UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GLENN AARONSON, MQ DISTRIBUTION LLC, MR. SNACK HAT LLC, DAVID DECILLA, LD COOKIE CORP., RICARDO RAMSOOMAIR, HSIU FANG LAU, JOHN CASTLES and JOSEPH MCSWEENEY, Plaintiffs, v. KELLOGG COMPANY, Defendant.	Civil Action No. **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiffs Glenn Aaronson, MQ Distribution LLC, Mr. Snack Hat LLC, David DeCilla, LD Cookie Corp., Ricardo Ramsoomair, Hsiu Fang Lau, John Castles and Joseph McSweeney (collectively, "Plaintiffs"), by and through their undersigned counsel, as and for their Complaint herein, upon information and belief, based upon the investigation of their attorneys, and, as to their individual transactions, based upon their own personal knowledge, allege as follows:

I. PRELIMINARY STATEMENT

1. This case is brought on behalf of similarly situated Plaintiffs who have been gravely damaged by defendant Kellogg Company's ("Kellogg") pattern of misrepresentations and failure to honor its business commitments to Plaintiffs, as part of a secret plan to transition to a new distribution model in Kellogg's snack business.

2. Plaintiffs, each of whom acquired for valuable consideration a certain distribution route located within the New York metropolitan market for purposes of

delivering snack products manufactured by Kellogg, expended significant financial and other resources in reliance on Kellogg's and its agents' express representations that Plaintiffs would continue as Kellogg's subdistributors, despite Kellogg having a secret plan in place by as early as 2014 to terminate Plaintiffs' distribution rights and eliminate subdistributors from Kellogg's snack distribution model.

3. As further alleged herein, Kellogg repeatedly misrepresented to Plaintiffs that it intended to maintain its then-existing Direct Store Delivery ("DSD") distribution model in the New York metropolitan market, a model that was reliant on third-party independent contractor subdistributors, such as Plaintiffs, who worked in tandem with certain independent third-party master-distributors referred to by Kellogg as Direct Store Delivery Distributors ("DSDDs")[1]. Defendant continued to represent as such after the termination of one of its master distributors in early 2016, and even after it publicly announced major changes to its distribution network in March 2017.

4. Contrary to Kellogg's representations, on information and belief Defendant had already decided by as early as June 2014 to discontinue its DSD distribution system in favor of reverting to a more traditional centralized warehouse distribution system. The factual record, including documents from litigation that arose between a master distributor of Kellogg snacks known as Premier and Defendant (*see* ¶¶ 83-91, *infra*), leads Plaintiffs to conclude that Kellogg decided to discontinue its DSD

[1] For purposes of this Complaint, the term DSDD is used at various times to refer both to Plaintiffs, in their capacity as independent contractor subdistributors, and to certain relevant non-party independent master-distributors defined below as Premier, W.M. Brown and Condal.

model as early as June 2014, although the process of transition would not be finalized until three years later, in mid-2017.

5. Defendant's most recent attempt to improve operating results via cost cutting is the latest in a series of similar initiatives. Kellogg's business -- in particular, its core breakfast cereal business -- has been negatively impacted over the past 10-15 years by a host of factors, including changing consumer tastes for breakfast foods, fierce competition from other large consumer packaged goods companies encroaching on Defendant's market share, and overly aggressive cost-cutting initiatives undertaken by various CEOs serving Kellogg from around 2004 forward.

6. Kellogg's decision to discontinue its DSD distribution model in the New York metropolitan market created certain challenges for Defendant, namely how Kellogg could structure an orderly exit from its DSD model to a centralized warehouse distribution system with as little disruption to Defendant's business and bottom line as possible. Crucial to an orderly transition was that existing distributors remain in place until a replacement delivery and distribution network could be established and was ready to commence operations.

7. Accordingly, and in order for Defendant to effectuate as seamless a business transition as possible, Kellogg and certain of its employees or agents sought to ensure Plaintiffs' continued performance as DSDDs, during which time frame Kellogg made repeated misrepresentations to Plaintiffs, designed to allow for as seamless a transition as possible, to Kellogg's benefit and Plaintiffs' detriment. During this time frame, Defendant's employees or agents continually reassured Plaintiffs that any

corporate reorganization efforts or cost-cutting initiatives would *not* impact Plaintiffs and their livelihood.

8. Because of Defendant's repeated misrepresentations, omissions and false assertions surrounding the continuation of its DSD model, which assertions Plaintiffs reasonably relied upon in conducting their business as subdistributors until as late as mid-2017, Plaintiffs have all been damaged through their detrimental reliance on Kellogg's false assertions and misrepresentations and resultant expenditure of financial and other resources. Plaintiffs expended significant resources in reliance on Defendant's ongoing assurances as late as 2016. *See* ¶¶ 127-29, *infra.* Plaintiffs have also been damaged by the unwarranted cancellation of their subdistributorships and the resulting evisceration of the value of their businesses.

9. Plaintiffs now bring this action seeking just compensation for their monetary damages caused by Kellogg and assert claims for breach of fiduciary duty, constructive fraud, negligent misrepresentation, quantum meruit and unjust enrichment.

II. THE PARTIES

10. Plaintiff Glenn Aaronson, 35 years of age, is a natural person residing at 139 Rumford Way, Manalapan, NJ 07726. Mr. Aaronson at relevant times distributed certain snack products manufactured by and under the ownership of Kellogg. On or about December 4, 2012, Mr. Aaronson first acquired a certain snack distribution route, located primarily within a geographic territory in New Jersey.

11. Plaintiff MQ Distribution LLC ("MQ Distribution") is a New Jersey limited liability company formed on or about October 18, 2012 by Mr. Aaronson and his former business partner, nonparty Joshua Landesman. MQ Distribution was formed in connection with Mr. Aaronson's acquisition of a certain snack distribution route for the purpose of delivering Defendant's snack food products, including Keebler cookies and crackers.

12. Plaintiff Mr. Snack Hat LLC ("Mr. Snack Hat") is a New Jersey limited liability company formed on or about February 9, 2016. As further alleged herein (*see infra*, Section V), Mr. Aaronson was required to form a new business entity by master-distributor and relevant non-party W.M. Brown Group, Inc., following Kellogg's unilateral termination of its distribution agreement with master-distributor and relevant non-party Two Locks, Inc. d/b/a Premier Snack Distributors (as further defined below).

13. Plaintiff David DeCilla, 66 years of age, is a natural person residing at 5A Clovebrook Road, Valhalla, NY 10595. Mr. DeCilla at relevant times distributed certain snack products manufactured by and under the ownership of Kellogg. On or about November 18, 2013, Mr. DeCilla first acquired a certain snack distribution route, located primarily within a geographic territory in Westchester and Bronx Counties, New York.

14. Plaintiff LD Cookie Corp. ("LD Cookie") is a New York corporation formed on or about October 21, 2013 by David DeCilla and his wife, Lorraine DeCilla.

