

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

Thomas Harvey,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

- against -

WK Kellogg Co and  
Walmart Inc.,

Defendants,

2:25-cv-3984

**CLASS ACTION COMPLAINT**

Jury Trial Demanded

**CLASS ACTION COMPLAINT**

Plaintiff, Thomas Harvey (“Plaintiff”), alleges upon information and belief, including investigation conducted by his attorneys, except for allegations pertaining to Plaintiff, which are based on his personal knowledge:

**NATURE OF THE ACTION**

1. Plaintiff, Thomas Harvey, brings this consumer class action lawsuit individually, and on behalf of similarly situated consumers (“Class Members”) who purchased for personal, family or household use the Kellogg’s® Froot Loops® with Marshmallows Cereal 16.2 oz. (the “16.2 oz Product”). Materially false and deceptive representations and advertising on the 16.2 oz Product are also present on the 9.3 oz size and 23.7 oz size of the Kellogg’s Froot Loops with Marshmallow Cereal. The 16.2 oz, 9.3 oz and 23.7 oz sizes of the Kellogg’s Froot Loops with Marshmallows Cereal will be referred to collectively in this pleading as the “Product”.

2. Plaintiff purchased the 16 oz. Product in New York in reasonable reliance on the

materially misleading and deceptive trade practices and advertising of WK Kellogg Co and its affiliates (collectively, “Kellogg”) and Walmart Inc. and its affiliates (collectively, “Walmart,” and together with Kellogg, “Defendants”). In addition to unjustly enriching themselves, Defendants acted in derogation of New York law. Specifically, Defendants violated New York General Business Law §349 and §350, New York’s consumer protection statutes, and breached various express and implied warranties by manufacturing, marketing, promoting, and selling the Product.

3. Plaintiff purchased the 16.2 oz Product in reasonable reliance on the Product’s label representations and false label advertising stating that (1)  $1\frac{1}{3}$  cups of the Product is equivalent to 39 grams of the Product; and (2) the Product contains “about 12 servings” per container.

4. Importantly, as explained in more detail *infra*, these misrepresentations and false advertising statements were made in the NFP section of the Product’s label. The meaning of the terms used within the NFP section of a food label have precisely defined meanings that must be adhered to by Defendants because the NFP exists on food labels to permit consumers to compare competing food products knowing that “serving size”, “about 12 servings” “cup and  $1\frac{1}{3}$  Cup (39g)” have the same meaning whether printed on the label of Kellogg’s Froot Loops with Marshmallow cereal, General Mills’ Lucky Charms cereal, Post’s Fruity Pebbles Marshmallows cereal or some other competing cereal. The NFP is designed to enable reasonable consumers like Plaintiff to make side by side comparisons of competing products. The process for determining the truthful and legally required label statement of the serving size and the related number of servings is explained by the Food and Drug Administration (“FDA”) in its 2013 guidance *A Food Labeling Guide* under item L57.<sup>1</sup> Understanding the regulations that define the required content

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<sup>1</sup> See U.S. FOOD & DRUG ADMIN., A FOOD LABELING GUIDE: GUIDANCE FOR INDUSTRY (2013), <https://www.fda.gov/media/81606/download>.

of the NFP and the legally prescribed meanings of the words used within the NFP will help the Court and jury understand the plausibility of how Plaintiff and the putative Class of New York consumers were deceived and misled in violation of New York statutory and common law.

5. **Step 1: Determine the Reference Amount Customarily Consumed (RACC) for the Product** - Federal regulations require that “all nutrient and food component quantities shall be declared in relation to a serving as defined in this section” (21 C.F.R. §101.9(b)). “Serving” or “serving size” is defined as “an amount of food customarily consumed per eating occasion by persons 4 years of age or older which is expressed in a common household measure that is appropriate to the food” (21 C.F.R. §101.9(b)(1), *emphasis added*). Defendants correctly identified the RACC for the Product as “Breakfast cereals, ready-to-eat, weighing 20 g or more but less than 43 g per cup...” as “40 g” and the appropriate serving size label statement as “\_\_ cup(s) (\_\_ g)”.<sup>2</sup> 21 C.F.R. §101.12(b), Table 2.

6. **Step 2: Determine the Serving Size of the Product** - “For nondiscrete bulk products (e.g., breakfast cereal, flour, sugar, dry mixes, concentrates, pancake mixes, macaroni and cheese kits) . . . the *serving size* shall be the amount in household measure that *most closely approximates the reference amount* for the product category” (21 C.F.R. §101.9(b)(2)(iii), *emphasis added*). This regulatory requirement explicitly recognizes that the common household measure is not necessarily equivalent to the reference amount but rather the measure which most closely approximates it and that the label statement is derived therefrom.<sup>3</sup> Defendants correctly

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<sup>2</sup> 21 C.F.R. § 101.12(b), Table 2.

<sup>3</sup> The 2019 FDA guidance document *Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion, Reference Amounts Customarily Consumed, Serving Size- Related Issues, Dual Column Labeling, and Miscellaneous Topics* further clarifies in item B.5:

“The RACC for my product is 50 g; however, a single serving of my product actually weighs 54 g because 54 g is the weight of the 1-cup household measure most closely approximating the RACC. How should the serving size be declared?”

determined that cups are the common household measure for the serving size label statement of the Product.

7. **Step 3: Determine Metric Mass Equivalent of Serving Size** – The metric mass equivalent of the common household serving size must be reported parenthetically after the common household measure (21 C.F.R. §101.9(b)(7)). When reporting the metric mass of the relevant common household measure the regulations also require Defendant to “round to the nearest whole number”. Importantly, the requirement is to express the serving size in a common household measure and to then report the metric equivalent thereof. Defendants determined that 1<sup>1</sup>/<sub>3</sub> cups is the serving size and claim on the Product’s NFP that the metric mass equivalent of this serving size is 39 grams.

8. **Step 4: Determine the Number of Servings of the Product** – The “determination of the number of servings per container shall be based on the *serving size* of the product” (21 C.F.R. §101.9(b)(8), *emphasis added*). Defendants represent that the 16.2 oz Product contains “about 12 servings”.

9. Defendants’ use of the phrase “about 12 servings” in the NFP of the 16.2 oz Product has a precise meaning and definition: “about 12 servings” means the container of the 16.2 oz Product must contain between 11.5 and 12.49 servings of a volume of 1<sup>1</sup>/<sub>3</sub> cups. 21 CFR § 101.9(b)(8)(i). One cup likewise has a precisely defined volume of 240 milliliters. 21 CFR § 101.9(b)(5)(viii).

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Is the nutrition information based on the 50-g RACC, or the 1-cup serving size (weighing 54 g)?

The *serving size* and the nutrition information on the label are based on the household unit *closest to the RACC* (i.e., 1 cup). The *RACC* is used as the starting point to determine the serving size for the foods in each product category (see 21 CFR 101.9(b)(2)), but the *actual amount of the product per serving* (i.e., 54 g) is used to calculate the nutrient amounts for the nutrition information in the Nutrition Facts label.”

10. As explained in greater detail *infra*, independent laboratory testing of the 16.2 oz Product purchased by Plaintiff (the “Plaintiff’s Product”) found (1) the stated equivalency that  $1\frac{1}{3}$  cups of the Product was the same as 39 grams of the Product was false finding that  $1\frac{1}{3}$  cups of Plaintiff’s Product was actually 45.26 grams and (2) the “servings” claim on the Plaintiff’s Product was false and misleading because the Plaintiff’s Product was missing 1.84 servings, making the Plaintiff’s Product short 15.33% of the promised servings.

11. Based on relevant FDA regulations, Defendants erroneously stated the metric mass equivalent of the stated serving size, and, as a result, the Product did not contain the promised number of servings stated on its label and advertising. The mass equivalent is the “(39g)” notation following the “ $1\frac{1}{3}$  cups” serving size in the NFP of the Plaintiff’s Product.

12. Defendants unlawfully manufactured, marketed, advertised, sold, and distributed the Product injuring Plaintiff and the other putative class members by understating the mass equivalent of the  $1\frac{1}{3}$  cup serving size and thus delivering fewer servings than represented on the Product’s label.

13. Cases involving overstatement of the number of servings of products contained within a retail package, such as the allegations made in this Class Action Complaint, have been the subject of nationwide class settlements, including, for example in *Yonan v. Walmart, Inc.*, 591 F. Supp. 3d 1291 (S.D. Fla. 2022), which was originally filed in Florida federal court and then settled in a different forum. In *Yonan*, labeling and advertising of a Coffee Mate powdered creamer claimed the product contained 499.50 to 500.49 1-teaspoon servings. However, third-party testing found that the Coffee Mate product in fact contained 383.3 servings (because the metric mass equivalent of one teaspoon was actually 2.6 grams rather than the 2 grams represented in the Coffee Mate NFP), constituting a shortage of 23.2% of the promised

servings. *Yonan* was ultimately settled as part of a nationwide class action; however, prior to settlement, Nestle revised the label of the product to correct the error.

14. The allegations made in this Class Action Complaint are also similar to those in *Landry v. Post Consumer Brands, LLC*, No. 24-cv-01661-SPM, 2025 U.S. Dist. LEXIS 54202 (S.D. Ill. Mar. 24, 2025), *Gwinn v. Laird Superfood, Inc.*, 643 F. Supp. 3d 450 (S.D.N.Y. 2022) and *Neubauer v. Cont'l Mills, Inc.*, No. 3:24-CV-01160-NJR, 2025 U.S. Dist. LEXIS 51826 (S.D. Ill. Mar. 20, 2025). Defendants in these cases lost their motions to dismiss on the core liability theory that the products delivered fewer servings than represented in the nutrition facts panel.

## PARTIES

15. Plaintiff, Thomas Harvey, is an individual consumer over the age of eighteen (18) who is a citizen of Jensen Beach, Martin County, Florida. Plaintiff seeks injunctive relief and damages on behalf of himself and the Class, and respectfully requests a jury trial as to damages.

16. Defendant, WK Kellogg Co, is a Delaware corporation with a principal place of business in Battle Creek, Michigan. Kellogg is registered as a foreign business corporation in the state of New York.

17. Kellogg is a leading manufacturer, marketer and distributor of branded ready-to-eat cereal. Kellogg's portfolio includes diverse cereals and many iconic brands such as Kellogg's Frosted Flakes<sup>®</sup>, Kellogg's Special K<sup>®</sup>, Kellogg's Raisin Bran<sup>®</sup>, as well as Kellogg's Froot Loops<sup>®</sup> with Marshmallows, the Product at issue in this litigation.<sup>4</sup>

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<sup>4</sup> WK Kellogg Co, Annual Report (Form 10-K) at 5 (Feb. 25, 2025).

