

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into as of the date of the last signature below (the “Effective Date”) by and between Precila Balabbo (“Balabbo”), on the one hand, and Kellanova, formerly known as Kellogg Company (“Kellanova”), on the other hand, with Balabbo and Kellanova collectively referred to as the “Parties.”

RECITALS

1.1 General Allegations. Balabbo is alleged to be an individual who resides in the State of California and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Balabbo alleges that Kellanova is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”). Balabbo alleges that Kellanova exposed individuals in California to lead from its sales of *RX Bar*® Protein Granola, UPC # 193908006400 without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.2 Product Description. The products covered by this Settlement Agreement are *RX Bar*® Protein Granola, UPC # 193908006400 (the “Products”) that have been manufactured, imported, distributed, offered for sale, and/or sold in California by Kellanova or its affiliates.

1.3 Notice of Violation. On August 29, 2023, Balabbo served CVS Pharmacy, Inc., CVS Health Corporation (collectively, “CVS”), Kellanova, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). For purposes of this Settlement Agreement only, Kellanova stipulates that the Notice provided alleged that Kellanova was in violation of California Health and Safety Code section 25249.6, for failing to warn California consumers and customers that use of the Products will

expose them to lead. No public enforcement entity has diligently prosecuted the allegations as set forth in the Notice.

1.4 No Admission. This Settlement Agreement resolves claims that are denied and disputed. Kellanova enters into this Settlement Agreement merely to avoid the cost and uncertainty inherent in litigation. Kellanova expressly denies each and every material factual and legal allegation contained in the Notice and maintains that all products that it has manufactured, imported, sold, offered for sale, or distributed in the State of California, including, but not limited to, the Products, have been and are in compliance with all applicable laws, regulations, standards, guidance, and requirements, including, but not limited to, Proposition 65, and are safe for human consumption. The existence of this Settlement Agreement, its contents, and Kellanova's compliance with it shall not be construed as an admission by Kellanova of any fact, finding, issue of law, or violation of law, nor shall this Settlement Agreement be admissible in any proceeding for any purpose other than a proceeding between the Parties and solely for the purpose of enforcing the terms of this Settlement Agreement.

NOW, THEREFORE, in consideration of the terms, covenants, representations, and warranties in this Settlement Agreement, the adequacy of which is acknowledged, the Parties agree as follows:

AGREEMENT

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

2.1 Reformulation and/or Warnings. In consideration for this Settlement Agreement, commencing within sixty (60) days after the Effective Date, and continuing thereafter, Kellanova agrees that Products that it directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) "Reformulated Products," pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to § 2.3, below. For purposes of this Settlement Agreement, a "Reformulated Product" is a product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in § 2.3 shall not apply to any Reformulated Product.

Notwithstanding the foregoing, all Products manufactured prior to the Effective Date shall be deemed a “Reformulated Product” and sold as-packaged as of the Effective Date.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products that expose a person to an exposure level of less than 0.5 micrograms of lead per serving size. For the purpose of this Settlement Agreement, exposure level amount shall be based on the micrograms of lead, if any, per gram of Product, multiplied by grams of Product per serving size of the Product (using the largest serving size appearing on the Product label). If the label contains no recommended daily servings, then the number of recommended daily servings shall be one. Kellanova shall be entitled to rely on Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) and other validated methodologies.

2.3 Clear and Reasonable Warning.

2.3.1. Commencing within sixty (60) days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this § 2.3 must be provided for all Products that Kellanova manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Kellanova to provide an exposure warning for Products that entered the stream of commerce within sixty (60) days after the Effective Date. The warning shall consist of the following as applicable:

(1) **CA WARNING:** Consuming this product can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

(2) **CA WARNING:** Risk of cancer and reproductive harm from exposure to lead. See www.P65Warnings.ca.gov/food.

Alternatively, Kellanova may use any form of “safe harbor” warning set forth in Proposition 65 regulations applicable to the Products and the exposures that are adopted at the time it places the Products in the stream of commerce.

2.3.2. A warning provided pursuant to § 2.3.1 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign, or electronic device or automatic

process, provided that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings. Where the warning is provided on the food product label, it must be set off from other surrounding information, and Kellanova shall enclose the warning in a black box and comply with the content requirements specified in California Code of Regulations, title 27, section 25607.2. If “consumer information,” as that term is defined in California Code of Regulations, title 27, section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Kellanova shall provide the warning in the foreign language in accordance with applicable warning regulations adopted by the Office of Environmental Health Hazard Assessment (“OEHHA”).

In addition to affixing the warning to the Product’s packaging or labeling, the warning shall be posted on websites where Kellanova offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the warning, or a clearly marked hyperlink using the word “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Kellanova shall (a) post the warning on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the warning on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with California Code of Regulations, title 27, section 25600.2.

2.3.3. The Parties agree that Kellanova shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning requirements adopted by OEHHA at the time Kellanova places the Product in the stream of commerce.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7, SUBDIVISION (b) AND REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, Kellanova shall pay \$2,000.00 as a civil penalty in accordance with this Section 3 and \$21,000 as a reimbursement of fees and costs.

3.1 Civil Penalty. The Civil Penalty payment shall be allocated in accordance with California Health and Safety Code section 25249.12, subdivisions (c)(1) and (d), with seventy-five percent (75%) of the Penalty remitted to OEHHA and the remaining twenty-five percent (25%) of the Penalty remitted to Balabbo.