The DeCillas are the owners and sole shareholders of LD Cookie and provided capital to acquire a certain snack distribution route for the purpose of employing their son-in-law, non-party Steven Mastrosimone, to deliver Kellogg's snack food products, including Keebler cookies and crackers.

15. Plaintiff Ricardo Ramsoomair (known as Rick), 39 years of age, is a natural person residing at 433 5th Avenue, Apt. 2, Brooklyn, NY 11215. Mr. Ramsoomair at relevant times distributed certain snack products manufactured by and under the ownership of Kellogg. On or about July 30, 2014, Mr. Ramsoomair first acquired a certain snack distribution route, located primarily within a geographic territory in Kings and Queens Counties, New York.

16. Plaintiff Hsiu Fang Lau, 32 years of age, known as "Sue", is a natural person residing at 177 Christie Street, Ridgefield Park, NJ 07660. Ms. Lau at relevant times distributed certain snack products manufactured by and under the ownership of Kellogg. On or about April 22, 2016, Ms. Lau first acquired a certain snack distribution route, located primarily within a geographic territory in Westchester, Bronx, and New York Counties, New York.

17. Plaintiff John Castles, 57 years of age, is a natural person residing at 33 Barnum Avenue, Plainview, NY 11803. Mr. Castles at relevant times distributed certain snack products manufactured by and under the ownership of Kellogg. In or around 2000, Mr. Castles first acquired a certain snack distribution route, which he later expanded by acquiring additional stores. Mr. Castles' snack distribution route was

located primarily within a geographic territory in Queens and Nassau Counties, New York.

18. Plaintiff Joseph McSweeney, 51 years of age, is a natural person residing at 11 Jayne Court, Nesconset, NY 11767. Mr. McSweeney at relevant times distributed certain snack products manufactured by and under the ownership of Kellogg. In or around November 2007, Mr. McSweeney first acquired a certain snack distribution route, located primarily within a geographic territory in Nassau and Suffolk Counties, New York.

19. Defendant Kellogg is a Delaware corporation with its principal place of business located at One Kellogg Square, Battle Creek, Michigan 49037. Kellogg is a multinational company engaged in the business of manufacturing, marketing and distributing a variety of food products, including cereal and snack products. At relevant times, Kellogg manufactured, marketed and distributed certain snack foods including, but not limited to, Keebler cookies and crackers.

III. RELEVANT NON-PARTIES

20. Relevant non-party Two Locks, Inc. d/b/a Premier Snack Distributors ("Premier") is a New York corporation formed in February 1996. Premier's principal place of business is located at 169 Commack Road, Suite 377, Commack, New York 11725. As further alleged herein, beginning as early as mid-2014, Kellogg began undertaking efforts designed to terminate its business dealings with master- distributor Premier, as a necessary initial step in Defendant's plan to do away with its then-existing distribution model, in favor of returning to a traditional centralized warehouse

distribution model. Premier did business with Kellogg as a master-distributor, primarily in the New York metropolitan area, including distribution routes located in New Jersey, until early 2016, at which time Kellogg terminated its business dealings with Premier.

21. Relevant non-party W.M. Brown Group, Inc. ("W.M. Brown") is a New York corporation formed in June 1994. W.M. Brown's principal place of business is located at 999 South Oyster Bay Road, Suite 106, Bethpage, New York 11716. At relevant times, W.M. Brown had arranged to do business with Kellogg as a master-distributor by, among other things, providing certain warehouse space in Nassau County, New York, for purposes of storing Defendant's product. As further alleged herein, in or about early May 2017, Kellogg formally notified W.M. Brown that it intended to terminate its relationship with master-distributor W.M. Brown, thus furthering its plan to return to a centralized warehouse distribution model by the fourth quarter of 2017.

IV. JURISDICTION AND VENUE

22. Plaintiffs are domiciled in New York and New Jersey. Plaintiffs who are natural persons have citizenship as follows: Mr. Aaronson, New Jersey, Mr. DeCilla, New York, Mr. Ramsoomair, New York, Ms. Lau, New Jersey, Mr. Castles, New York, and Mr. McSweeney, New York.

23. Plaintiff MQ Distribution, LLC is a citizen of New Jersey for purposes of diversity jurisdiction by virtue of the citizenship of both of its members, Mr. Aaronson and Joshua Landesman, in New Jersey.

24. Plaintiff Mr. Snack Hat LLC is a citizen of New Jersey for purposes of jurisdiction by virtue of the citizenship of its sole member, Mr. Aaronson.

25. Plaintiff LD Cookie Corp. is a New York corporation, with its principal office located at 5A Clovebrook Road, Valhalla, NY 10595.

26. Defendant Kellogg is a Delaware corporation, with its principal office located in Battle Creek, Michigan, and regularly transacts business in New York.

27. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a) because Plaintiffs and Defendant are citizens of different States and the amount in controversy exceeds the sum or value of $75,000.00.

28. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because it is where a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred and Defendant conducts business in this District.

V. DETAILED FACTUAL ALLEGATIONS

A. Overview of Kellogg's Acquisition of Keebler and its DSD Snack Distribution Model

29. In October 2000, Kellogg acquired Keebler Foods Company for $3.86 billion in cash. At that time, Keebler was the second-largest cookie and cracker maker in the United States, having generated revenue of $2.7 billion and net income of $88.2 million in 1999.

30. Following the Keebler acquisition, then Kellogg Chairman and CEO Carlos Gutierrez praised the deal: "These two great companies are a winning combination for consumers, customers, and share owners." As further set forth in Kellogg's March 26, 2001 press release, as filed with the SEC and announcing the completion of the

merger, Kellogg's specifically touted procurement of Keebler's product delivery system, which at the time was regarded as cutting-edge:

> The new Kellogg Company's growth will be propelled by: KEEBLER'S DIRECT STORE DOOR (DSD) delivery system, which is expected to increase the growth potential of Kellogg snack foods such as Rice Krispies Treats squares and Nutri-Grain bars.[2]

31. At various times following Kellogg's acquisition of Keebler, Plaintiffs all acquired certain distribution routes in the New York metropolitan market, extending from as far west as Essex and Monmouth Counties, New Jersey to as far east as Nassau and Suffolk Counties, New York.

32. Plaintiffs acquired their respective routes and corresponding stores for valuable consideration, and added stores to their routes in exchange for monetary consideration at dates as late as 2016. In exchange, Plaintiffs received the right as independent DSDD subdistributors to deliver Defendant's product on a certain distribution route, to various stores including larger grocery chains, as well as smaller convenience stores and bodegas.

33. Plaintiffs all acquired distribution routes under Kellogg's then-existing Direct Store Delivery (DSD) model. As subdistributors working with certain DSDD master-distributors including Premier and W.M. Brown, Plaintiffs consistently performed to ensure timely and efficient delivery of certain Kellogg product, primarily snack foods, directly to stores.