18. Kellogg's net sales in the U.S. for the year ended December 28, 2024 was approximately \$2,374 million.<sup>5</sup>

19. Kellogg manufactures, markets, promotes, advertises, and sells ready-to-eat cereal products, including the Product at issue in this litigation.

20. Defendant, Walmart Inc., is a Delaware corporation with a principal place of business in Bentonville, Benton County, Arkansas. Walmart is registered as a foreign corporation in the state of New York.

21. Walmart is an omni-channel retailer with net sales of \$674.5 billion during its 2025 fiscal year.<sup>6</sup>

22. Walmart U.S., Walmart's largest segment, operates in all 50 states, Washington D.C. and Puerto Rico.<sup>7</sup> It has over 4,600 retail stores nationwide.<sup>8</sup>

23. Walmart U.S. operates under the "Walmart" and "Walmart Neighborhood Market" brands. Walmart U.S. had net sales of \$462.4 billion for fiscal 2025, representing 69% of Walmart's fiscal 2025 consolidated net sales.<sup>9</sup>

24. Walmart sells brand name merchandise, such as Kellogg's<sup>®</sup>, as well as markets lines of merchandise under its private brands.<sup>10</sup>

25. Walmart markets, promotes, advertises, distributes and/or sells ready-to-eat cereal products, including the Product at issue in this litigation.

26. Plaintiff alleges that Walmart sells the Product in its retail stores nationwide.

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<sup>5</sup> *Id.* at 83.

<sup>6</sup> Walmart Inc., Annual Report (Form 10-K) at 6 (Mar. 14, 2025).

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

27. Plaintiff alleges that, at all times relevant herein, Kellogg and its subsidiaries, affiliates, and other related entities and suppliers, as well as their respective employees, were the agents, servants, or employees of Kellogg and at all times relevant herein, each was acting within the purpose and scope of that agency or employment.

28. Plaintiff alleges that, at all times relevant herein, Walmart and its subsidiaries, affiliates, and other related entities and suppliers, as well as their respective employees, were the agents, servants, or employees of Walmart and at all times relevant herein, each was acting within the purpose and scope of that agency or employment.

29. In addition, Plaintiff alleges that, in committing the wrongful acts alleged herein, Defendants, in concert with their respective subsidiaries, affiliates, and/or other related entities and suppliers, and their respective employees, planned, participated in, and furthered a common scheme to induce members of the public to purchase the Product by means of untrue, misleading, deceptive, and/or fraudulent representations and advertising.

30. Whenever reference in this Class Action Complaint is made to any act by Kellogg or its subsidiaries, affiliates, distributors, retailers and other related entities and suppliers, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Kellogg committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of Kellogg while actively engaged in the scope of their duties.

31. Whenever reference in this Class Action Complaint is made to any act by Walmart or its subsidiaries, affiliates, distributors, retailers and other related entities and suppliers, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Walmart committed, knew of, performed, authorized, ratified and/or



directed that act or transaction on behalf of Walmart while actively engaged in the scope of their duties.

### **JURISDICTION & VENUE**

32. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs. Pursuant to 28 U.S.C. § 1332(d)(2)(A), Plaintiff alleges that the total claims of the members of the Plaintiff’s Class in this action are in excess of \$5,000,000.00, in the aggregate, including any statutory damages, and exclusive of interest and costs, and as set forth below, diversity of citizenship exists under CAFA because Plaintiff is a citizen of Florida and Defendants are incorporated in Delaware with Kellogg having a principal place of business in Michigan and Walmart having a principal place of business in Arkansas. Thus, the parties are citizens of different states. Based on information and belief regarding nationwide sales of the ready-to-eat cereal product at issue in this lawsuit over the most recent three-year period, Plaintiff has a good faith basis to plead that the total claims of the Plaintiff’s Class (New York residents) including statutory damages exceed \$5,000,000.00.

33. This Court has personal jurisdiction over Defendants because Defendants conduct business in New York. Defendants have marketed, distributed, and sold the Product in New York. Defendants have sufficient minimum contacts with this State, and/or sufficiently avails itself of the markets of this State through their sales and marketing within this State to render the exercise of jurisdiction by this Court permissible.

34. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2) because of a substantial part of the events or omissions giving rise to the claim occurred in this District. Specifically, Plaintiff last purchased the Product at the Walmart store located in Commack, Suffolk County, New York and Defendants have intentionally availed themselves of the laws and markets within this District.

### FACTUAL ALLEGATIONS

35. The Product that is the subject of this litigation is comprised of a ready-to-eat cereal along with its packaging and labeling.

36. Plaintiff, Thomas Harvey, has purchased the Product for several years, and most recently on February 2, 2024 from the Walmart store located at 85 Crooked Hill, Commack, NY 11725. A copy of the receipt is attached hereto and incorporated herein as **Exhibit “A.”**

37. Each time Mr. Harvey purchased the Product, Plaintiff read the nutrition facts panel (the “NFP”) portion of the label and its information about serving size and number of servings. Plaintiff, like any reasonable consumer, relied on the information inside the NFP in making product comparisons and informing him of his decision to purchase the Product.

38. The advertising and labeling for the Product, including the Product purchased by Plaintiff, were prepared and/or approved by Defendants and their respective agents.

39. The NFP on the back of the 16.2 oz Product states that the Product provides “about 12 servings per container,” and that the serving size for the Product is 1<sup>1</sup>/<sub>3</sub> cups, which Defendants falsely state is equivalent to 39 grams of the ready-to-eat cereal Product. Under FDA regulations “about” means the Product contains between 11.5 and 12.49 servings.<sup>11</sup>

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<sup>11</sup> 21 C.F.R. §§ 101.9(b)(8).

40. The front label of the 16.2 oz Product states that the net weight of the Product is “16.2oz (459g).”

41. Photographs of the 16.2 oz Product’s labeling, including its NFP are attached hereto and incorporated herein as **Exhibit “B.”**

42. Based on this labeling and advertising, a reasonable consumer purchasing the 6.2 oz Product would reasonably believe that the Product contains 12 servings of  $1\frac{1}{3}$  cups of ready-to-eat cereal.

43. However, the labeling of the Product does not comply with relevant FDA regulations and the contents of the 16.2 oz Product cannot yield the 12 servings promised. As the independent laboratory testing discussed in more detail *infra*. shows, the mass of the  $1\frac{1}{3}$  cups serving is understated, meaning that all sizes of the Product would yield 15.33% fewer servings.<sup>12</sup> In other words, the misrepresentations on the label of the Product are the same across all sizes of the Product:  $1\frac{1}{3}$  cups of the Product do not have a mass of 39 grams and the number of  $1\frac{1}{3}$  cups servings per container is overstated by 15.33%. The same misrepresentations and falsity on the 16.2 oz Product’s labeling are repeated on all sizes of the Product and are equally in violation of the New York General Business Law Section 349 and Section 350.

44. Testing of the Product purchased by Plaintiff on February 2, 2024 by an independent laboratory and earlier testing of a sample Product by the same laboratory in January 2024, confirmed the misleading and false statements detailed in the preceding paragraph. The testing of the Plaintiff’s Product is attached hereto as **Exhibit “C-1”** and is incorporated herein

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<sup>12</sup>[The reason is that the density of the product in grams per milliliter is a physical property that does not vary depending on whether the Product is sold in 16.2 oz, 9.3 oz and 23.7 oz sizes. Defendants’ assessment of density was incorrect; thus, Defendants incorrectly determined the metric mass equivalent for the Product and that same incorrect metric mass equivalent was used to determine the number of servings contained in each of the sizes of the Product.

(the “Plaintiff’s Product Testing”) and the prior testing of the 16.2 oz Product is attached hereto as “**Exhibit C-2**” and incorporated herein (the “Prior Product Testing”). The Plaintiff’s Product Testing establishes that the metric mass equivalent of a  $1\frac{1}{3}$  cups serving is actually 45.26 grams not the 39 grams claimed on the NFP of the Product’s label.

45. Under FDA regulations, the metric unit equivalent of the  $1\frac{1}{3}$  cups serving of the Product should be parenthetically disclosed after the common household measure of  $1\frac{1}{3}$  cups. Based on the Plaintiff’s Product Testing, the metric mass equivalent of a  $1\frac{1}{3}$  cups serving of the Product should have been reported as “(45g)”.

46. Accordingly, the Product’s NFP should have stated “45g” rather than “39g” for the metric mass equivalent of the  $1\frac{1}{3}$  cups serving of the Product.

47. Defendants failed to meet this FDA labeling requirement by erroneously stating the metric mass equivalent of the  $1\frac{1}{3}$  cups serving and this failure rendered the Product’s labeling deceptive, misleading and false. Defendants stated that 39 grams was the metric mass equivalent of the  $1\frac{1}{3}$  cups serving of the Product; however, based on the Plaintiff’s Product Testing, the correct metric mass equivalent of the  $1\frac{1}{3}$  cups serving of the Plaintiff’s Product was actually 45.26 grams

48. Additionally, Defendants incorrectly calculated the number of servings provided by the 16.2 oz Product as a result of its use of the erroneous metric mass equivalent of 39 grams. And, as a result, Defendants claimed that the 16.2 oz Product delivered 15.33% more servings than allowed by law.

49. Expert testing found that the metric mass equivalent of the  $1\frac{1}{3}$  cups serving size of the Plaintiff’s Product purchased by Plaintiff was 45.26g, 16.1% heavier than the 39 grams claimed on the NFP on the Product’s label. Defendants calculated the number of servings the 16.2 oz

Product provided by dividing the net mass of the Product listed on the 16.2 oz Product's label, 459 grams, by the erroneous metric mass equivalent of the  $1\frac{1}{3}$  cups serving size of 39 grams (i.e.,  $459\text{g net weight} \div 39\text{g per serving} = 12\text{ servings}$ ). But the actual mass of  $1\frac{1}{3}$  cups of the Plaintiff's Product as a matter of law is 45g, thus a legally labeled box of the 16.2 oz Product would have reported 10 servings and would report 45g as the mass equivalent of  $1\frac{1}{3}$  cups serving size.

50. Because all sizes of the Product are deceptively and falsely labeled, they are misbranded. N.Y. Agric. & Mkts. Law § 201 (2024). Misbranded products cannot be legally sold in New York. N.Y. Agric. & Mkts. Law § 199-a (2024).

