

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

*Smith, et al., v. Kellogg Company et al.*, Case No. 1:18-cv-01341-PLM-RSK (W.D. Mich.)

**NOTICE OF FAIR LABOR STANDARDS ACT SETTLEMENT AND  
RELEASE OF CLAIMS**

**Please read this Court ordered notice carefully. It informs you about your legal rights.**

You are receiving this notice because you have the right to join in a settlement for unpaid overtime wages for the time you worked for Kellogg Sales Company between July 13, 2014 and August 18, 2017 as a Kellogg Sales Representative, Retail Sales Representative-DSD, Route Sales Representative, or Retail Sales Manager, or other position with a similar title or function (“KSR”). This notice informs you of the settlement, your estimated settlement share, the settlement terms that may affect you, and how to receive settlement money. This notice is only a summary.

**Based on the settlement, you are entitled to receive approximately \$ \_\_\_\_\_.**

The Court has preliminarily approved the settlement as fair and reasonable. If the Court gives final approval of the Settlement and it is not reversed by an appellate court, and if you file a claim form, you will be eligible to recover your settlement share.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>FILE A CLAIM FORM TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A PAYMENT</b>	If you wish to settle your claims and receive a payment, you must file a CLAIM AND CONSENT TO SUE FORM. If you do so, and if the Court grants final approval of the settlement, you will receive a check in the mail.
<b>OBJECT TO THE SETTLEMENT</b>	You may also participate in the settlement but object to its terms, letting the Court resolve your objections. If you object to the settlement, you will be bound by the Court’s decision, and if the Court grants final approval of the settlement, you will receive a check in the mail and release your wage and hour claims.
<b>DO NOTHING</b>	By doing nothing, you won’t participate in the settlement, and you give up any right to receive a payment from this settlement. You will keep any rights to sue Kellogg about the same legal claims in this lawsuit provided you do so within the applicable statute of limitations (legal time limit).

**1. What is this lawsuit about?**

The three Named Plaintiffs allege Kellogg Sales Company and Kellogg Company (collectively referred to as “Kellogg”) improperly classified them as exempt employees under the Fair Labor Standards Act and failed to pay them overtime wages for all hours worked over 40 in a workweek. Kellogg disputes the claims and allegations, denies that it violated the Fair Labor Standards Act, and vigorously defended the lawsuit. The Named Plaintiffs filed their claim on behalf of themselves and others who worked in the KSR position, as it is defined in the first paragraph of this notice.

**2. What is the purpose of this notice?**

The purpose of this notice is to inform you of your rights and options **and the deadlines to exercise them** under the Settlement Agreement. The Court still must decide whether to grant final approval of the settlement. Payments will be made if the Court grants final approval of the settlement and after any appeals are resolved. Please be patient.

### 3. What does the settlement provide?

Below is a summary of the terms in the proposed settlement. All of the terms are available for review on the settlement website [www.KelloggFLSASettlement.com](http://www.KelloggFLSASettlement.com), or you can ask for a copy of the Settlement Agreement from the Claims Administrator. The Claims Administrator's contact information is in Section 15 of this notice. You also may contact Plaintiffs' Counsel for more information. Their information is at the end of this notice.

**Settlement Fund:** The settlement requires Kellogg to create a settlement fund of \$1,851,689.56. This Settlement Fund shall be used to pay the claims of the 3 Named Plaintiffs, the 74 people who already filed consents to sue that remain pending in this case, and those who physically worked for Kellogg in a KSR position between July 13, 2014 and August 18, 2017, who choose to opt in to the settlement during the notice period.

**Allocation of Settlement Fund:** The Settlement Fund will be allocated as follows: (1) approximately \$35,000 will be deducted for the costs of administering the Settlement Fund, including the cost of sending this notice and sending the money to participating KSRs if the settlement is approved; (2) \$1,106,971.75 to the 77 Named and Opt-In Plaintiffs who filed a consent to sue in the case and who do not opt out (Fund A); (3) approximately \$687,217.80 for the approximately 1,700 others who physically worked for Kellogg in a KSR position between July 13, 2014 and August 18, 2017 (Fund B); and (4) \$7,500 to each of the three Named Plaintiffs (a total of \$22,500.00) as a Service Award to compensate them for the risks they took, and for their time and efforts in pursuing this case, including sitting for depositions and participating in the negotiations to generate the Settlement Fund. The service awards, if approved by the Court, are in addition to the Named Plaintiffs' share of the Settlement Fund.