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[2] https://www.sec.gov/Archives/edgar/data/55067/000095012401001952/k61222ex99-1.txt

34. DSD is the term used to describe a method of delivering product from a supplier/distributor directly to a retail store, thereby bypassing a retailer's distribution center. DSD products are typically, but not always, fast-turning, high velocity, and high consumer demand merchandise. As DSDD subdistributors, although in privity of contract with master-distributors, Plaintiffs also worked with Defendant Kellogg and/or certain of its employees, contractors and/or agents, as more fully described herein.

35. According to RW3 Technologies, a software company whose business is primarily focused on assisting consumer packaged goods (CPG) companies, such as Defendant Kellogg:

> When Direct Store Delivery (DSD) was first tried, the numbers came in strongly in favor. In 2008, the Grocery Manufacturer's Association reported that while only 24 percent of products were in a DSD supply chain, they accounted for 52 percent of profits. There were huge cost savings for retailers in terms of reduction of warehousing costs, reduced out-of-stocks, time spent merchandising and other areas.[3]

36. While the DSD model may have proved profitable and efficient for many retailers at the end of the supply chain, on information and belief by 2014 Kellogg had devised a secret plan to exit the DSD distribution model in its Keebler snacks business.

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[3] *Central Warehouse or Direct Store Delivery (DSD): Why Some CPG's are Making the Switch*. RW3 article by Seth Nagle, published on February 20, 2018 and located here: https://www.rw3.com/central-warehouse-or-direct-store-delivery-dsd/

B. Kellogg Devises a Secret Plan to Abandon its DSD Snack Distribution Model in the New York Metropolitan Market

37. In response to various business difficulties and severe macro-economic headwinds, including, for example, the growing trend of American consumers eating less cereal, loss of market share in various breakfast food categories to rival General Mills Inc., and the 2008 Great Recession, Kellogg drastically shifted its corporate strategy, from one premised on building a complementary portfolio of brands through selective acquisitions to a more defensive, cost-cutting approach to managing profitability. In this regard, in 2008, then-CEO David MacKay announced that Kellogg would embark on an aggressive three-year cost-cutting initiative, termed "K-Lean", aimed at capturing savings of $1 billion.

38. Unfortunately for Defendant, K-Lean proved a disaster. Among other things, the K-Lean cost-cutting initiative led to sizeable layoffs among Kellogg's factory workers. Many Wall Street analysts believed the loss of so many competent employees negatively impacted Kellogg, causing or directly contributing to a slew of serious problems, including a severe shortage of frozen waffles in 2009 and a 2010 recall of 28 million boxes of Froot Loops and Honey Smacks breakfast cereals.

39. Reeling from a disastrous K-Lean initiative, Kellogg replaced CEO David MacKay by January 2011 with John Bryant. Despite Bryant's best efforts -- including rehiring about 300 factory workers following the deep cuts associated with K-Lean, in addition to Defendant's 2012 acquisition of Pringles potato chips for $2.7 billion from Procter & Gamble -- Kellogg remained very dependent on its core cereal business, a contracting category that was suffering declining gross sales.

40. In an effort to shore up its profitability, in or around November 2013, Defendant Kellogg launched its "Project K" program, an ambitious corporate cost-cutting and efficiency initiative aimed at saving "[u]p to $475 million annually by 2018 through job cuts and production optimization."[4] In public statements, Kellogg represented that the primary source of savings from Project K would be from consolidating facilities and eliminating excess capacity, and not from reducing head count in operating units.

41. By mid-2015, Wall Street analysts covering Kellogg were taking note of Project K and its positive impact on Defendant's bottom line. For instance, in a May 5, 2015 article by digital journalist Tony Owuso of *TheStreet*, he indicated that:

> Kellogg shares are up 0.81% to $64.65 in trading on Tuesday after the cereal and packaged food manufacturer reported that first quarter cost cuts helped it beat analysts' earning expectations despite a 44% drop in profits. Revenue for the period fell 5% to $3.56 billion as the company executes its four year cost cutting "Project K" program which is expected to save Kellogg between $425 million and $475 million by 2018.

42. From the time of Project K's inception in 2013 until 2017, on information and belief Defendant made no public statement concerning its intention to eventually discontinue the DSD model in favor of a centralized warehouse distribution system to meet its product delivery needs.

43. However, by at latest June 2014, as further alleged herein (*see infra*, Section V(C)), Defendant began executing on a secret plan to exit its DSD distribution model in the New York metropolitan market by notifying Premier of its termination as a

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[4] *Kellogg to Switch Delivery Model for U.S. Snacks Unit to Cut Costs*. Reuters article by Jessica Kuruthukulangara and Lauren Hirsch, published on February 8, 2017 and located here: https://www.reuters.com/article/us-kellogg-restructuring-sales-model-idUSKBN15N2R6

DSDD master-distributor of Kellogg product. This termination of Premier was the first step in a planned consolidation, and then later elimination, of DSDD distributors.

C. Plaintiffs Acquire Their Kellogg Routes for Valuable Consideration

1. Plaintiff Glenn Aaronson and His Business Partner Acquire a Kellogg Distribution Route From Master-Distributor Premier

44. Mr. Aaronson was born and raised in Monmouth County, New Jersey. Sometime around mid-2012, Mr. Aaronson and his college friend (and later business partner) Joshua Landesman contacted through a route broker the owners of a certain Kellogg snack distribution route in New Jersey.

45. After initially assessing the distribution route through meeting with the then-current owners, Messrs. Aaronson and Landesman were contacted by Mr. David Biller, who, at that time, worked at Premier and essentially served as second-in-charge with managerial duties to Premier's CEO, Marc Ceruto. Biller ultimately departed Premier on or about December 23, 2013, for employment with Kellogg.

46. Based on their meeting with David Biller, and conversations with others, Messrs. Aaronson and Landesman decided to invest their money and purchase the distribution route.

47. Previous to closing on their distribution route, Messrs. Aaronson and Landesman formed a New Jersey LLC known as MQ Distribution LLC.

48. On December 4, 2012, Messrs. Aaronson and Landesman attended a closing to purchase the distribution route at attorney James L. Green's offices in Westbury, New York. In connection with the closing, Messrs. Aaronson and Landesman,

as owners and the two members of MQ Distribution LLC, each paid one-half of the route acquisition price of approximately $124,500, or $62,250 each.

49. In addition to the cost associated with route acquisition, Messrs. Aaronson and Landesman also paid additional monies in the approximate amount of $5,000 in order to acquire a cargo van to deliver Kellogg's product.

50. Mr. Aaronson's initial Kellogg snack distribution route consisted primarily of various supermarkets, including some Kings, Supremo, Tropical and KeyFood grocery stores. Geographically, the route was far-flung and extended from Hoboken in North Jersey to Lakewood in Ocean County, New Jersey. The initial route consisted of approximately 15 stores.

51. Upon information and belief, by early 2013, shortly following the December 2012 route acquisition, Mr. Aaronson's route was generating in excess of $10,000 per week in gross sales.