51. The advertising and labeling for the Product, including the Product most recently purchased by Plaintiff, were prepared and/or approved by Defendants and their respective agents, and were disseminated and marketed by Defendants and their respective agents through advertising and labeling containing the misrepresentations alleged herein.

52. The advertising for the Product was designed to encourage consumers to purchase the Product and did reasonably mislead reasonable consumers, including Plaintiff and the Class Members, into purchasing the Product.

53. Defendants market and distribute the Product and are the companies that created and/or authorized the unlawful, fraudulent, false, misleading and deceptive advertising, labeling, packaging and statements about the Product.

54. Because Plaintiff purchased the Product as a product advertising itself as containing about 12 servings of ready-to-eat cereal and it was not such product, Plaintiff suffered financial injury in proportion to the servings of ready-to-eat cereal not received.

55. Expert testing established that the Plaintiff's Product, as designed and sold, yields 1.84 fewer servings than claimed on the label of the Plaintiff's Product. This means consumers of

the Product were cheated out of 15.33% of the servings they paid for based on the labeling of the Product.

56. Plaintiff and other consumers of the Product were cheated out of 15.33% of the servings that they paid for based on the advertising, marketing, packaging and labeling of the Product. Receiving fewer than the number of servings represented and advertised on the Product label (e.g., in the case of the 16.2 oz Product, receiving only 10.16 servings) caused Plaintiff financial injury in the amount of, at least, the purchase price of the Product multiplied by 15.33%. Mathematically, this percentage economic injury is the same as paying for a dozen eggs but receiving only 10.

57. The Product's representations, as outlined and explained above, which are uniformly, consistently and prominently displayed on each individual package of the Product are untrue, misleading, deceptive and false. In making these allegations that the representations on the packaging regarding the number of servings contained in the packages are untrue, Plaintiff relies upon independent laboratory testing, attached as Exhibit "C-1," showing that the Product contains 15.33% fewer servings than the 11.5 to 12.49 servings claimed by the Product's label.

58. As Plaintiff's Product Testing shows, the gram weight of the 1 <sup>1</sup>/<sub>3</sub> cups serving is understated, meaning that the other sizes of the Product would also yield fewer servings. In other words, the misrepresentations on the label of the Product are the same across all sizes of the Product: The same misrepresentations and falsity on the Product's labeling are repeated on all sizes of the Product and are equally in violation of the New York General Business Law Section 349 and Section 350.

59. Plaintiff is aggrieved by the deceptively labeled and marketed Product as he relied on the misleading and deceptive labeling and advertising and was deprived of the benefit of the

bargain he reasonably anticipated from his reading and reliance on the Product's NFP labeling and advertising; specifically, he was deprived of the benefit he paid for, product labeled and advertised as containing about 12 servings of ready-to-eat cereal, when in actuality based on expert testing the Plaintiff's Product contains on average only 10.16 servings.

60. Reasonable consumers, such as the Plaintiff, will continue to be aggrieved by the deceptive and misleading labeling and advertising of the Product, as reasonable consumers will continue to plausibly rely on the Product's labeling and advertising and be misled and deceived into believing that they are purchasing Product containing the number of servings of ready-to-eat cereal stated on the NFP. A consumer has no ability to determine if the representations on the label are true without buying the Product and apportioning them in accordance with the Product's label instructions or having it tested by a laboratory. Reasonable consumers are entitled to rely on the truth of label statements about the number of servings a product provides.

61. Upon information and reasonable belief, Defendants could sell the Product without deceptive labeling by, for example, correctly stating the metric mass of the  $1\frac{1}{3}$  cups serving and adjusting the number of  $1\frac{1}{3}$  cups servings yielded by the Product according to the actual metric mass of each  $1\frac{1}{3}$  cups serving. Walmart touts that it is "dedicated to help people around the world save money..." and states that its strategy "is to ...make trust a competitive advantage"<sup>13</sup> and Kellogg "endeavors to provide consumers with high-quality products".<sup>14</sup> Defendants failed to meet their own delineated standard and strategy in committing the wrongful acts alleged herein.

### **PLAINTIFF'S ADDITIONAL ALLEGATIONS**

62. Plaintiff, Thomas Harvey, has purchased the Product for several years, and most recently on February 2, 2024 from the Walmart store located at 85 Crooked Hill, Commack, NY

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<sup>13</sup>Walmart Inc., *supra* note 6 at 5-6.

<sup>14</sup>WK Kellogg Co., *supra* note 4 at 5.

11725. A copy of the receipt is attached hereto as Exhibit “A.” Each time he purchased the Product, Plaintiff read the NFP portion of the label and its information about serving size and number of servings. Plaintiff, like any reasonable consumer, relied on this information inside the NFP in making product comparisons and informing his decision to purchase the Product.

63. Plaintiff is aggrieved by the deceptively labeled and marketed Product as he relied on the materially misleading and deceptive labeling and advertising and was deprived of the benefit of the bargain he reasonably anticipated from his reading of and reliance on the Product’s labeling and advertising; specifically, he was deprived of the benefit he paid for, product labeled and advertised as containing about 12 servings of ready-to-eat cereal, when in actuality based on expert testing the Plaintiff’s Product contains on average only 10.16 servings.

64. Because Plaintiff purchased the Product advertised as capable of providing about 12 servings of ready-to-eat cereal and it was not such product, Plaintiff was damaged in proportion to the servings of ready-to-eat cereal not received.

65. The Product’s representations, as outlined and explained above, which are uniformly, consistently, and prominently displayed on each individual package of the Product are untrue, misleading, and deceive the public.

66. Reasonable consumers, such as Plaintiff, will continue to be aggrieved by the deceptive and misleading labeling and advertising of the Product, as reasonable consumers will continue to reasonably believe that they are purchasing a Product containing the number of servings represented on the Product’s label. A consumer has no ability to determine if the representations on the labels are true without buying the Product and apportioning it in accordance with the Product’s stated serving size or having it tested by a laboratory. Reasonable consumers are entitled to rely on the truth of label statements about the number of servings a product provides.



67. Upon information and reasonable belief, Defendants could sell the Product without deceptive labeling by, for example, correctly stating the metric mass equivalent of the  $1\frac{1}{3}$  cups serving and adjusting the number of  $1\frac{1}{3}$  cups servings yielded by the Product according to the actual metric mass of the  $1\frac{1}{3}$  cups serving.

68. Defendants unlawfully marketed, advertised, sold, and distributed the Product. Because all sizes of the Product are deceptively and falsely labeled, they are misbranded. N.Y. Agric. & Mkts. Law § 201 (2024). Misbranded products cannot be legally sold in New York. N.Y. Agric. & Mkts. Law § 199-a (2024).

69. The Product was a deceptively marketed and labeled product under New York law because the Product's labeling and advertising made false, deceptive, and materially misleading representations.

70. Defendants unlawfully and deceptively marketed, advertised, sold, and distributed the Product to New York purchasers, because the Product contained false and deceptive labeling which materially misled consumers.

71. Additionally, Defendants have had actual knowledge of the false, deceptive and misleading label since approximately February 9, 2024 and continue to market, advertise, sell and distribute the Product with its false, deceptive and misleading label. Defendants sold the Product at a premium price per actual serving provided, and Defendants' false and misleading representations on the Product deceive New York consumers for the reasons previously alleged above.

72. Had Defendants not approved, authorized, and participated in the advertising, marketing, labeling, and sale of the Product containing the above-referenced deceptive representations, Plaintiff and the other Class members would not have been economically injured

because Plaintiff and the other Class members would not have purchased the Product or would have paid less for the Product.

73. In addition, Plaintiff could not have determined whether the number of servings claimed on the Product's label was accurate other than to purchase the Product and apportion it in accordance with the stated serving size or to have it tested by a laboratory.

74. Plaintiff spent time, and incurred significant expense, having the Product tested by a third-party expert.

75. As an immediate, direct, and proximate result of Defendants' false, misleading, and deceptive representations, Defendants injured Plaintiff and the other Class Members in that Plaintiff and other Class Members:

- a. paid a sum of money for the Product that was not as represented;
- b. paid a premium price per serving of the Product as the number of servings was not provided as represented;
- c. were deprived of the benefit of the bargain because the Product they purchased were different than what Defendants warranted;
- d. were deprived the benefit of the bargain because the Product they purchased had less value than what was represented by Defendants;
- e. did not receive Product that measured up to their expectations as created by Defendants;
- f. purchased Product that was other than what was represented by Defendants;
- g. received Product that Plaintiff and the other members of the Class did not expect or consent to;
- h. received Product that had different characteristics than what Defendants

promised; and

- i. received a Product that delivered 15.33% fewer  $1\frac{1}{3}$  cups servings than represented on the label, thus, causing Plaintiff and each member of the Class quantifiable economic injury in an amount equal to 15.33% of the purchase price.

76. Accordingly, Plaintiff and the other Class Members have suffered injury in fact and lost money or property as a result of Defendants' wrongful conduct.

77. Plaintiff and the other Class Members did not obtain the full value of the advertised Product due to Defendants' misrepresentations.

78. Plaintiff and the other Class Members purchased, purchased more of, or paid more for the Product than they would have done had they known the truth about the Product.

79. The Product is worth significantly less than what Plaintiff and members of the Class paid for, and/or is not what Plaintiff and members of the Class reasonably intended to receive.

80. The Product was deceptively advertised and marketed for the reasons previously alleged herein.

81. With respect to the Product, Plaintiff and members of the Class paid a price premium or received less than they bargained for, because Plaintiff and members of the Class reasonably believed the Product contained the number of servings of ready-to-eat cereal specified on the label and in the advertising, when in fact the Product did not contain anywhere near the promised number of servings. In the context of this pleading, price premium means paying for a Product containing e.g., 12,  $1\frac{1}{3}$  cups servings but receiving a Product containing e.g., 10.16,  $1\frac{1}{3}$  cups servings; thus, Plaintiff paid a premium price for the Product received, which was the Product with only 10.16,  $1\frac{1}{3}$  cups servings.

82. Likewise, if Plaintiff and members of the Class had known that the Product did not contain the number of servings of ready-to-eat cereal specified on the Product's label and in the advertising, they would not have purchased the Product or would have paid less for the Product.

83. Plaintiff and the other Class Members would likely purchase the Product again if the deceptive advertising and labeling on the Product were corrected because there would be a fair, accurate and truthful basis to compare competing products at the time of purchase. New York consumer protection laws like GBL §349 and GBL §350, focus on the time at which the purchasing decision is made not on how the Product may be used later in time..

