of the Daily Value of the DVAs listed on a 2,000-calorie diet.

Calories	Total Fat	Sodium	Sugars	Vitamin A	Vitamin C
120	1g	150mg	12g	1250IU	15mg
6%	2%	6%	*	25%	25%

See side panel for more information

COCOA KRISPIES

CHOCOLATEY,
SWEETENED RICE
CEREAL



NOW HELPS SUPPORT YOUR CHILD'S

IMMUNITY

25%

DAILY VALUE OF

**ANTIOXIDANTS
& NUTRIENTS**

**VITAMINS
A, B, C & E**

NET WT. 16.5 OZ. (1 LB. 0.5 OZ.) (467g)

ENLARGED TO

EXHIBIT 2

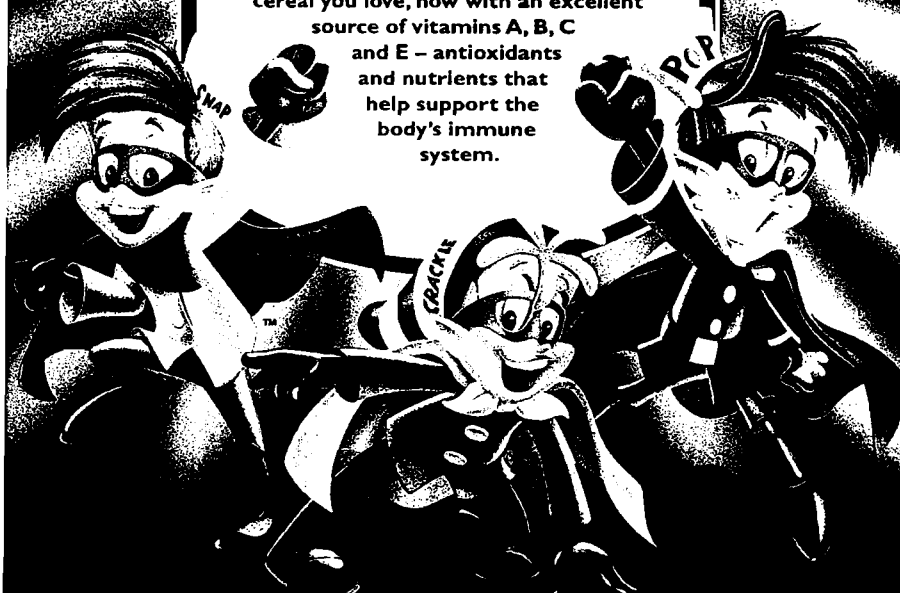
Kellogg's® **COCOA KRISPIES**®

WITH ANTIOXIDANTS AND NUTRIENTS

Helping to
support your family's
IMMUNITY

Kellogg's® Cocoa Krispies® has been improved to include antioxidants and nutrients that your family needs to help them stay healthy.

Cocoa Krispies® is still the same delicious cereal you love, now with an excellent source of vitamins A, B, C and E – antioxidants and nutrients that help support the body's immune system.



Enjoy this wholesome breakfast and help keep your family healthy.

ORIGINAL

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself) Sabena Lakshmi Kammala
Resident of Los Angeles County
DEFENDANTS
KELLOGG COMPANY, a Delaware Corporation; KELLOGG USA, INC., a Michigan Corporation; KELLOGG SALES COMPANY, a Delaware Corporation; and DOES 1 through 100, inclusive.
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
MILSTEIN, ADELMAN & KREGER, LLP
Wayne S. Kreger, Esq.; Sara D. Avila, Esq.
2800 Donald Douglas Loop N., Santa Monica, CA 90405; 310-396-9600
Attorneys (If Known)
Unknown

FAXED

II. BASIS OF JURISDICTION (Place an X in one box only.)
I U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)
III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business in this State
Incorporated and Principal Place of Business in Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. ORIGIN (Place an X in one box only.)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify):
6 Multi-District Litigation
7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: Yes No
MONEY DEMANDED IN COMPLAINT: \$ amount to be determined at trial

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
California Consumer Statutes (Cal. Bus. Prof. C. 17200 et seq, 17500 et seq; Cal. Civ. C. 1750, et seq)

VII. NATURE OF SUIT (Place an X in one box only.)
OTHER STATUTES
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce/ICC Rates/etc.
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
810 Selective Service
850 Securities/Commodities/Exchange
875 Customer Challenge 12 USC 3410
890 Other Statutory Actions
891 Agricultural Act
892 Economic Stabilization Act
893 Environmental Matters
894 Energy Allocation Act
895 Freedom of Info. Act
900 Appeal of Fee Determination Under Equal Access to Justice
950 Constitutionality of State Statutes
CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loan (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
TORTS
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Fed. Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury-Med Malpractice
365 Personal Injury-Product Liability
368 Asbestos Personal Injury Product Liability
IMMIGRATION
462 Naturalization Application
463 Habeas Corpus-Alien Detainee
465 Other Immigration Actions
TORTS
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
CIVIL RIGHTS
441 Voting
442 Employment
443 Housing/Accommodations
444 Welfare
445 American with Disabilities - Employment
446 American with Disabilities - Other
440 Other Civil Rights
PRISONER PETITIONS
510 Motions to Vacate Sentence Habeas Corpus
530 General
535 Death Penalty
540 Mandamus/Other
550 Civil Rights
555 Prison Condition
FORFEITURE/PENALTY
610 Agriculture
620 Other Food & Drug
625 Drug Related Seizure of Property 21 USC 881
630 Liquor Laws
640 R.R. & Truck
650 Airline Regs
660 Occupational Safety /Health
690 Other
LABOR
710 Fair Labor Standards Act
720 Labor/Mgmt. Relations
730 Labor/Mgmt. Reporting & Disclosure Act
740 Railway Labor Act
790 Other Labor Litigation
791 Empl. Ret. Inc. Security Act
PROPERTY RIGHTS
820 Copyrights
830 Patent
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL-TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS-Third Party 26 USC 7609

CV09 08102

FOR OFFICE USE ONLY: Case Number:
AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Calhoun

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date November 4, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))