52. Messrs. Aaronson and Landesman built their route brick-by-brick over time by incrementally adding more stores to their Kellogg snack product distribution route. A significant part of growing the business also involved establishing relationships with store personnel along the route and carving out shelf space for Kellogg products.

53. Leading up to mid-2014 -- when Defendant engaged in certain actions designed to further the process of terminating Kellogg's relationship with Premier -- Messrs. Aaronson and Landesman were successful in growing their distribution route. In order to sustain and grow their route during this time frame, Mr. Aaronson received a

weekly delivery from a Kellogg driver directly from Kellogg's warehouse located in Cranbury, New Jersey to his rented storage facilities located in Englishtown, New Jersey.

2. Plaintiff David DeCilla Acquires a Kellogg Distribution Route From Master-Distributor Premier

54. Mr. DeCilla is a resident of Valhalla, New York. In or around January 2012, Mr. DeCilla, his wife Lorraine, and their son-in-law, Steven Mastrosimone, began collectively assessing potential business opportunities, including acquiring a distribution route, and through a broker came into contact with the then-current owner of a certain Kellogg snacks distribution route, Mr. Ramon Tamarez.

55. Messrs. DeCilla and Mastrosimone contacted Mr. Tamarez. Shortly thereafter, Mr. Mastrosimone did several ride-alongs in order to get a clear understanding of the route, including the overall distance covered, number of stores, and related considerations. At that time, the route consisted of 17 stores, located in the Bronx and Yonkers, New York, and included grocery stores such as Food Bazaar, Western Beef, and C-Town.

56. On or about November 13, 2013, Mr. DeCilla closed on the distribution route. For purposes of acquiring the route , Mr. DeCilla set up a New York entity, LD Cookie Corp. Through LD Cookie, Mr. DeCilla's route was acquired for $170,000, an up-front purchase price which also included a 14-foot box truck for product delivery.

57. In addition to the initial cost of route acquisition, LD Cookie also incurred an ongoing monthly expense of $1000 per month in order to rent a storage facility in the Bronx located at 863 E. 141st Street, Bronx, New York.

58. Immediately following the closing, Mr. DeCilla employed Mr. Mastrosimone, through LD Cookie, to commence working the distribution route and subsequently placing orders for Kellogg product. The route initially yielded approximately $12,000 per week in gross revenue.

59. Prior to Kellogg effectively terminating Premier in or about early 2016, Mr. DeCilla had successfully grown his route to approximately 44 stores, and had dramatically increased LD Cookie's weekly gross revenues.

3. Plaintiff Ricardo Ramsoomair Acquires a Kellogg Distribution Route From Master-Distributor W.M. Brown

60. Plaintiff Ricardo Ramsoomair is a resident of Brooklyn, New York. In mid-2014, Mr. Ramsoomair heard about a certain distribution route for sale from a friend who was managing a route on behalf of Kellogg master-distributor W.M. Brown. Along with Premier, W.M. Brown and another master-distributor, Condal Distributors, Inc. ("Condal"), were Kellogg's three primary DSDD master-distributors in the New York metropolitan market.

61. In order to explore the potential distributorship opportunity, Mr. Ramsoomair placed a call to Kellogg master-distributor W.M. Brown and spoke with one of W.M. Brown's key managerial employees, Mike Ambrosio. During the call Mr. Ramsoomair discussed the logistics of the route in some detail with Mr. Ambrosio, including the route's territory, number of stores, and acquisition price.

62. On or about July 30, 2014, Mr. Ramsoomair closed on his route, for a cost of $100,000. This price called for Mr. Ramsoomair to pay $40,000 as a down payment, with the balance of $60,000 due under a 6-year note, payable via monthly installments.

In addition to the cost associated with closing on the route, Mr. Ramsoomair also had to purchase a GMC box truck for approximately $7,500.

63. Mr. Ramsoomair's route was located in Brooklyn and Queens, New York, and consisted of approximately 20-24 stores. These stores included some grocery stores, as well as some smaller convenience stores. Beginning distributing for Kellogg in 2014, upon information and belief Mr. Ramsoomair initially earned in excess of $10,000 per week in gross revenue through sales of Kellogg product.

64. Prior to Defendant terminating its business relationship with W.M. Brown in 2017, Mr. Ramsoomair had successfully grown his route and substantially increased his weekly gross revenues.

4. Plaintiff John Castles Acquires a Kellogg Distribution Route From Master-Distributor W.M. Brown

65. Mr. Castles is a resident of Plainview, New York, He is a retired firefighter who worked for the FDNY from 1987 through 2009.

66. While still working as a firefighter during the 1990s, Mr. Castles gradually developed a side business in which he delivered cookies and other snacks on his off days.

67. Mr. Castles acquired a route delivering Kellogg snack products in or about 2000, and continued to distribute Kellogg snack products until being terminated by W.M. Brown in 2017. During this time Mr. Castles built his route up from around 6 stores initially, to approximately 20 or more stores by 2014. By 2014 Mr. Castles had grown his gross sales to approximately $12,000 a week.

5. Plaintiff Joseph McSweeney Acquires a Kellogg Distribution Route From Master-Distributor W.M. Brown

68. Mr. McSweeney is a resident of Nesconset, New York. He is a retired FDNY Lieutenant, having joined the Fire Department in or around 1993. As the end of his career as a fireman approached, Mr. McSweeney began exploring potential career options.

69. In or around mid-2007, Mr. McSweeney came across an advertisement for a Kellogg distribution route for sale that covered certain stores located in both Nassau and Suffolk Counties, New York. Ultimately, Mr. McSweeney decided to move forward on acquiring the route. In this regard, on or about September 15, 2007, Mr. Daniel Bealey agreed to sell his distribution route to Mr. McSweeney for $53,500. Included this pricing was a 2003 Ford E450 truck for delivering Kellogg product, primarily Keebler cookies and crackers.

70. In April 2016, at W.M. Brown's insistence, Mr. McSweeney paid an additional $20,000 to purportedly protect his exclusive right to distribute Kellogg snack products to certain specific locations pursuant to an agreement presented to him by W.M. Brown.

71. Initially, Mr. McSweeney's route generated about $8,000 per week in gross revenue. At its peak, in or around 2016, the route consisted of approximately 30-35 stores and generated average weekly gross revenue of approximately $20,000.

6. Plaintiff Sue Lau Acquires a New Kellogg Distribution Route From Master-Distributor W.M. Brown

72. Sue Lau is a resident of Ridgefield Park, New Jersey. Until approximately 2012, she worked as a bookkeeper for the owner of a grocery store. In or about 2013, Ms. Lau began delivering Kellogg snack products, including Keebler cookies and crackers, as an employee of another distributor named Story Chun.

73. In or around January 2016, Mike Ambrosio first approached Ms. Lau to gauge her interest in acquiring the rights to distribute Kellogg snack products to approximately ten stores that, at that time, had no assigned distributor. Shortly thereafter, Mr. Ambrosio and W.M. Brown began engaging Ms. Lau in negotiations concerning a possible route acquisition.