84. If Defendants are allowed to continue to violate New York law by continuing to advertise, market, and sell the misbranded and deceptively, misleadingly and falsely labeled Product, Plaintiff and the other Class Members could purchase the Product again, mistakenly believing the Product had been changed in some way such that the labeling and advertising were at that time true.

85. Plaintiff has no way of knowing if or when Defendants make changes to the Product and whether the Product's labeling and advertising remain false and deceptive. For example, Defendants could change the contents of the Product and Plaintiff would have no way of knowing if the Product's representations about the number of servings it contains remain deceptive other than to purchase the Product and evaluate how many servings are contained within.

86. Accordingly, Plaintiff and all other consumers purchasing the Product have been, are, and will continue to suffer a loss and be damaged by the deceptively, dishonestly, misleadingly and falsely marketed, advertised and labeled Product and are being deprived of the benefit of the bargain they reasonably anticipated from the Product's labeling, marketing and advertising. Plaintiff and the members of the putative class are also being harmed by continuing exposure to

the misbranded Product being offered for sale in New York.

87. Plaintiff has performed all conditions precedent to bringing this Action.

### **CLASS ALLEGATIONS**

88. Plaintiff brings this class action pursuant to all applicable provisions of Section 23 of the Federal Rules of Civil Procedure, on behalf of himself and all members of the following Class:

New York Class: During the fullest period allowed by law, all persons who purchased the Product within the State of New York for personal, family or household use and not resale.

89. Members of the Class described above are referred to herein as “Class Members” or members of the “Class.”

90. Plaintiff reserves the right to amend the Class definition or add a Class or Classes if discovery and/or further investigation reveal that the Class definition(s) should be narrowed, expanded or otherwise modified.

91. Excluded from the Class are Defendants, their respective subsidiaries, affiliates, and employees; all persons who make a timely election to be excluded from the Class; governmental entities; and the Judge(s) to whom this case is assigned and any immediate family members thereof.

92. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff can prove the elements of Plaintiff’s claims on a class-wide basis using the same evidence as would be used to prove those claims in individual actions alleging the same claims.

#### **A. Numerosity – Federal Rules of Civil Procedure 23(a)(1)**

93. The members of the Class are so numerous that individual joinder of all class members is impracticable.

94. The precise number of members of the Class is unknown to Plaintiff, but it is clear that the number greatly exceeds the number that would make joinder practicable. Upon information and belief Plaintiff estimates the number of members in the Class to be in the tens-of-thousands or more, particularly given Defendants' comprehensive distribution and sales network throughout New York and the United States.

95. Members of the Class may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

96. The number of individuals who comprise the Class is so numerous that the disposition of all such person's claims in a class action, rather than in individual actions, will benefit both the parties and the courts.

**B. Commonality and Predominance – Federal Rules of Civil  
Procedure 23(a)(2) and 23(b)(3)**

97. Common questions of law or fact exist as to all members of each Class and predominate over any questions affecting only individual members of the Class. All members of the Class were exposed to Defendants' deceptive and misleading advertising and marketing claims alleged herein.

98. Furthermore, common questions of law or fact include:

- a. whether Defendants engaged in the conduct as alleged herein;
- b. whether Defendants' practices violate applicable law cited herein;
- c. whether Plaintiff and the other members of the Class are entitled to actual, statutory, or other forms of damages, and/or other monetary relief; and
- d. whether Plaintiff and the other members of the Class are entitled to equitable relief, including but not limited to injunctive relief.

99. Defendants engaged in a common course of conduct in contravention of the laws Plaintiff seeks to enforce individually, and on behalf of the other members of the proposed Class. Materially identical business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. Moreover, the common questions will yield common answers.

**C. Typicality – Federal Rules of Civil Procedure 23(a)(3)**

100. Plaintiff's claims are typical of the claims of the other members of the Class because, among other things, all members of the Class purchased, in a typical consumer setting, Defendants' Product, and were comparably injured through Defendants' same uniform misconduct described herein. Further, there are no defenses available to Defendants that are unique to Plaintiff or to any particular members of the Class.

**D. Adequacy of Representation – Federal Rules of Civil Procedure 23(a)(4)**

101. Plaintiff is an adequate representative of the members of the Class because Plaintiff's interests do not conflict with the interests of the other members of the Class that Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff will prosecute this action vigorously. The Class's interests will be fairly and adequately protected by Plaintiff and Plaintiff's counsel. Plaintiff's counsel has represented consumers in a wide variety of actions where they have sought to protect consumers from fraudulent and deceptive practices.

**E. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2)**

102. Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as described herein, with respect to the members of the Class as a whole.

**F. Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1)**

103. Absent a representative class action, members of the Class would continue to suffer the harm described herein for which they would have no remedy. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue burden and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated purchasers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendants. The proposed Class thus satisfies the requirements of Fed. R. Civ. P. 23(b)(1).

**G. Superiority - Federal Rule of Civil Procedure 23(b)(3)**

104. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other members of the Class are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for members of the Class to individually seek redress for Defendants' wrongful conduct. Even if the members of the Class could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments; and increases the delay and expense to all parties and the court system and thereby unnecessarily clogging of dockets.

105. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Given the similar nature of the members of the Class's claims and the absence of



material or dispositive differences in laws upon which the claims are based, the Class will be easily managed by the Court and the parties.

**FIRST CAUSE OF ACTION:  
VIOLATION OF NEW YORK GEN.BUS.LAW § 349, *et seq.***

106. Plaintiff repeats, re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Class Action Complaint as if fully set forth herein verbatim.

107. The New York General Business Law Section 349 (“GBL §349”) declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state . . .”

108. To state a claim under GBL §§ 349 and 350, “a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct, that is (2) materially misleading, and that (3) the plaintiff suffered injury as a result of the allegedly deceptive act or practice.”<sup>15</sup>

109. Defendant, WK Kellogg Co, is a Delaware corporation with a principal place of business in Battle Creek, Michigan. Kellogg is registered as a foreign business corporation in the state of New York.

110. Kellogg is a leading manufacturer, marketer and distributor of branded ready-to-eat cereal. Kellogg’s portfolio includes diverse cereals and many iconic brands such as Kellogg’s Frosted Flakes®, Kellogg’s Special K®, Kellogg’s Raisin Bran®, as well as Kellogg’s Froot Loops® with Marshmallows, the Product at issue in this litigation.<sup>16</sup>

111. Kellogg’s net sales in the U.S. for the year ended December 28, 2024 was approximately \$2,374 million.<sup>17</sup>

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<sup>15</sup> *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (2012); *see Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 324 n.1 (2002).

<sup>16</sup> WK Kellogg Co, *supra* note 4 at 5.

<sup>17</sup> *Id.* at 83.

112. Kellogg manufactures, markets, promotes, advertises, and sells ready-to-eat cereal products, including the Product at issue in this litigation.

113. Defendant, Walmart Inc., is a Delaware corporation with a principal place of business in Bentonville, Benton County, Arkansas. Walmart is registered as a foreign corporation in the state of New York.

114. Walmart is an omni-channel retailer with net sales of \$674.5 billion during its 2025 fiscal year.<sup>18</sup>

115. Walmart U.S., Walmart's largest segment, operates in all 50 states, Washington D.C. and Puerto Rico.<sup>19</sup> It has over 4,600 retail stores nationwide.<sup>20</sup>

116. Walmart U.S. operates under the "Walmart" and "Walmart Neighborhood Market" brands. Walmart U.S. had net sales of \$462.4 billion for fiscal 2025, representing 69% of Walmart's fiscal 2025 consolidated net sales.<sup>21</sup>

117. Walmart sells brand name merchandise, such as Kellogg's<sup>®</sup>, as well as markets lines of merchandise under its private brands.<sup>22</sup>

118. Walmart markets, promotes, advertises, distributes and/or sells ready-to-eat cereal products, including the Product at issue in this litigation.

119. Plaintiff alleges that Walmart sells the Product in its retail stores nationwide.

120. Defendants' deceptive acts and practices were directed at, and impacted, consumers located in both New York and nationwide.

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<sup>18</sup> Walmart Inc., *supra* note 6 at 6.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

121. Defendants misleadingly, inaccurately, deceptively and falsely advertise and market the Product to Plaintiff and consumers. Defendants' deceptive practices are likely to mislead— and have misled—reasonable consumers acting reasonably, such as Plaintiff and members of the Class.

122. Specifically, Defendants marketed, labeled and advertised the Product in a deceptive, false and materially misleading manner since the representations contained on the Plaintiff's Product stated that the Product contains “about 12 servings” of ready-to-eat cereal and that the serving size is “1<sup>1</sup>/<sub>3</sub> Cup (39g)”. *See* Exhibit “B”. Based on this prominent labeling and advertising, a reasonable consumer purchasing this Product would reasonably believe that the Product contained 12 servings. Despite this prominent labeling and advertising, the Product does not contain the number of servings promised because Defendants incorrectly stated the metric mass equivalent of the 1<sup>1</sup>/<sub>3</sub> cups serving size and used such erroneous metric mass equivalent to determine the number of servings provided by the Product.

123. Reasonable consumers rely on Defendants to honestly market and label the Product in a way that does not deceive reasonable consumers into believing they are purchasing Product that has the number of servings stated on its label, when the truth is that the Plaintiff's Product contains 15.33% fewer servings than the number of servings promised on the Product's label.

124. In addition, reasonable consumers would expect Defendants to honestly market and label the Product given that that Walmart claims that it is “dedicated to help people around the world save money...” and one of its strategies “is to ...make trust a competitive advantage”<sup>23</sup> and Kellogg “endeavors to provide consumers with high-quality products”.<sup>24</sup>

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<sup>23</sup>Walmart Inc., *supra* note 6 at 5-6.

<sup>24</sup>WK Kellogg Co., *supra* note 4 at 5.

125. Defendants' improper consumer-oriented conduct —marketing, labeling and advertising the Product as providing about the number of servings specified on the Product's label — is misleading in a material way in that it, inter alia, induced Plaintiff and the Class Members to purchase and pay a premium for Defendants' Product and to use the Product when they otherwise would not have or would have paid less for because the Product contained fewer servings than promised. Defendants have deceived reasonable consumers, like Plaintiff and the Class, into believing (a) the Product provided a number of servings that it did not; and (b) that a  $1\frac{1}{3}$  cups serving of the Product has a mass of 39g when it did not.

126. Plaintiff and the Class Members have been injured inasmuch as they paid a price for the 16.2 oz Product based on 12 servings, in circumstances in which the Product actually provided 10.16 servings per container. Accordingly, Plaintiff and the Class Members received less than what they bargained and/or paid for, which caused them to suffer economic injury equal to at least 15.33% of the purchase price of the Product.