3.2 Reimbursement of Fees and Costs. The Parties acknowledge that Balabbo and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Balabbo and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure section 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Kellanova shall reimburse Balabbo's counsel for \$21,000 in fees and costs incurred as a result of investigating and bringing this matter to the attention of Kellanova, and negotiating a settlement in the public interest.

3.3 Payment of Penalties and Fees and Costs

(a) Payments. Within ten (10) days of the Effective Date, Balabbo's counsel will provide wire instructions and be responsible for allocating the payments required herein. Within ten (10) days of receiving the wire instructions from Balabbo's counsel, Kellanova will complete two separate wire payments to (a) "OEHHA" in the amount of \$1,500.00 and (b) Brodsky & Smith in the amount of \$21,500. As for (b), \$500 of this amount shall be allotted to Precila Balabbo as a civil penalty and the remaining \$21,000 allotted to Brodsky & Smith for reimbursement of fees and costs.

(b) Tax Documentation. Kellanova agrees to provide a completed IRS 1099 form for its payments to, and Balabbo agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

- (i) “Precila Balabbo” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;
- (ii) “Brodsky Smith” (EIN: 23-2971061) at the address provided in § 3.2(a)(i); and
- (iii) “Office of Environmental Health Hazard Assessment” at 1001 I Street, Sacramento, CA 95814.

5. RELEASE OF ALL CLAIMS

5.1 Release of Kellanova and Downstream Customers and Entities. This Settlement Agreement is a full, final, and binding resolution between Balabbo, acting on her own behalf, and Kellanova of any violation of Proposition 65 that was or could have been asserted by Balabbo or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to lead from use of the Products, and Releasers hereby release all claims relating to the Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “Claims”), against Kellanova and Kellanova’s parent companies, subsidiaries, affiliated entities, doing-business-as entities, predecessor and successor entities, and each of their owners, shareholders, members, marketplaces, directors, officers, agents, employees, attorneys, and assignees; as well as each upstream and downstream entity in the distribution chain for the Products, including, but not limited to, manufacturers, suppliers, packers, downstream distributors, wholesalers, customers, retailers such as CVS, and any of its/their respective subsidiaries, affiliates, parents, franchisees, cooperative members, and licensees (collectively, the “Releasees”), from all claims for

violations of Proposition 65 based on exposure to lead from use of all Products through sixty (60) days after the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Balabbo, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation all actions and causes of action in law and in equity, and all obligations, expenses (including without limitation all attorneys' fees, expert fees, investigation fees, and costs), damages, losses, liabilities, and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to lead from use of the Products.

5.2 Kellanova's Release of Balabbo. Kellanova, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Balabbo, her attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Balabbo and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to exposure to lead from the Products.

5.3 California Civil Code, § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Balabbo on behalf of herself only, on the one hand, and Kellanova, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through sixty (60) days after the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Balabbo and Kellanova each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Kellanova with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

5.5. Public Benefit. It is Kellanova's understanding that the commitments it has agreed to herein, and actions to be taken by Kellanova under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in California Code of Civil Procedure section 1021.5 and California Code of Regulations, title 11, section 3201. As such, it is the intent of Kellanova that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Kellanova's failure to provide a warning concerning exposure to chemicals subject to this Settlement Agreement prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Kellanova is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to, the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. The rights to enforce the terms of this Settlement Agreement are exclusively conferred on the Parties hereto. In the event that Proposition 65 is repealed or its

regulations applicable to the Products are repealed, or are otherwise rendered inapplicable or invalid, including but not limited to by reason of law generally, due to federal preemption, or the First Amendment commercial speech rights of the U.S. Constitution, as determined by a court of competent jurisdiction of an agency of the federal government, then Kellanova shall provide written notice to Balabbo of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) overnight or two-day courier on any Party by the other Party to the following addresses:

For Kellanova:

Emily N. Dillingham, Esq.
Kellanova
412 N. Wells Street
Chicago, IL 60654

With a copy to:

Bao M. Vu, Esq.
Stoel Rives LLP
One Montgomery Street
San Francisco, CA 94104

For Balabbo:

Evan J. Smith, Esq.
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or PDF signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7, SUBDIVISION (f)

Balabbo agrees to comply with the reporting requirements referenced in Health and Safety Code section 25249.7, subdivision (f).

11. MODIFICATION

This Settlement Agreement shall be modified by written agreement of the Parties upon a showing of good cause, so long as such modification is sent to the Office of the California Attorney General in advance and the Attorney General has a reasonable opportunity to review, comment thereon, and object. Should there be objection by any Party or the Attorney General to a modification, the dispute shall be submitted to a California court with competent jurisdiction over the Parties. A showing of technical infeasibility or commercial unreasonableness in meeting the requirements of §§ 2.1 and 2.2 with respect to the Products shall be deemed to constitute good cause for a modification.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained in this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: 2/13/2025

By: _____
Precila Balabbo

Signed by:
Emily Newhouse Dillingham
By: _____
09C8EF2B732E494
Kellanova

13. AUTHORIZATION


The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained in this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 2/17/25

Date: _____

By: 
Precila Balabbo

By: _____
Kellanova