74. On or about April 22, 2016, Ms. Lau closed on her Kellogg distribution route, paying $22,500 for the distribution rights. By this time, Kellogg had terminated its business dealings with master-distributors Premier and Condal, thus leaving W.M. Brown as the sole remaining master-distributor in the New York metropolitan market, and was already well along in its secret plan to terminate its DSDD distributors throughout the New York metropolitan market.

75. In addition to the up-front payment for route acquisition, Ms. Lau incurred other costs associated with her route, including paying attorneys' fees in the amount of $700, having to pay for a handheld computer to track product and print receipts, and purchasing a Sprinter van for approximately $68,000.

76. In order to acquire her route, Ms. Lau also had to quit her existing job.

77. Ms. Lau's Kellogg distribution route consisted of approximately 20 stores, located primarily in Bronx and New York Counties, New York. Upon information and belief, at the time of her peak earnings working the route, in or around mid-late 2016, Ms. Lau was earning gross revenues of approximately $20,000 per week.

78. Despite the fact that Ms. Lau acquired her DSDD distribution route following termination of Premier and Condal by Defendant (as further discussed below), at no time did anyone from Kellogg inform Ms. Lau of any issues or concerns with the DSD distribution model. On the contrary, the route was presented to Ms. Lau as an attractively priced opportunity for her to begin building a successful distribution route selling premium Kellogg product.

D. Kellogg Terminates Master-Distributor Premier as a Necessary Step to Incrementally Abandon its DSD Model

1. Background of Premier's Longstanding Relationship with Kellogg

79. Beginning in or around July 2000, Premier began serving as a master-distributor of Kellogg snack products in the New York metropolitan market under a series of contractual agreements between Premier and Defendant.

80. On or about February 24, 2009, Premier and Defendant entered into a distribution agreement that they referred to as a "DSDD Distributor Agreement" (hereinafter, the "DSDD Agreement").

81. Pursuant to the DSDD Agreement, Kellogg authorized Premier as an independent master-distributor to purchase certain snack product from Defendant and to then resell the same product in a defined geographic territory. In practice, Premier

accomplished its objective of selling considerable quantities of Kellogg product through entering into various contracts with certain third-party independent contractor subdistributors, including Plaintiffs Glenn Aaronson and David DeCilla. At relevant times Premier utilized as many as eight distribution warehouse locations (in Yonkers, NY, Jamaica, NY (two locations), North Brunswick, NJ, Staten Island, NY, Phillipsburg, PA, Bronx, NY and Brooklyn, NY) to service its territory in the greater New York area.

82. As further alleged herein, Messrs. Aaronson and DeCilla acquired their respective distribution routes by paying valuable consideration to Premier. Further, at relevant times, Kellogg and its employees and agents were aware of and approved Premier's practice of assigning the rights to various distribution routes to DSDD subdistributors including Plaintiffs Aaronson and DeCilla.

2. Kellogg Moves Forward on its Secret Plan to Terminate Premier and Abandon its DSDD Model

83. Through correspondence dated June 30, 2014 (the "Premier Termination Notice"), as a first step in eliminating distributors from its DSDD platform in the New York metropolitan market, Kellogg notified Premier that it intended to terminate Premier as a master-distributor, effective within 90 days, per the terms of their DSDD Agreement.

84. Following receipt of the Premier Termination Notice, Premier CEO Marc Ceruto sought to engage Kellogg in a pre-litigation dialogue aimed at securing a successor DSDD Agreement and preserving Premier's long-standing relationship with Kellogg. To that end, Premier's counsel and Kellogg Snacks Division in-house counsel, Daniel O'Connor, engaged in certain correspondence during August and September 2014.

85. Correspondence concerning the Premier Termination Notice demonstrates that Kellogg was pushing Premier to phase out warehouse locations and subdistributors in order to consolidate Kellogg's distribution footprint. In email correspondence dated August 13, 2014 Premier's counsel wrote to Kellogg's counsel, in part, to confirm that "Kellogg is requesting that Premier Snack centralize its distribution network and Premier Snack will certainly consider doing so. Kellogg's request that Premier Snack consolidate its distribution network will require Premier Snack to rent suitable warehouse space." Kellogg appears to have initially wanted Premier to utilize only one warehouse in Garden City, New York, and later insisted on a consolidation plan involving a maximum of three warehouses.

86. Premier's counsel's initial reaction to the termination notice was that it was an effort by Kellogg to transition out of the DSD/DSDD distribution model. In a letter dated August 25, 2014 to Kellogg's attorneys (and referring to a specific provision in Premier's contract with Kellogg), Premier's attorneys asked whether there had been a "change in Kellogg's business that results in Kellogg no longer using independent DSDD distributors in Premier Snack's territory (Connecticut/New Jersey/New York/Pennsylvania)?"

87. In the same letter dated August 25, 2014, Premier's counsel wrote to Daniel O'Connor that "Kellogg must understand that Premier Snack needs to retain some flexibility with respect to the third party subdistributors it retains. Premier Snack engages such parties solely to advance the logistics of distributing Kellogg products."

88. Kellogg pushed back in a September 10, 2014 email, stating it avoided long-term DSDD commitments and that "we also require the flexibility to adapt to changing market conditions." Accordingly, Kellogg refused to readily agree to the continued use of any subdistributors, stated that it required "additional clarity" as to their roles before agreeing to any use of any subdistributors by Premier going forward, and ruled out any shipments of Kellogg snack products to locations other than a centralized footprint of only three Premier warehouses.

89. On or about September 16, 2014, Premier came to learn that employees of Kellogg, including Omar Zlam, had visited one of Premier's storage facilities in Yonkers, New York. According to Premier's counsel it was during this visit that Mr. Zlam and the other Kellogg employee interrogated a number of Premier's personnel and even requested their email addresses (presumably to enable Kellogg to communicate with them directly).

90. On or about October 8, 2014, Premier filed a lawsuit against Kellogg in the Eastern District of New York (Case 2:14-cv-05917-ADS-ARL), alleging, *inter alia*, breach of contract, unfair competition, unjust enrichment, and promissory estoppel in connection with Kellogg's unilateral attempt to terminate its DSDD Agreement with Premier.

91. The Court denied Premier's motion for a preliminary injunction against Kellogg on December 19, 2014. On or about February 27, 2015, Premier dismissed its claims against Kellogg with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). Premier then continued its operations as a master-distributor, suggesting that the parties reached a

resolution to the litigation that involved a resumed distribution relationship between Kellogg and Premier.

3. Kellogg's Makes A Second Attempt to Terminate Premier While Reassuring Plaintiffs That This Will Not Impact Their Businesses

92. In or around early 2015, notwithstanding the lawsuit, Defendant forged ahead with its plan to terminate Premier. It was around this time that Kellogg appointed Mr. James Yany to help oversee its snack division, particularly in the New York metropolitan market. Mr. Yany was brought on to replace Omar Zlam. Upon information and belief, Mr. Zlam was transferred internally from Kellogg's snack division to another department in or around late 2014 or early 2015.