127. Since Plaintiff purchased the 16.2 oz Product as product advertising itself as containing about 12 servings of ready-to-eat cereal, and it was not such product, Plaintiff was damaged in proportion to the servings of ready-to-eat cereal not received.

128. Specifically, as established in Plaintiff's Product Testing, Plaintiff and other consumers of the Product were cheated out of 15.33% of the servings they paid for based on the advertising, marketing, packaging and labeling of the Product.

129. Defendants' advertising and the Product's packaging and labeling induced Plaintiff and the Class Members to buy the Product and to pay a premium price.

130. Defendants' deceptive and misleading practices constitute a deceptive act and practice in the conduct of business in violation of New York General Business Law §349(a) and

Plaintiff and the Class Members have been damaged thereby.

131. GBL §349 gives the right to any person who has been injured by reason of any violation of GBL §349 to bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or fifty dollars, whichever is greater, or both such actions.

132. Additionally pursuant to GBL §349, the Court has discretion to increase the award of damages to an amount not to exceed three times the actual damages up to \$1,000 if the Court finds the defendant willfully or knowingly violated GBL §349 and the discretion to award reasonable attorney's fees to a prevailing plaintiff.

133. Defendants had prior notice that the Product and advertising contained these untrue, false, and misleading statements regarding the number of servings provided by the Product. Defendants knew, or should have known, about the misbranded, false, misleading and deceptive nature of the Product's marketing and label advertising.

134. Despite being notified of the material misrepresentations described in this Class Action Complaint, Defendants made, and continue to make, these untrue, false, materially misleading and illegal statements regarding the number of servings provided by the Product.

135. As a result of Defendants' recurring, unlawful deceptive acts and practices, Plaintiff and the Class Members are entitled to recover the maximum amount allowed by law on the following elements: monetary, statutory, compensatory, and treble damages, restitution, and disgorgement of all money obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs. The damages suffered by the Plaintiff and the Class were directly and proximately caused by the deceptive and materially misleading practices of Defendants.

136. In addition, Plaintiff and Class Members seek equitable and injunctive relief against Defendants on terms that the Court considers reasonable to stop Defendants' illegal conduct, and reasonable attorneys' fees and costs.

137. Plaintiff and Class Members seek all available remedies, damages, and awards resulting from Defendants' violations of New York law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated members of the Class, prays for relief and judgement, including entry of an order, pursuant to each cause of action set forth in this Complaint as follows:

- a. For an order certifying that this action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating Plaintiff's attorneys as Class counsel;
- b. Directing that Defendants bear the costs of any notice sent to the Class;
- c. For actual damages in amounts to be determined by the Court and/or jury;
- d. For statutory damages and/or punitive damages, as provided by the applicable statutes invoked above;
- e. For an award of equitable relief for all causes of action as follows:
  - i. Enjoining Defendants from continuing to engage, use, or employ any deceptive business acts or practices related to the design, testing, distribution, assembly, development, marketing, advertising, or sale of the Product for the purpose of selling the Product in such manner as set forth in detail above, or from making any claims found to violate New York law or the other causes of action as set forth above;

- f. Restoring all monies that may have been acquired by the Defendants as a result of such unfair and/or deceptive act or practices;
- g. For an award of attorney's fees and costs;
- h. For an award of pre- and post-judgment interest on any amounts awarded; and
- i. For any other relief the Court might deem just, appropriate, or proper.

**SECOND CAUSE OF ACTION:  
VIOLATION OF NEW YORK GEN.BUS.LAW § 350, ET SEQ.**

138. Plaintiff repeats, re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Class Action Complaint as if fully set forth herein verbatim.

139. The New York General Business Law §350 (“GBL §350”) provides, in part, as follows: “False advertising in the conduct of any business, trade, or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

140. New York General Business Law § 350a(1) provides, in part, that: “The term “false advertising” means advertising, including labeling, of a commodity, . . . if such advertising is misleading in a material respect.” In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof. . . “ See GBL §350a(1).

141. As stated above, to state a claim under GBL §§ 349 and 350, “a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct, that is (2) materially misleading, and that (3) the plaintiff suffered injury as a result of the allegedly deceptive act or practice.”<sup>25</sup>

142. Defendant, WK Kellogg Co, is a Delaware corporation with a principal place of business in Battle Creek, Michigan. Kellogg is registered as a foreign business corporation in the

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<sup>25</sup> *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (2012); see *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 324 n.1 (2002).

state of New York.

143. Kellogg is a leading manufacturer, marketer and distributor of branded ready-to-eat cereal. Kellogg's portfolio includes diverse cereals and many iconic brands such as Kellogg's Frosted Flakes<sup>®</sup>, Kellogg's Special K<sup>®</sup>, Kellogg's Raisin Bran<sup>®</sup>, as well as Kellogg's Froot Loops<sup>®</sup> with Marshmallows, the Product at issue in this litigation.<sup>26</sup>

144. Kellogg's net sales in the U.S. for the year ended December 28, 2024 was approximately \$2,374 million.<sup>27</sup>

145. Kellogg manufactures, markets, promotes, advertises, and sells ready-to-eat cereal products, including the Product at issue in this litigation.

146. Defendant, Walmart Inc., is a Delaware corporation with a principal place of business in Bentonville, Benton County, Arkansas. Walmart is registered as a foreign corporation in the state of New York.

147. Walmart is an omni-channel retailer with net sales of \$674.5 billion during its 2025 fiscal year.<sup>28</sup>

148. Walmart U.S., Walmart's largest segment, operates in all 50 states, Washington D.C. and Puerto Rico.<sup>29</sup> It has over 4,600 retail stores nationwide.<sup>30</sup>

149. Walmart U.S. operates under the "Walmart" and "Walmart Neighborhood Market" brands. Walmart U.S. had net sales of \$462.4 billion for fiscal 2025, representing 69% of Walmart's fiscal 2025 consolidated net sales.<sup>31</sup>

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<sup>26</sup> WK Kellogg Co, *supra* note 4 at 5.

<sup>27</sup> *Id.* at 83.

<sup>28</sup> Walmart Inc., *supra* note 6 at 6.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*



150. Walmart sells brand name merchandise, such as Kellogg's<sup>®</sup>, as well as markets lines of merchandise under its private brands.<sup>32</sup>

151. Walmart markets, promotes, advertises, distributes and/or sells ready-to-eat cereal products, including the Product at issue in this litigation.

152. Plaintiff alleges that Walmart sells the Product in its retail stores nationwide.

153. Defendants' deceptive acts and practices were directed at, and impacted, consumers located in both New York and nationwide.

154. Defendants misleadingly, inaccurately, deceptively and falsely advertise and market the Product to Plaintiff and consumers.

155. Defendants' deceptive practices are likely to mislead— and have misled— reasonable consumers acting reasonably, such as Plaintiff and members of the Class.

156. Defendants' labeling of the Product contains untrue and materially misleading statements concerning the Product. The representations contained on the 16.2 oz Product stated that the Product contains "about 12 servings" of ready-to-eat cereal and that the serving size is 1<sup>1</sup>/<sub>3</sub> cups, which Defendants falsely states is equivalent to 39 grams. *See* Exhibit B. Based on this prominent labeling and advertising, a reasonable consumer purchasing the 16.2 oz Product would reasonably believe that the Product contained 12 servings of ready-to-eat cereal. Despite this prominent labeling and advertising, the Product does not contain the number of servings promised because Defendants incorrectly stated the metric mass equivalent of the 1<sup>1</sup>/<sub>3</sub> cups servings size and used such erroneous metric mass equivalent to determine the number of servings provided by the Product.

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<sup>32</sup> *Id.*

157. Defendants have engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York General Business Law. The labeling and packaging of the Product are directed at consumers and are likely to – and have- materially mislead a reasonable consumer acting reasonably under the circumstances.

158. Defendants’ material misrepresentations were substantially uniform in content, presentation, and impact upon consumers at large. Moreover, all consumers purchasing the Product were, and continue to be, exposed to Defendants’ material misrepresentations.

159. Plaintiff and the Class Members have been injured inasmuch as they reasonably relied upon the labeling, packaging, and advertising and paid a price for the Product based on a specified number of servings, but the Product was unable to provide the number of servings stated on its label. Accordingly, Plaintiff and the Class Members received less than what they bargained and/or paid for and were each injured economically in an amount equal to at least 15.33% multiplied by the purchase price of the Product based on the Plaintiff’s Product Testing.

160. Because Plaintiff purchased the 16.2 oz Product as product advertising itself as containing about 12 servings of ready-to-eat cereal, and it was not such product, Plaintiff was damaged in proportion to the servings of ready-to-eat cereal not received –15.33% fewer servings.

161. Specifically, as established by Plaintiff’s Product Testing, Plaintiff and other consumers of the Product, were cheated out of 15.33% of the servings they paid for based on the advertising and labeling of the Product.

162. Defendants’ advertising, and the Product’s packaging and labeling induced Plaintiff and the Class Members to buy the Product.

163. New York General Business Law §350-e gives the right to any person who has been injured by reason of any violation of GBL §350 to bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or \$500, whichever is greater, or both such actions.

164. Additionally, pursuant to New York General Business Law §350-e the Court has discretion to increase the award of damages to an amount not to exceed three times the actual damages, up to \$10,000, if the Court finds that the defendant willfully or knowingly violated GBL §350 and discretion to award reasonable attorney's fees to a prevailing plaintiff.

165. Despite being notified of the material misrepresentations described in this Class Action Complaint, Defendants made, and continue to make, these untrue, false and materially misleading statements regarding the number of servings provided by the Product and that 1<sup>1</sup>/<sub>3</sub> cups of the Product have a mass of 39 grams.