**Attorneys' Fees and Costs:** No money will be deducted from the settlement fund for attorneys' fees and costs. Instead, the Plaintiffs' attorneys may file a motion asking the Court to order Kellogg to reimburse Plaintiffs the attorneys' fees and costs they incurred in litigating this case directly. Kellogg will have the opportunity to contest Plaintiffs' Counsel's petition for fees and costs by filing an opposition to the petition with the Court. The Court will decide how much to award the Plaintiffs' attorneys. Understand, however, that the amount of fees and costs the Court awards the attorneys will not impact the amount of money you recover. The legal fees and costs are separate from the settlement fund.

**Individual Awards:** Because you are one of the approximately 1,700 KSRs who physically worked for Kellogg in a KSR position between July 13, 2014 and August 18, 2017, and you are not a Named or Opt-In Plaintiff, your share is from Fund B. All KSRs who held only a KSR-WH job title will receive a total payment of \$50. All other KSRs in Fund B who file a timely claim form will receive a base payment of \$100. In addition, if you worked in a KSR position between January 16, 2016 and August 18, 2017, you will receive a share amount for each week that you worked. Any KSR who previously filed and withdrew a consent to sue will receive an additional share amount for each week physically worked between January 16, 2016 and August 18, 2017. All KSRs who are not Named or Opt-In Plaintiffs and who file a claim form will share in Fund B. Because no money from Fund B will go back to Kellogg, all of Fund B will be allocated among the KSRs who file a claim form. And if you worked between January 16, 2016 and August 18, 2017, you may recover more money than your estimated amount.

**Other Terms:** The Court must approve the settlement as fair and reasonable before the settlement can go into effect. If approved, any KSRs who participate will be deemed to have released all wage and hour claims they may have against Kellogg. Additionally, unless you opt out, Kellogg will release any claims it may have against you for any alleged breach of an arbitration agreement. Under certain conditions, Kellogg also has the right to cancel the settlement.

### 4. What are my options?

You can respond to this notice in one of three ways: (1) you can choose to receive your share of the settlement money in exchange for submitting a claim form and giving up your claims; (2) you can choose to participate in the settlement but object to its terms and let the Court resolve your objections, understanding that you will be bound by the Court's decision; or (3) you can do nothing, in which case you won't receive money and you won't give up your claims. The effects of your choice are described in more detail below.

**To Receive Your Settlement Award:** If you want to receive your share of the Settlement Fund, you must fill out, sign, and mail or email the enclosed "Claim Form and Consent to Sue" to the Claims Administrator at the address in Section 15 below, or complete the forms on the settlement website, no later than **May 14, 2021**. Any Claim Form

emailed or post-marked after **May 14, 2021** will be considered late, and may be invalid. If you file a timely claim form and the Court approves the settlement, you will receive a check for your share of the Settlement Fund. In exchange for the money you receive, you agree to give up (release) all wage and hour claims or potential claims you may have against Kellogg and related entities arising before March 1, 2021. The complete language describing the claims you will be giving up and the parties covered by the release is available from the Claims Administrator or at [www.KelloggFLSASettlement.com](http://www.KelloggFLSASettlement.com). **If you participate in the settlement, it is important that you inform the Claims Administrator if your address changes so the Claims Administrator can mail your check to you.**

**To Object To The Settlement:** If you file a claim form to participate in the settlement, you may object to the settlement terms if you believe they are unfair. You may mail or email a written objection to the Claims Administrator identifying the specific terms that you think are unfair and why. Your letter should include your name, address, telephone number, and the last four digits of your social security number. To be considered, the objection must be mailed or emailed to Analytics Consulting, LLC, at the address below in Section 15 no later than May 14, 2021. You also may appear personally or through an attorney at a hearing scheduled on June 14, 2021 at 9:00 a.m. at the federal courthouse located at 107 Federal Bldg, 410 W. Michigan Ave, Kalamazoo, MI 49007 to object. If the Court overrules your objection, you will still be bound by the terms of the settlement.

Understand that you cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, then no settlement payments will be mailed.

**If You Do Nothing:** If you don't file a claim form, then you: (1) won't be covered by the settlement; (2) won't receive money from the settlement; and (3) won't give up any wage and hour claims against Kellogg and related entities arising out of your employment with Kellogg.

#### **5. What if I have other claims?**

Plaintiffs' Counsel evaluated the claims based on the time you worked as a KSR (as defined in the first paragraph of this notice) up until August 18, 2017. If you believe you may have other wage and hour claims against Kellogg that post-date this time period, you may contact Plaintiffs' Counsel to discuss your rights.

#### **6. No retaliation**

Whether you decide to submit a claim form to participate in this settlement, object to it, or do nothing, you are free to make your choice without fear of retaliation. Kellogg will not retaliate against you based on your choice. Even if you previously filed a consent to sue form and opted-out or if you signed an agreement that contains an arbitration clause, you have the right to participate in this settlement.