93. Mr. Yany reported directly to Ted Engle, a regional sales director for Kellogg, in charge of managing various product, including the Kellogg snack product distributed by Plaintiffs.

94. As 2015 progressed, Glenn Aaronson, as well as Steven Mastrosimone who essentially charged with running the LD Cookie distribution route on behalf of Mr. DeCilla, began having more frequent direct contact with Messrs. Engle and Yany. In or around May 2015, Premier began leasing warehouse space from which to distribute Kellogg product, located at 1 Pier Eleven, Brooklyn, NY 11231.

95. During this same time frame of early-mid 2015, Mr. Aaronson was routinely dealing directly with Messrs. Yany and Engle, speaking with them by phone in order to, among other things, order Kellogg product and discuss his distribution route. Mr. Aaronson frequently expressed displeasure with Premier and Mr. Ceruto during these conversations and other communications.

96. In or around mid-November 2015, Kellogg held a meeting at Premier's Brooklyn warehouse facility attended by Marc Ceruto and other Premier employees, various DSDD subdistributors including Mr. Aaronson, and several Kellogg employees including David Biller (the former Premier second-in-command who had gone to work for Kellogg two years before). At this meeting Mr. Biller described Project K as a company-wide program involving various cost-cutting measures. Neither Mr. Biller nor any of the other Kellogg employees present at the meeting made any mention of Project K directly impacting the DSDD model in the New York metropolitan market. The meeting focused on subdistributors' problems with Premier and ways in which distribution could be improved going forward.

97. During the November-December 2015 time frame, Mr. Mastrosimone was also aware of Project K, and like Mr. Aaronson, he was aware of Kellogg's general displeasure with Premier. Mr. Mastrosimone was in regular direct communication with Yany and regional sales manager Ted Engle at Kellogg regarding potential opportunities to grow LD Cookie's distributorship by adding stores to its Kellogg routes regardless of Premier's ongoing status (or not) as a master-distributor.

98. Through a December 1, 2015 email dispatch, Mr. Mastrosimone informed Messrs. Yany and Engle, in relevant part, that "We are not looking to just be a distributor of Kellogg's but an extension of the culture, practices and programs …. Snack sales for Kellogg are down 1.5% for the qtr and the K project which is intended to cut costs and reinvest in new products and flavors is being undermined …. We would be remiss if we

didn't reiterate our desire and capabilities to offer you a better alternative to Premier Snacks."

99. In response to Mr. Mastrosimone's December 1, 2015 email, Mr. Engle offered the following reply: "Steve. thanks for the message. We are very aware of your desire and if in the future we have the need for a new distributor in the NY metro market we will be in touch to discuss in more detail."

100. On or about January 7, 2016, Kellogg employee James Yany scheduled a breakfast meeting at Premier's Brooklyn warehouse. In attendance were Kellogg regional sales director Ted Engle, Mr. Yany, some Premier staff, and around 25 Kellogg snacks route distributors, including Mr. Aaronson. At the meeting, Messrs. Yany and Engle spoke about the "future of Kellogg's business" and addressed concerns from some of the distributors, including complaints about purported price-undercutting by certain distributors.

101. Also in or around early 2016, Mr. Yany informed Mr. Aaronson that Kellogg intended to terminate master-distributor Premier. Accordingly, like Mr. Mastrosimone, Mr. Aaronson began having discussions, primarily with Mr. Yany, about growing his distribution route in New Jersey, with an eye on consolidating his route and, eventually, becoming a master-distributor like Premier. In response, Mr. Yany made repeated reassurances to Mr. Aaronson, telling him not to worry, that "we are cutting the cord with Marc [Ceruto]" and "sit tight -- just keep doing what you're doing." In the course of these discussions, Mr. Yany made absolutely no mention of Kellogg's plan to

altogether abandon its DSD distribution model, including the DSDD model utilized in the New York metropolitan market.

102. Shortly following the January 7, 2016 meeting at Premier's Brooklyn warehouse, Kellogg moved ahead with its plan to discontinue its DSD model in the New York market by terminating Premier as a master-distributor on or about January 20, 2016, ceasing all future business with Marc Ceruto and his company.

E. Following Premier's Termination, Kellogg Misleads Plaintiffs into Continuing and Expanding Existing Routes, Purchasing New Routes, and Entering into Contracts with Master-Distributor W.M. Brown

1. Glenn Aaronson Assists Kellogg By Providing Free Warehouse Space and Logistical Assistance in Exchange for Promised Future Consideration

103. By mid-January 2016, at around the time of Premier's termination, Mr. Aaronson and his former business partner, Joshua Landesman, were delivering approximately 75% of the Kellogg snack product in New Jersey as DSDD distributors through direct shipments from a Kellogg warehouse to a warehouse facility rented by Aaronson and Landesman in New Brunswick, New Jersey.

104. Having grown his route to considerable size and viewing himself has having performed invaluable services to Kellogg, Mr. Aaronson informed Mr. Yany that he wanted an exclusive New Jersey distributorship. In response, Mr. Yany reassured Mr. Aaronson that "it will happen -- sit tight."

105. Subsequent to Premier's termination as a master-distributor in mid-January 2016, Kellogg came to rely heavily on Mr. Aaronson. Specifically, Messrs. Yany and Engle requested that Kellogg be allowed to deliver and store product directly

with Mr. Aaronson at his New Brunswick warehouse, in order to accommodate other, smaller distributors who required a centrally located New Jersey warehouse from which to pick up product. Thus, not only did Mr. Aaronson supply numerous New Jersey stores with Kellogg snack products via direct shipments from Kellogg to his New Brunswick warehouse, he also permitted Kellogg to use his facilities to supply its other route distributors and coordinated and supervised their pickups from his facility.

106. By agreeing to allow Kellogg to utilize his warehouse space for no monetary consideration, Defendant received significant benefit from Mr. Aaronson. Without the use of Mr. Aaronson's warehouse space, Kellogg lacked the necessary infrastructure to ensure continued timely deliveries of Kellogg product to stores previously handled by Premier throughout New Jersey.

107. At around this time, Messrs. Yany and Kellogg regional sales director Ted Engle repeatedly made assurances to Mr. Aaronson, telling him that he was "winning a lot of points with Kellogg," and making similar statements suggesting that Mr. Aaronson was positioning himself favorably with Defendant to gain more business.

108. Specifically, in an email message to Mr. Aaronson dated February 26, 2016, addressing Mr. Aaronson's request for an expanded role distributing Kellogg snack products, Mr. Yany wrote as follows: "All the work you're doing will not go unnoticed and you have my word that your [sic] will be protected going forward."

109. Furthermore, Mr. Aaronson consulted with James Yany about acquiring additional stores for his route for cash consideration in or about August 2016, and Yany

advised Aaronson to do so. In express reliance on Yany's advice and assurances, Mr. Aaronson went forward with the transaction.