166. As a result of Defendants' recurring, unlawful deceptive acts and practices, Plaintiff and Class Members are entitled to recover the maximum amount allowed by law on the following elements: monetary, statutory, compensatory, and treble damages, restitution, and disgorgement of all money obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

167. In addition, Plaintiff and Class Members seek equitable and injunctive relief against Defendants on terms that the Court considers reasonable, and reasonable attorneys' fees and costs.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated members of the Class, prays for relief and judgement, including entry of an order, pursuant to each cause of action set forth in this Complaint as follows:

- a. For an order certifying that this action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating Plaintiff's attorneys as Class counsel;
- b. Directing that Defendants bear the costs of any notice sent to the Class;
- c. For actual damages in amounts to be determined by the Court and/or jury;
- d. For statutory damages and/or punitive damages, as provided by the applicable statutes invoked above;
- e. For an award of equitable relief for all causes of action as follows:
  - i. Enjoining Defendants from continuing to engage, use, or employ any deceptive business acts or practices related to the design, testing, distribution, assembly, development, marketing, advertising, or sale of the Product for the purpose of selling the Product in such manner as set forth in detail above, or from making any claims found to violate New York law or the other causes of action as set forth above;
- f. Restoring all monies that may have been acquired by Defendants as a result of such unfair and/or deceptive acts or practices;
- g. For an award of attorney's fees and costs;
- h. For an award of pre- and post-judgment interest on any amounts awarded; and
- i. For any other relief the Court might deem just, appropriate, or proper.

**THIRD CAUSE OF ACTION:  
BREACH OF EXPRESS AND IMPLIED WARRANTY OF MERCHANTABILITY**

168. Plaintiff repeats, re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Class Action Complaint as if fully set forth herein verbatim.

169. To the extent that the statute of limitations vary as between Plaintiff's First and Second Causes of Action on the one hand and Plaintiff's Third Cause of Action on the other hand, Plaintiff pleads the cause of action in the alternative where the limitations periods overlap.

170. Plaintiff and Class Members formed a contract with Defendants at the time Plaintiff and Class Members purchased the Product.

171. The terms of the contract include the promises and affirmations of fact made by Defendants on the Product's packaging and labels as described above.

172. Defendants created express warranties through written descriptions on its Product that the Product contained a specified number of  $1\frac{1}{3}$  cups servings and that the  $1\frac{1}{3}$  cups serving size has a mass of 39 grams.

173. Defendants made these representations to all consumers, which became the benefit of the bargain between Plaintiff, Class Members, and the Defendants and were material to the Plaintiff's and Class Members' decisions to purchase the Product.

174. Defendants breached the express warranties because, despite the above-referenced representations, based on expert testing the metric mass equivalent of a  $1\frac{1}{3}$  cups serving of the Product is not 39g as stated on the Product's NFP but is in fact 45.26 grams as established by the Plaintiff's Product Testing.

175. Additionally, the NFP of the Product states that the contents of the Product provide a specified number of  $1\frac{1}{3}$  cups servings, when in fact the Product will yield 15.33% fewer servings because the Defendants incorrectly calculated the number of servings provided by the Product by using the erroneously stated metric mass equivalent of the  $1\frac{1}{3}$  cups serving size.

176. An implied warranty of merchantability also arose between Plaintiff and the members of the putative Class on the one hand and Defendants on the other hand as each purchase

of the Product was made.

177. Defendants' failure to comply with Federal labeling regulations resulted in Defendants breaching the express warranties it provided on the Product' labeling by: (1) erroneously stating the metric mass equivalent of the stated serving size on the NFP of the Product, and (2) incorrectly stating the number of servings provided by the Product on the NFP because it calculated the number of servings using the erroneously stated metric mass equivalent of the stated serving size (39 grams) instead of the true mass equivalent of  $1\frac{1}{3}$  cups of the Product, which is as established by the Plaintiff's Product Testing is 45.26 grams.

178. Defendant breached the implied warranty of merchantability by selling or offering for sale a misbranded product under New York Law. Misbranded products are not merchantable as a matter of law.

179. There was no mistake, despite being notified of the material misrepresentations described in this Class Action Complaint, Defendants made, and continue to make, these untrue, false and materially misleading statements regarding the number of servings provided by the Product.

180. Defendants knew, or should have known, about the facts constituting the breach of these express and implied warranties.

181. As a direct and proximate result of Defendants' breach of express and implied warranties concerning the number of servings of ready-to-eat cereal contained in the Product as well as the misbranding and illegal sale of the Product, Plaintiff and members of the Class have suffered and will continue to suffer damages.

182. Plaintiff seeks all available remedies, damages, and awards resulting from Defendants' breaches of express warranties.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated members of the Class, prays for relief and judgement, including entry of an order, pursuant to each cause of action set forth in this Complaint as follows:

- a. For an order certifying that this action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating Plaintiff's attorneys as Class counsel;
- b. Directing that Defendants bear the costs of any notice sent to the Class;
- c. For actual damages in amounts to be determined by the Court and/or jury;
- d. For an award of attorney's fees and costs;
- e. For an award of pre- and post-judgment interest on any amounts awarded; and
- f. For any other relief the Court might deem just, appropriate, or proper.

**FOURTH CAUSE OF ACTION:  
UNJUST ENRICHMENT  
(In the Partial Alternative)**

183. Plaintiff repeats, re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Class Action Complaint as if fully set forth herein verbatim.

184. To the extent the statute of limitations vary as between Plaintiff's First and Second and Third Causes of Action on the one hand and Plaintiff's Fourth Cause of Action on the other hand, Plaintiff pleads this Fourth Cause of Action in the alternative where the limitations periods overlap, but as a primary cause of action where varying limitations periods allow this equitable cause of action but the First, Second and/or Third Causes of Action are not available due to shorter limitations.

185. Defendant has engaged in the conduct alleged for more than four years.

186. As a result of Defendants' wrongful and deceptive conduct alleged herein, Defendants knowingly and voluntarily accepted and retained wrongful benefits in the form of money paid by the Plaintiff and members of the Class when they purchased the Product.

187. In so doing, Defendants acted with conscious disregard for the rights of Plaintiff and members of the Class.

188. As a result of Defendants' wrongful conduct as alleged herein, Defendants have been unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the Class.

189. Defendants' unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

190. Under the common law doctrine of unjust enrichment, it is inequitable for Defendants to be permitted to retain the benefits it received, and is still receiving, without justification, from the false and deceptive labeling and marketing of the Product to Plaintiff and members of the Class. A benefit that includes 100% of the purchase price received from the illegal sale of misbranded product in New York.

191. Defendants' retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

192. The financial benefits derived by Defendants rightfully belong to Plaintiff and members of the Class.

193. Defendants should be compelled to disgorge in a common fund for the benefit of Plaintiff and members of the Class all wrongful or inequitable proceeds received by them.



### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated members of the Class, prays for relief and judgement, including entry of an order, pursuant to each cause of action set forth in this Complaint as follows:

- a. For an order certifying that this action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating Plaintiff's attorneys as Class counsel;
- b. Directing that Defendants bear the costs of any notice sent to the Class;
- c. For actual damages in amounts to be determined by the Court and/or jury;
- e. Restoring all monies that may have been acquired by Defendants and in equity and fairness should be returned to Plaintiff and the Class;
- f. For an award of attorney's fees and costs;
- g. For an award of pre- and post-judgment interest on any amounts awarded; and
- h. For any other relief the Court might deem just, appropriate, or proper.

### **DEMAND FOR JURY TRIAL**

194. Plaintiff hereby demands trial by jury on all issues so triable.

Dated: July 17, 2025

Respectfully submitted,

**The Law Offices of Howard W. Rubinstein, P.A.**

By: /s/ Ariana V. Held  
Ariana V. Held, Of Counsel  
(N.Y. Bar No. 6024723)  
305 Broadway, Suite 700  
New York, New York 10007  
Office: (212) 500-3289  
Email: ariana@avheld.com

**Attorneys For Plaintiff**

## CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Thomas Harvey, individually and on behalf of all others  
similarly situated

(b) County of Residence of First Listed Plaintiff Martin County, FL  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ariana V. Held, Of Counsel  
Law Offices of Howard W. Rubinstein, P.A.

## DEFENDANTS

WK Kellogg Co. and Walmart Inc.

County of Residence of First Listed Defendant Calhoun County, MI  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 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 (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		<b>INTELLECTUAL PROPERTY RIGHTS</b>	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<b>LABOR</b>	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input checked="" type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting		<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<b>IMMIGRATION</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 448 Education			
	<b>PRISONER PETITIONS</b>			
	<b>Habeas Corpus:</b>			
	<input type="checkbox"/> 463 Alien Detainee			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<b>Other:</b>			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. 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 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332(d)

Brief description of cause:

Violations of NY GBL Sections 349 and 350 and breaches of warranty

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
50000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/17/2025

SIGNATURE OF ATTORNEY OF RECORD

/s/ Ariana V. Held

## FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, **Ariana V. Held**, counsel for **Thomas Harvey**, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000.00 exclusive of interest and costs,
- ☒ the complaint seeks injunctive relief, or
- ☐ the matter is otherwise ineligible for the following reason:

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks. Add an additional page if needed.

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 3 in Section VIII on the front of this form. Rule 3(a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 3(a) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case involves identical legal issues, or the same parties." Rule 3 further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (b), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NEW YORK EASTERN DISTRICT DIVISION OF BUSINESS RULE 1(d)(3)**

*If you answer "Yes" to any of the questions below, this case will be designated as a Central Islip case and you must select Office Code 2.*

1. Is the action being removed from a state court that is located in Nassau or Suffolk County? ☐ Yes ☒ No
2. Is the action—not involving real property—being brought against United States, its officers or its employees AND the majority of the plaintiffs reside in Nassau or Suffolk County? ☐ Yes ☒ No
3. If you answered "No" to all parts of Questions 1 and 2:
  - a. Did a substantial part of the events or omissions giving rise to claim or claims occur in Nassau or Suffolk County? ☒ Yes ☐ No
  - b. Do the majority of defendants reside in Nassau or Suffolk County? ☐ Yes ☒ No
  - c. Is a substantial amount of any property at issue located in Nassau or Suffolk County? ☐ Yes ☒ No
4. If this is a Fair Debt Collection Practice Act case, was the offending communication received in either Nassau or Suffolk County? ☐ Yes ☒ No

*(Note, a natural person is considered to reside in the county in which that person is domiciled; an entity is considered a resident of the county that is either its principal place of business or headquarters, of if there is no such county in the Eastern District, the county within the District with which it has the most significant contacts).*

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: **Ariana V. Held**

Digitally signed by Ariana V. Held  
Date: 2025.07.17 14:23:01 -05'00'

Signature of Clerk or Deputy Clerk

Civil Action No. 2:25-cv-3984

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

*Signature of Clerk or Deputy Clerk*

Civil Action No. 2:25-cv-3984

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**EXHIBIT A**

**Receipt**







**EXHIBIT C-1**

**Independent Laboratory Testing of**

**Plaintiff's Product**



Testing | Consulting | Training | Research | PROBIOTICS  
2402 Sykes Blvd., Ponca City, OK 74601 580-304-7953 www.log10.com

