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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

LATOSHA JEFFERSON,

Plaintiffs,

vs.

KELLOGG USA, INC., a Michigan Corporation; KEEBLER, a Michigan Corporation; JIM HESS, an individual; TIM RODRIQUEZ, an individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 3:08-cv-04132-SI

**STIPULATION AND [PROPOSED]
ORDER REGARDING DISMISSAL AND
SUBSTITUTION OF NAMED
DEFENDANTS**

1 **RECITALS**

2 WHEREAS Plaintiff Latosha Jefferson filed a First Amended Complaint ("FAC") on
3 August 1, 2008 in Alameda County Superior Court against Defendants Kellogg USA, Inc., a
4 Michigan corporation ("Kellogg USA"), Keebler, a Michigan corporation ("Keebler"), Jim Hess,
5 an individual ("Hess"), and Tim Rodriquez, an individual ("Rodriquez") (collectively the "Named
6 Defendants");

7 WHEREAS only Defendants Kellogg USA and Rodriquez have been served in this action,
8 which they removed to this Court on August 29, 2008 (Doc. #1);

9 WHEREAS Defendants Kellogg USA and Rodriquez filed a Motion to Dismiss Plaintiff's
10 Sixth, Seventh, and Eighth Causes of Action in the FAC pursuant to Fed. Rules Civ. P. 12(b)(6)
11 and to Strike Plaintiff's Punitive Damages Claims pursuant to Fed. Rules Civ. P. 12(f) (the
12 "Pending Motion") on September 9, 2008 (Doc. #8), which is set for hearing on November 14,
13 2008; and

14 WHEREAS all of the Named Defendants have been misjoined as parties in this action and
15 the parties are stipulating herein to the dismissal of the Named Defendants without prejudice and
16 to the substitution of Kellogg Sales Company, a Delaware corporation with its principal place of
17 business in Michigan ("KSC"), as the sole Defendant in this action which, without admitting any
18 liability to Plaintiff or limiting its defenses thereto in any way, KSC does not dispute was
19 Plaintiff's employer at all times relevant to this action and, therefore, would be properly joined as a
20 party to this action;

21
22 **STIPULATION**

23 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the
24 parties hereto through their respective undersigned counsel that:

- 25 1. All references and allegations in the FAC identifying or referring to Defendant
26 Kellogg USA shall be amended to read, mean, and refer to "Kellogg Sales
27 Company, A Delaware corporation with its principal place of business in
28 Michigan". Upon entry of the Court's Order approving this Stipulation, counsel for

1 Kellogg USA will be deemed to have accepted service of the FAC as so amended
2 on behalf of Defendant KSC, the removal of this action to this Court will be
3 deemed to have been effectuated by Defendant KSC, and the pending Motion will
4 be deemed to have been filed and brought solely by and on behalf of Defendant
5 KSC;

6 2. Defendants Kellogg USA and Keebler shall be dismissed without prejudice, and
7 the parties shall each bear their own respective attorneys fees and costs associated
8 with such dismissal;

9 3. Defendants Rodriquez and Hess shall be dismissed without prejudice and the
10 parties shall each bear their own respective costs associated with such dismissal.
11 Defendant KSC shall make them available for depositions and trial to the extent
12 they are employed by Defendant KSC, including accepting service of deposition
13 notices on their behalf and refraining from objecting to such notices on the basis
14 that they are not parties to this action. All other objections by Defendant KSC,
15 however, are expressly and fully reserved;

16 4. The grounds for removing this action to this Court have not been contested by
17 Plaintiff and thus, Plaintiff waives any objections or challenges to the Court's
18 jurisdiction to hear and decide this action, but in doing so Plaintiff does not waive
19 any related argument or opposition which might be relevant to the grounds for the
20 Pending Motion; and

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5. The Pending Motion will remain on calendar for hearing on November 14, 2008, and be deemed to be filed and brought solely by and on behalf of Defendant KSC against the FAC as amended by this Stipulation and Order.

DATED: October 22, 2008

COOPER & MORA

By: /s/ Beth W. Mora, Esq.
Beth W. Mora, Esq.
Kay E. Tuazon, Esq.

Attorneys for Plaintiff LATOSHA JEFFERSON

DATED: October 22, 2008

MCGUIREWOODS LLP

By: /s/ Matthew C. Kane, Esq.
Matthew C. Kane, Esq.
Curtis L. Mack, Esq.
Halima Horton, Esq.
Sara E. Willey, Esq.

Attorneys for Defendants
KELLOGG USA, INC. and TIM RODRIQUEZ
and proposed substituted Defendant
KELLOGG SALES COMPANY

[PROPOSED] ORDER

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3 Having reviewed and considered the foregoing Stipulation of the parties, and good cause
4 appearing for the same, IT IS HEREBY ORDERED as follows:
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- 6 1. All references and allegations in the FAC (as defined in the Stipulation) identifying
7 or referring to Defendant Kellogg USA (as defined in the Stipulation) shall be and
8 hereby are amended to read, mean, and refer to "Kellogg Sales Company, A
9 Delaware corporation with its principal place of business in Michigan". Upon the
10 entry of this Order, counsel for Kellogg USA shall be and hereby is deemed to have
11 accepted service of the FAC, as so amended, on behalf of Defendant KSC (as
12 defined in the Stipulation), the removal of this action to this Court will be deemed
13 to have been effectuated by Defendant KSC, and the Pending Motion (as defined in
14 the Stipulation) will be deemed to have been filed and brought solely by and on
15 behalf of Defendant KSC;
16
- 17 2. Defendants Kellogg USA and Keebler (as defined in the Stipulation) shall be and
18 hereby are dismissed without prejudice, and the parties shall each bear their own
19 respective attorneys fees and costs associated with such dismissal;
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- 21 3. Defendants Rodriquez and Hess (as defined in the Stipulation) shall be and hereby
22 are dismissed without prejudice and the parties shall each bear their own respective
23 fees and costs associated with such dismissal. Defendant KSC shall make them
24 available for depositions and trial to the extent they are employed by Defendant
25 KSC, including accepting service of deposition notices on their behalf and
26 refraining from objecting to such notices on the basis that they are not parties to
27 this action. All other objections by Defendant KSC, however, shall be and hereby
28 are expressly and fully reserved;

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4. The grounds for removing this action to this Court are correct, Plaintiff has waived any objections or challenges to the Court's jurisdiction to hear and decide this action, and the Court has jurisdiction to hear and decide this action, but Plaintiff has not waived any related argument or opposition which might be relevant to the grounds for the Pending Motion; and

5. The Pending Motion shall remain on calendar for hearing by the Court on November 14, 2008, and shall be and hereby is deemed to be filed and brought solely by and on behalf of Defendant KSC against the FAC as amended by this Stipulation and Order.

IT IS SO ORDERED.

Dated: _____



HON. SUSAN Y. ILLSTON
UNITED STATES DISTRICT JUDGE