110. By this point in time, Mr. Aaronson and his former business partner, Joshua Landesman, were spending approximately $3,000 per month in order to rent their 7,500 square foot New Brunswick warehouse facility. Kellogg paid no money whatsoever to Mr. Aaronson for its use of his warehouse space.

111. Despite Kellogg's repeated assurances to Mr. Aaronson, Kellogg had no intention of continuing with its DSDD model in the New York metropolitan market following the Premier termination and, in fact, was already implementing its secret plan to altogether eliminate its DSD model.

2. Early-2016 Assurances to Plaintiffs Aaronson and LD Cookie by Kellogg and Master-Distributor W.M. Brown

112. Following Kellogg's termination of Premier, certain Premier subdistributors -- including Mr. Aaronson and LD Cookie, through route manager Mr. Mastrosimone -- were informed by Messrs. Yany and Engle that, in order to continue working their respective distribution routes and delivering Kellogg product, they needed to enter into an affiliation with master-distributor W.M. Brown.

113. Upon information and belief, certain subdistributors begrudgingly acquiesced to Kellogg's demand in the weeks following Premier's termination, as these DSDDs could not afford to engage in protracted negotiations while Kellogg refused to arrange for access to their product, until such time that they agreed to a W.M. Brown affiliation. Mr. Aaronson and LD Cookie also were hesitant to work with W.M. Brown following Premier's termination.

114. In early 2016, shortly following Premier's termination by Kellogg, W.M. Brown and Kellogg invited Mr. Aaronson to a meeting at W.M. Brown's warehouse facility located in Bethpage, Long Island. Kellogg and W.M. Brown arranged the meeting so that certain DSDD subdistributors, including Mr. Aaronson and non-party Matthew Bruno could air their concerns surrounding the contemplated transition to working with W.M. Brown and Kellogg in the absence of Premier and Condal.

115. Present at this meeting were Mr. Aaronson, Mr. Bruno, W.M. Brown owner Warren Brown, W.M. Brown manager Mike Ambrosio, Kellogg employee James Yany, and Kellogg regional sales director Ted Engle.

116. At this meeting, Messrs. Yany and Engle posed a number of questions, including asking Mr. Aaronson which DSDD subdistributors who had been affiliated with Premier could be trusted, and which subdistributors likely remained loyal to Premier CEO Marc Ceruto. In addition, Messrs. Yany and Engle also specifically inquired about the subdistributors' respective routes, and the amounts of money that each subdistributor had paid in order to acquire these routes.

117. Mr. Aaronson expressed concern at the meeting about the contemplated reduction in commission through working with W.M. Brown. Whereas Mr. Aaronson had earned a 17% commission while working with master-distributor Premier, the proposed affiliation with W.M. Brown called for a reduction in commission to approximately 13-14%. In response, Yany and Engle promised Mr. Aaronson that there was a profitable chain of larger Circus and Food Town stores that was becoming available and that they would see to it that these stores were assigned to Mr. Aaronson.

118. When Premier was terminated by Kellogg on or about January 20, 2016, Mr. Yany informed Mr. Mastrosimone that "we put in a good word for you." Despite such assurances by Kellogg, Mr. DeCilla and LD Cookie were nevertheless reluctant to enter into an affiliation with W.M. Brown.

119. On February 29, 2016, Mr. Mastrosimone dispatched an email to Kellogg executives and managers expressing concern about the termination of Premier and the way forward. In response to Mr. Mastrosimone's email, he received a phone call from regional sales manager Ted Engle's supervisor, James Holton, who directed Mr. Mastrosimone to address his concerns directly with Messrs. Yany and Engle and Mike Ambrosio.

120. Following Mr. Mastrosimone's February 29, 2016 email and brief phone call with Mr. Holton, he was contacted by regional sales director Ted Engle. Among other things, Mr. Engle informed Mr. Mastrosimone that Condal was also being terminated as a master-distributor, thus leaving W.M. Brown as the sole master-distributor in the New York metropolitan market. In addition, Mr. Engle asked Mr. Mastrosimone what he and Mr. DeCilla wanted. During this conversation, addressing Mr. Mastrosimone's response that he wanted a larger number of stores for LD Cookie and an assurance that his interests would be protected going forward, Mr. Engle once again offered reassurances to Mr. Mastrosimone, repeatedly telling him "You'll get what you want."

F. Kellogg Micromanages the Selection and Recruitment of W.M. Brown Subdistributors

1. Kellogg Needed to Retain Subdistributors Through Transition

121. By March 2016 -- with Premier having been terminated by Kellogg on or about January 20, 2016, and Condal having been terminated as a master-distributor in or around February 2016 -- Kellogg's secret plan to abandon its DSDD distribution in the New York market was moving forward, with distribution consolidated under a single master-distributor.

122. In order to ensure as seamless a business transition as possible, Kellogg continued to utilize subdistributors to deliver products even while executing on its plan to do away with the DSDD model. As such, Kellogg sought to micromanage the selection and recruitment of subdistributors to W.M. Brown, Defendant's sole New York area master-distributor. Put simply, Kellogg needed to keep subdistributors in place on all of the existing routes to continue delivering product until it sprung the trap on its final termination of its DSDD distributors throughout the New York metropolitan market. Consistent with this purpose, Kellogg, per David Biller, actively supervised W.M. Brown's entering into contracts with subdistributors to ensure that the entire geographic footprint was covered.

2. Kellogg Recruits Steven Mastrosimone and LD Cookie to Maintain Condal's Distribution Through Termination

123. Subsequent to Mr. Mastrosimone's February 29, 2016 email and his follow-up telephone call with Kellogg regional sales director Ted Engle in which he was assured "You'll get what you want" and "you'll get a good deal," Mr. Mastrosimone scheduled a meeting at W.M Brown in order to discuss LD Cookie's distribution route and to negotiate on behalf of Mr. DeCilla for a larger distributorship.

124. In or around March 2016, Mr. Mastrosimone visited W.M. Brown's Bethpage warehouse in order to meet with Mike Ambrosio and discuss entering into an affiliation with W.M. Brown. Also present at this meeting was Kellogg regional sales director Ted Engle.

125. At this March 2016 meeting, Mr. Ambrosio commented about the number of stores that would be assigned to LD Cookie, some 144 stores primarily in the Bronx and Westchester Counties, New York. Mr. Ambrosio expressed some concern about the unusually high number of stores, stores which had previously been under Condal's management as a master-distributor. In response, Mr. Engle stated "Give him what he wants. Just give him what he wants."

126. Shortly following this meeting, at which no mention was made by Mr. Engle that Kellogg intended to discontinue its DSD distribution model, Mr. DeCilla elected to proceed with working an expanded LD Cookie route consisting of some 144 stores, with Mr. Mastrosimone charged with managing the day-to-day operations of the expanded DSDD route. By mid-2016, with his newly expanded, much larger route, Mr.

Mastrosimone had hired two employees to assist him in properly managing his Kellogg distribution route.