Research Report, April 14<sup>th</sup>, 2025

CS1272.B Serving Size and Net Weight Claims Evaluation

Claire Roche<sup>1</sup>, Santiago Molina<sup>1</sup>

Log10<sup>®</sup>, LLC, Ponca City, OK<sup>1</sup>; Client: Law Office of L. DeWayne Layfield PLLC

#### Executive Summary:

On March 19<sup>th</sup>, 2025, one package of the commercial product Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 27 2024 KMB 105 17:19), hereafter referred as product 1, was received at the Log10 Laboratory. A second package (Best If Used By DEC 15 2025 KMB 107 20:12) of the same product, hereafter referred to as product 2, was purchased from a local supermarket on April 10<sup>th</sup>, 2025. Both products were analyzed separately for total mass and net mass using a certified balance. Product 1 was analyzed for serving size using a 2.5 L measurement vessel. A composite sample of products 1 and 2 was analyzed for serving size using a 3.4 L measurement vessel to comply with FDA measurement volume recommendations. All analyses were performed in a controlled laboratory environment (temperature  $19.46 \pm 0.4$  °C, humidity  $43.75 \pm 5.39\%$ ). Product 1 had a total mass of  $563.57 \pm 0.05$  g and net mass of  $459.84 \pm 0.06$  g. Product 2 had a total mass of  $566.35 \pm 0.05$  g and net mass of  $461.15 \pm 0.05$  g. Product 1 had  $10.16 \pm 0.05$  servings (1½ cup), with a serving size mass of  $45.26 \pm 0.24$  g. The composite sample had  $10.62 \pm 0.06$  servings (1½ cup), with a serving size mass of  $43.32 \pm 0.24$  g. All findings were compared to the product's label claims (Net Mass: 459 g; Servings per Container: 12; Serving Size: 39 g). The results demonstrated overages in net weight and serving size mass, while the number of servings was lower than the label claim.

#### Objective:

To evaluate and report the total mass, net mass, and serving size of the commercial product Family Size Kellogg's Froot Loops with Marshmallows and establish any differences from the label claim values.

#### Procedures:

**Laboratory Environment and Equipment Verification:** All the analyses were performed in a controlled laboratory environment at an ambient temperature of  $19.46 \pm 0.4$  °C and relative humidity of  $43.75 \pm 5.39\%$ . Mass measurements were conducted using a certified balance Sartorius Quintix 5102-1S (Log10 Equipment ID: BLN001, Cross Calibration Certificate # OKC-88107-550731-1, Resolution: 0.01 g). Before use, the balance was verified using a set of standard weights Troemner 10 mg-100 g (Log10 Equipment ID: L.WGHT03, Troemner, LLC Calibration Certificate#: 01111049-1) as established in the Log10

Laboratory Work Instruction WKI-64-643-08 (4). Volume measurements were conducted using a 14-inch tall by 4-inch diameter glass vase (2.5 L measurement vessel) (4pcs Glass Cylinder Vase, Glass Vase Depot, SKU: GCY010/14-4p) and a 20-inch tall by 4-inch diameter glass vase (3.4 L measurement vessel) (1pcs Glass Cylinder Vase, Glass Vase Depot, SKU: VAR-GCY010/20-1P-). The 20-inch-tall measurement vessel was cut approximately 2-inches from the top to contain a volume of approximately 3.4 L. The actual volume of the measurement vessel was determined using deionized (DI) water. The water was left to temper in the room in which the measurements were performed for 20 minutes. The empty vessels were used to tare balance BLN001, then the vessels were filled completely with the tempered DI water and the mass readings were recorded. This process was repeated a total of 20 times. The temperature of the DI water was taken on the 1<sup>st</sup>, 6<sup>th</sup>, 11<sup>th</sup>, and 16<sup>th</sup> measurements. The average mass readings and the water density corresponding to the average temperature of the DI water were used to calculate the volume of the vessels (3). The final determined volumes were  $2500.24 \pm 3.41$  mL for the 14-inch vessel and  $3420.28 \pm 2.56$  mL for the shortened 20-inch vessel.

**Sample Analysis:** Initially, only product 1 was planned for analysis. However, it was found that product 1 alone did not provide a sufficient amount of cereal to meet FDA requirements for serving size determination, which call for a measuring vessel volume at least 10 times that of the serving size (2). Since the serving size volume was  $1\frac{1}{2}$  cups or 320 mL, the vessel needed to be at least 3.2 L. Therefore, product 2 was purchased and used to create a composite sample with product 1 for serving size analysis. Prior to testing, both products were visually inspected for packaging integrity. Label information, including expiration date, barcode, and net weight, was recorded, and photographs of all sides of the boxes were taken for documentation purposes.

The total mass and net mass analyses for products 1 and 2 were performed separately. The serving size measurements of product 1 were carried out using the 2.5 L measurement vessel. Products 1 and 2 were then composited and the serving size measurements of the composite product were analyzed using the 3.4 L measurement vessel.

**Serving Size Measurement:** After performing the verification of balance BLN001 (4), each product was weighed in its original package a total of 20 times by the same analyst. The total product mass was reported as the average weight plus minus the standard deviation (2). Then, the packages of each product were opened carefully to avoid any detachment of the packaging material. All the contents were transferred to a 123 oz Whirl-Pak bag. The corresponding empty measurement vessels (2.5 L vessel for product 1 and 3.4 L for the composite product) were used to tare balance BLN001. The cereal was dumped from the bag directly into the corresponding vessel. Shaking or sudden movements of the measurement vessel were avoided to prevent product compaction. Following the FDA's Guidelines for Determining Metric Equivalents of Household Measures (2), when the measurement vessel was completely full, the vessel was shaken gently three times sideways to leave enough product above the fill line of the vessel to compensate for the free air space between the cereal particles inside the vessel. The filled vessel was weighed on the balance and the product inside the vessel was returned to the Whirl-Pak bag. This process was repeated a total of 20 times by the same analyst (2). The balance was tared only once at the beginning of the process. The density (g/mL) of the product was calculated by dividing the mass of cereal contained



## CS1272 Serving Size and Net Weight Claims Evaluation

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in the measurement vessel by the volume of the previously determined vessel. The total volume (mL) of the product was determined by dividing the net mass of the product by the density. The number of servings per container was calculated by dividing the total volume of the product by the serving size volume (1½ cup). The equivalence of 1 cup = 240 mL indicated on the Code of Federal Regulations-Title 21 was used for the calculation (i.e. servings per container =  $\frac{\text{total volume (mL)}}{(1\frac{1}{2}) \times 240 \text{ (mL)}}$ ) (1). The mass of the serving size was calculated by multiplying the serving size volume (1½ cup = 320 mL) by the density of the product.

**Net Mass Measurement:** The empty packages of the two products were weighed separately a total of 20 times by the same analyst (2). The net mass was calculated by subtracting the package mass of each cereal box from the corresponding total product mass.

**Statistical Analysis:** Descriptive statistics (mean, median, range, standard deviation) of the analysis results were calculated using Microsoft Excel from Microsoft Office 365 Apps for Business (Version 2503, Build 18623.20156).

**Results:**

According to the product labels (Figures 1 and 2), both product 1 and product 2 of Family Size Kellogg's Froot Loops with Marshmallows claimed a net weight of 459 g, 12 servings per container, and a serving size (1½ cup) of 39 g.



Figure 1: Front view (A), nutrition facts (B), and label claims (C) of the product 1 Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 27 2024 KMB 105 17:19).

## CS1272 Serving Size and Net Weight Claims Evaluation

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Figure 2: Front view (A), nutrition facts (B), and label claims (C) of the product 2 Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By DEC 15 2025 KMB 107 20:12).

The results of the analyses performed in this study for product 1 (Table 1) indicated a total mass of  $563.57 \pm 0.05$  g (1.24 lbs.), net mass of  $459.84 \pm 0.06$  g (1.01 lbs.). The net mass determined in this study exceeded the claimed net mass (459 g, 1.01 lbs.) by  $0.84 \pm 0.06$  g (0.002 lb), equivalent to a 0.18% difference from the claimed net mass. The results for product 2 (Table 1) indicated a total mass of  $566.35 \pm 0.05$  g (1.25 lbs.) and net mass of  $461.15 \pm 0.05$  g (1.02 lbs.). The net mass determined in this study exceeded the claimed net mass (459 g, 1.01 lbs.) by  $2.15 \pm 0.05$  g (0.005 lb), equivalent to a 0.47% difference from the claimed net mass.

Table 1: Descriptive statistics for the total mass and net mass, servings per container and serving size mass of product 1 Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 27 2024 KMB 105 17:19) and product 2 Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By DEC 15 2025 KMB 107 20:12).

Descriptive Statistics (n=20)	Total Mass (g)- Product 1	Net Mass (g)- Product 1	Total Mass (g)- Product 2	Net Mass (g)- Product 2
Mean	563.57	459.84	566.35	461.15
Median	563.60	459.80	566.35	461.15
Standard Deviation	0.05	0.06	0.05	0.05
Range	0.10	0.20	0.10	0.10

## CS1272 Serving Size and Net Weight Claims Evaluation

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The results of the analyses performed in this study for product 1 showed a total of  $10.16 \pm 0.05$  1½-cup servings per container, and a serving size (1½) mass of  $45.26 \pm 0.24$  g. The servings per container were less than the label claim value by  $1.84 \pm 0.05$  1½-cups or 15.33% less. The serving size mass estimated for product 1 was  $6.26 \pm 0.24$  g more than the label claim value (16.05% more). The composite product showed a total of  $10.62 \pm 0.06$  1½-cup servings per container, and a serving size (1½ cup) mass of  $43.32 \pm 0.24$  g. The servings per container were less than the label claim value by  $1.38 \pm 0.06$  1½-cups or 11.54% less. The serving size mass estimated for the composite product was  $4.32 \pm 0.24$  g more than the label claim value (11.08% more).

Table 2: Descriptive statistics for servings per container and serving size mass of product 1 Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 27 2024 KMB 105 17:19) and the composite sample.