#### **7. How much will my estimated payment be?**

You will be entitled to receive approximately \$\_\_\_\_\_.

#### **8. How can I get my payment?**

If you wish to receive a settlement share from the settlement fund, you must file a Claim Form. If you do so and if the Court grants final approval of the settlement, you will receive a check in the mail.

#### **9. When will I get paid?**

If the settlement is approved, monies owed to you will be mailed within 15 days after the settlement becomes effective, which could be 33 or 63 days after the Court issues its approval, barring any appeal. The entire process for giving this notice, obtaining Court approval and receiving payment is estimated to take approximately six months from the date of this notice. If you want to find out whether the settlement has been approved, you can contact the Claims Administrator or consult the website at [www.KelloggFLSASettlement.com](http://www.KelloggFLSASettlement.com). **PLEASE BE PATIENT.**

#### **10. Will I still get a payment if I have filed for bankruptcy while the lawsuit was pending?**

If you have filed for bankruptcy, contact your bankruptcy attorney to discuss whether the bankruptcy impacts your options or your ability to collect a settlement payment. In consultation with your bankruptcy attorney, you must take the necessary steps to advise the bankruptcy trustee of this notice and any settlement payment.

### 11. How do I exclude myself from the settlement?

Do nothing. If you do nothing, you will not be part of the case or settlement, you will not receive a settlement payment, you will not be able to object to the settlement, and you will not be legally bound by anything that happens in this lawsuit.

### 12. Do I have a lawyer in this case?

If you file a Claim Form, then you designate Getman, Sweeney & Dunn, PLLC to represent you in this action. More information about the law firm, its practices, and its lawyers' experience is available at [www.getmansweeney.com](http://www.getmansweeney.com). Katherine Smith Kennedy of Pinsky, Smith, Fayette & Kennedy, LLP, serves as local counsel in the case. You also may hire a different lawyer of your own choosing and at your own expense to represent you.

### 13. When and where will the Court decide whether to approve the Settlement?

The Court will hold a fairness hearing on June 14, 2021 at 9:00 a.m at the United States District Court for the Western District of Michigan at 107 Federal Bldg, 410 W. Michigan Ave, Kalamazoo, MI 49007, before Judge Paul L. Maloney. You may attend and you may ask to speak, but you don't have to. **The Court may hold a virtual hearing, and if so, the Claims Administrator will provide the link on the website.** At the fairness hearing, the Court will consider whether the settlement is fair and reasonable. If there are any objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the settlement. We do not know how long the Court's decision will take.

### 14. Do I have to come to the fairness hearing?

No. Plaintiffs' Counsel will represent all KSRs at the settlement the hearing, and those KSRs do not need to attend. Of course, you are welcome to attend if you would like to. The Court will consider any timely objections, even if the individual who sent in the objection doesn't appear at the fairness hearing. You may also hire a different lawyer of your own choosing at your own expense to represent you and/or attend the fairness hearing if you want.

### 15. May I speak at the fairness hearing?

If you send in your objection by the deadline, you may ask the Court for permission to speak at the fairness hearing. To be eligible to speak regarding an objection at the fairness hearing, you must first raise the objection by sending a letter via U.S. Mail stating (1) "I object to the Kellogg wage and hour settlement;" (2) all reasons for the objection (any reasons not included in the statement will not be considered); (3) the name, address, telephone numbers, and last four digits of the social security number of the Plaintiffs making the objection; and (4) your intention to appear at the fairness hearing. Be sure to sign the letter. Any objections must be mailed to: **Kellogg FLSA Settlement Administrator, P.O. Box 2004, Chanhassen, MN 55317-2004**, and received by May 14, 2021. Analytics Consulting LLC, can be reached by phone at 1-833-352-1354.

Again, you cannot speak at the hearing if you do not participate in the case.

### 16. Are there more details about the settlement?

The full Settlement Agreement is available at [www.KelloggFLSASettlement.com](http://www.KelloggFLSASettlement.com). You can also obtain more information about the settlement by contacting Plaintiffs' Counsel at:

Getman, Sweeney & Dunn PLLC  
260 Fair Street  
Kingston, NY 12401  
(845) 255-9370  
[jfriday@getmansweeney.com](mailto:jfriday@getmansweeney.com)

**PLEASE DO NOT CONTACT THE COURT, THE JUDGE, KELLOGG, OR KELLOGG'S ATTORNEYS WITH QUESTIONS ABOUT THE SETTLEMENT. THEY ARE NOT IN A POSITION TO ADVISE YOU ABOUT THE SETTLEMENT.**