Descriptive Statistics (n=20)	Servings per Container (1½ cups) using 2.5 L Vessel- Product 1	Serving Size (1½ cup) Mass (g) using 2.5 L Vessel- Product 1	Servings per Container (1½ cups) using 3.4 L Vessel-Composite	Serving Size (1½ cup) Mass (g) using 3.4 L Vessel- Composite
Mean	10.16	45.26	10.62	43.32
Median	10.17	45.24	10.62	43.29
Standard Deviation	0.05	0.24	0.06	0.24
Range	0.19	0.84	0.21	0.87

## Conclusions:

This study evaluated the total mass, net mass, and serving size of Family Size Kellogg's Froot Loops with Marshmallows. Both product 1 and product 2 slightly exceeded the labeled net mass, with variations of 0.18% and 0.47%, respectively. The serving size mass determined for product 1 and the composite sample was higher than the label claimed value of 39 g, with deviations ranging from 11.08% to 16.05%. In contrast, the number of servings per container was consistently lower than the 12 servings claimed, with reductions of 15.33% for product 1 and 11.54% for composite sample. These discrepancies suggest that while the actual product weight was generally consistent with the label claims, the serving size estimation differed with the mass and volume of a 1½ cup portion of cereal obtained in this study.

## References:

1. FDA. 2019. Code of Federal Regulations Title 21, Chapter I, Subchapter B, Part 101, Subpart - General Provisions. 21CFR101. Electronic Code of Federal Regulations, USA.
2. FDA. 1993. Guidance for Industry: Guidelines for Determining Metric Equivalents of Household Measures.
3. Fierro, P., and E. K. Nyler. 2007. The Water Encyclopedia: Hydrologic Data and Internet Resources. Third Edit. CRC Press.
4. Log10. 2019. Operation & Accuracy Verification of Scales & Balances. WKI-64-643-08 Rev #: 3.
5. Yang, S., L. Gemming, and A. Rangan. 2018. Large variations in declared serving sizes of packaged foods in Australia: A need for serving size standardisation? *Nutrients* 10:1–15.

**EXHIBIT C-2**

**Prior Independent Laboratory Testing**





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Research Report, January 15<sup>th</sup>, 2024

CS1233.B Serving Size and Net Weight Claims Evaluation-Kellogg's Cereal

Andrew Thomas<sup>1</sup>, Santiago Molina<sup>1</sup>Log10®, LLC, Ponca City, OK<sup>1</sup>; Client: Law Office of L. DeWayne Layfield PLLC**Executive Summary:**

On December 19<sup>th</sup>, 2023, two packages of the commercial product Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 19 2024 KMC 107 04:22) were received at the Log10 Laboratory. On January 15<sup>th</sup>, 2024, the product was analyzed for total mass, net mass, and serving size. All analyses were performed in a controlled laboratory environment (temperature 20.0°C, humidity 26.5%). The mass measurements (total mass and package mass) were conducted using a certified balance. Measurements for the serving size analysis were conducted using a 20-inch glass vase and a certified balance. The product had a total mass of  $565.39 \pm 0.02$  g and net mass of  $463.14 \pm 0.02$  g. The number of  $1 \frac{1}{3}$  cup servings per container was  $10.76 \pm 0.13$ , and the mass of the serving size of  $1 \frac{1}{3}$  cup was  $43.05 \pm 0.51$  g. The results obtained in this study were different from the label claims of the product (net mass: 459 g, servings per container: 12, serving size mass: 39 g).

**Objective:**

To evaluate and report the total mass, net mass, and serving size of the commercial product Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 19 2024 KMC 107 04:22) and establish any differences from the label claim values.

**Procedures:**

**Laboratory Environment and Equipment Verification:** All the analyses for this study were performed in a controlled laboratory environment at an ambient temperature of 20.0°C and humidity of 26.5% (2). The mass measurements were conducted using a certified balance Sartorius Quintix 5102-1S (Log10 Equipment ID: BLN001, Cross Calibration Certificate Gage ID# 0032250083, Resolution: 0.01 g). Before use, the balance was verified using a set of standard weights Troemner 10 mg-100 g (Log10 Equipment ID: L.WGHT03, Troemner, LLC Calibration Certificate#: 01111049-1) as established in the Log10 Laboratory Work Instruction WKI-64-643-08 (4). The volume measurements were conducted using a 20-inch tall by 4-inch diameter glass vase (measurement vessel) (1pcs Glass Cylinder Vase, Glass Vase Depot, SKU: VAR-GCY010/20-1P-). The volume of the measurement vessel was determined using deionized (DI) water. The water was left to temper in the room in which the measurements were performed for 20 minutes. The empty vessel was used to tare balance BLN001, then the vessel was filled completely with

the tempered DI water and the mass reading was recorded. This process was repeated a total of 20 times. The temperature of the DI water was taken at the 1<sup>st</sup>, 6<sup>th</sup>, 11<sup>th</sup>, and 16<sup>th</sup> measurements. The average mass readings and the water density of 0.99843 g/mL, corresponding to the average temperature of the DI water (20.10 °C), were used to calculate the volume of the vessel (3). The determined volume of the measurement vessel was 3669.69 ± 1.39 mL.

**Total Product Mass Measurement:** In order to have enough product to comply with the FDA Guidelines for Determining Metric Equivalents of Household Measures (the measuring vessel should be at least 10 times bigger than the serving size of the label claim) (2), two boxes of Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 19 2024 KMC 107 04:22) were used for total product mass measurement, serving size measurement and net mass measurement. Upon arrival at the Log10 Laboratory, the two packages of Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 19 2024 KMC 107 04:22) were inspected for package integrity. The package information (e.g., product name, best used by date, barcode, net weight) was recorded in the research file assigned to the project CS1233. Pictures of all the sides of the packages were taken (Figure 1). After performing the verification of balance BLN001 (4), the two boxes of cereal were weighed together in its original package a total of 20 times by the same analyst. The total product mass was reported as the average weight of the two boxes (2).

**Serving Size Measurement:** After performing the total mass measurement analysis, the two boxes of cereal were opened carefully to avoid any detachment of the packaging material. All the contents of the two packages (cereal) were transferred to a 123 oz whirl-pak bag. The empty measurement vessel was used to tare balance BLN001. The cereal was dumped from the bag directly into the vessel and shaking or sudden movements of the measurement vessel were avoided to prevent product compaction. Following the FDA's Guidelines for Determining Metric Equivalents of Household Measures (2), when the measurement vessel was completely full, the vessel was shaken gently three times sideways to leave enough product above the fill line of the vessel to compensate for the free air space between the cereal particles inside the vessel. The filled vessel was weighed on the balance and the product inside the vessel was returned to the whirl-pak bag. This process was repeated a total of 20 times by the same analyst (2). The balance was tared only once at the beginning of the process. The density (g/mL) of the product was calculated by dividing the mass of cereal contained in the measurement vessel by the volume of the vessel previously determined (3669.69 mL). The total volume (mL) of the product was determined by dividing the net mass of the product by the density. The number of servings per container was calculated by dividing the total volume of the product by the serving size volume ( $1\frac{1}{3}$  cup). The equivalence of 1 cup = 240 mL indicated on the Code of Federal Regulations-Title 21 was used for the calculation (i.e. servings per container =  $\frac{\text{total volume (mL)}}{(1\frac{1}{3}) \times 240 \text{ (mL)}}$ ) (1). The mass of the serving size was calculated by multiplying the serving size volume ( $1\frac{1}{3}$  cup = 320 mL) by the density of the product.

**Net Mass Measurement:** The empty packages of the two products were weighed together a total of 20 times by the same analyst (2). The net mass was calculated by subtracting the average package mass of two cereal boxes from the total product mass.

**Statistical Analysis:** Descriptive statistics (mean, median, range, standard deviation) of the analysis results were calculated using Microsoft Excel from Microsoft Office 365 Apps for Business (Version 2306, Build 16529.20064) (5).

### Results:

The labels of the product Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 19 2024 KMC 107 04:22) claimed a net weight of 459 g, 12 servings per container, and serving size (1  $\frac{1}{3}$  cup) weight of 39 g (Figure 1).



**Figure 1:** Front view (A), nutrition facts (B), and label claims (C) of the product Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 19 2024 KMC 107 04:22).

The results of the analyses performed in this study (Table 1) indicated a total mass of  $565.39 \pm 0.02$  g (1.25 lbs), net mass of  $463.14 \pm 0.02$  g (1.02 lbs), a total of  $10.76 \pm 0.13$  1  $\frac{1}{3}$  cup servings per container, and a serving size (1  $\frac{1}{3}$  cup) mass of  $43.05 \pm 0.51$  g. The net mass determined in this study exceeded the claimed net mass (459 g, 1.01 lbs) by  $4.14 \pm 0.02$  g (0.009 lb), equivalent to a 0.90% difference from the claimed net mass. The servings per container were less than the label claim value by

$1.24 \pm 0.13$   $1 \frac{1}{3}$  cups or 10.34% less. The serving size mass estimated in this study was  $4.05 \pm 0.51$  g more than the label claim value (10.39% more).

**Table 1:** Descriptive statistics for the total mass, net mass, servings per container and serving size mass of the product Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 19 2024 KMC 107 04:22). A total of 20 repetitions (n=20) of the measurements were performed.

Descriptive Statistics (n=20)	Total Mass (g)	Net Mass (g)	Servings per Container ( $1 \frac{1}{3}$ cups)	Serving Size ( $1 \frac{1}{3}$ cup) Mass (g)
Mean	565.39	463.14	10.76	43.05
Median	565.40	463.15	10.82	42.82
Standard Deviation	0.02	0.02	0.13	0.51
Range	0.05	0.05	0.39	1.57

### Conclusions:

The total mass ( $565.39 \pm 0.02$  g), net mass ( $463.14 \pm 0.02$  g), servings per container ( $10.76 \pm 0.13$   $1 \frac{1}{3}$  cups) and serving size mass ( $43.05 \pm 0.51$  g) of the product Family Size Kellogg's Froot Loops with Marshmallows (Best If Used By OCT 19 2024 KMC 107 04:22) were determined. The net mass and the serving size of the product obtained in this study exceeded the claimed values of 459 g and 39 g, respectively. Conversely, the number of servings per container were less than the claimed value of 12 ( $1 \frac{1}{3}$  cup) servings.

### References:

1. FDA. 2019. Code of Federal Regulations Title 21, Chapter I, Subchapter B, Part 101, Subpart - General Provisions. 21CFR101. Electronic Code of Federal Regulations, USA.
2. FDA. 1993. Guidance for Industry: Guidelines for Determining Metric Equivalents of Household Measures.
3. Fierro, P., and E. K. Nyler. 2007. The Water Encyclopedia: Hydrologic Data and Internet Resources. Third Edit. CRC Press.
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5. Yang, S., L. Gemming, and A. Rangan. 2018. Large variations in declared serving sizes of packaged foods in Australia: A need for serving size standardisation? *Nutrients* 10:1–15.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kellogg Class Action Lawsuit Claims Froot Loops Serving Size Falsely Advertised](#)

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