G. Kellogg Springs the Trap on Its Long-Planned Termination of Plaintiffs' Distribution Rights

127. As 2016 progressed, Plaintiffs all continued to diligently work their DSDD distribution routes, investing their time and energy into what they viewed as a viable, long-term opportunity.

128. Moreover, in certain instances, Plaintiffs invested additional monies into growing their then-existing routes or in the case of Sue Lau, initially acquired her route. For one example, on or about April 7, 2016, Mr. McSweeney invested an additional $20,000 into his business, for the purpose of purportedly protecting his exclusive right to distribute Kellogg snack products to certain specific locations. As a second example, through 2016, Mr. Aaronson and his former business partner continued to consolidate their route by adding additional stores in New Jersey and expending funds to do so, including an acquisition of additional stores for cash consideration in or about August 2016 based on James Yany's advice and assurances. Mr. Aaronson never would have taken these actions had he known or expected that Kellogg was about to altogether abandon its DSD model, including the DSDD model utilized in the New York metropolitan market. As a third example, Sue Lau did not acquire her routes until 2016.

129. At no time during 2016 were Plaintiffs informed by Kellogg of its plan to abandon its DSD model.

130. Kellogg was motivated to eliminate DSD to cut its costs. As referenced in one industry publication, *FoodBusinessNews*, on June 15, 2017:

> Central to the Kellogg Co.'s plans to exit its U.S. snacks direct-store delivery distribution model is the financial savings anticipated to be generated by the move.
>
> * * *
>
> Without getting into specific numbers, John Bryant, chairman and chief executive officer of the Kellogg Co., iterated the savings will be significant.
> "… The D.S.D. system on average cost about 20% of sales to maintain,' he said. 'Our warehouse system is more like 5% of sales. So, it's 15 points of margin in there between those two systems."

131. By early 2017, some of the Plaintiffs began hearing rumors about Kellogg's future business plans, specifically with respect to W.M. Brown. For example, in or around early February 2017, Mr. McSweeney was at the W.M Brown Bethpage facility when he heard other distributors, including another retired FDNY colleague, discussing Kellogg possibly discontinuing its relationship with W.M. Brown.

132. Despite Kellogg's plan to exit its DSD distribution model, Plaintiffs were not advised by Kellogg that their livelihood was in jeopardy. On the contrary, upon information and belief, many DSDD subdistributors were misinformed by Kellogg agents that the DSDD model utilized in the New York metropolitan market would be insulated from any cuts undertaken by Defendant, and in fact, would remain viable.

133. On February 8, 2017, Kellogg formally announced its intended plan to switch its delivery channels, effectively discontinuing DSD in favor of returning to a centralized warehouse model. As indicated in a February 8, 2017 Reuters article addressing the announcement:

> The distribution model change is part of an expanded "Project K" program, which Kellogg launched in 2013 to save up to $475 million annually by 2018 through job cuts and production optimization. Kellogg said it will close its distribution centers and that there would be layoffs, though it declined to provide details.

134. Following this announcement, Plaintiffs all continued to diligently work their distribution routes, as Kellogg had not informed Plaintiffs, or other subdistributors working in the New York metropolitan market, that their distribution rights were being eliminated. In some instances, Plaintiffs were informed by W.M. Brown employees, including Mike Ambrosio, that their distribution rights would remain safe and that any cuts would not affect the New York market, as Premier and Condal had already been terminated. This assurance made sense to Plaintiffs, who were aware that the New York metropolitan market differed from many other markets due to the large number of independent retailers such as bodegas and small urban supermarkets located in the New York area that were not conducive to central warehouse distribution.

135. Consistent with this message, Kellogg, per James Yany, emailed New York-area DSDD distributors including Glenn Aaronson on February 28, 2017 referring to "the Company's decision to close all (39) Kellogg's dc locations and begin distributing Kellogg's Snacks to each of you through the (7) KDC locations throughout the country." *See* Exh. 1. The email contained an attachment providing procedures under which the DSDD distributors would place orders via e-mail to Kellogg and receive shipments from so- called "NSD" warehouses. In other words, the communication strongly suggested, if not indicated, that the New York area DSDD distributors would continue to distribute Kellogg products after the transition, but would receive shipments from a different location.

136. Kellogg also orally assured Plaintiffs that the transition would not harm their businesses. Kellogg regional sales director Ted Engle specifically distinguished

DSD from DSDD distribution, and told Steve Mastrosimone, with whom he spoke about three times a week, that LD Cookie Corp's distribution was "DSDD, not DSD" and therefore Mr. Mastrosimone had "nothing to worry about" and that "if anything [he] might get more business because of the change."

137. It was not until May 11, 2017, that Plaintiffs were all notified by W.M. Brown of Kellogg's intention to altogether abandon its DSD model, including the DSDD model utilized in certain markets, including New York. Specifically, Plaintiffs all received a copy of a letter from Kellogg, dated May 5, 2017. In relevant part, the letter read: "On February 8, we announced our decision to exit our Direct Store-Door (DSD) network, transitioning our U.S. Snacks business to our warehouse model by Q4 2017 …. As a result, we are terminating the Agreement effective August 4, 2017." Annexed hereto as Exh. 2 is a copy of the W.M. Brown correspondence and attached Kellogg notice terminating its business arrangement with W.M. Brown and Plaintiffs.

138. As a result of Kellogg's secret plan to entirely discontinue its DSD model, as carried out under its Project K initiative, Plaintiffs have lost their businesses and livelihoods and been severely damaged.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION – BREACH OF FIDUCARY DUTY

139. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

140. Defendant acted as a fiduciary to Plaintiffs by virtue of the confidential working relationship between the parties as alleged herein, giving rise to fiduciary duties to Plaintiffs, including without limitation duties of care, candor, loyalty, good faith and fair dealing, under the common law.

141. Defendant breached its fiduciary duties, including without limitation its duties of candor, loyalty, good faith and fair dealing under the common law, to Plaintiffs by virtue of conduct and omissions alleged herein.

142. As a direct and proximate result of Defendant's unlawful conduct, omissions and breach of fiduciary duty, Plaintiffs have suffered money damages based on the injury to their property, loss of future income, and other general and specific damages.

SECOND CAUSE OF ACTION – CONSTRUCTIVE FRAUD

143. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

144. As a result of their misrepresentations and omissions and the other wrongful conduct alleged herein, Defendant, in direct violation of its fiduciary duties to Plaintiffs, took improper advantage of the fiduciary relationship existing among the Defendant and the Plaintiffs at the expense of the Plaintiffs, who relied on the Defendant's expertise and good faith.

145. Defendant's actions have resulted in an unconscionable advantage being taken by the Defendant over the Plaintiffs, and the Plaintiffs have suffered damages resulting therefrom.

146. Defendant's abuse of the fiduciary relationships existing among the parties was accomplished in bad faith, through the use of intentional deceit and deception, and in reckless disregard of Plaintiffs' rights for the Defendant's own financial gain.

147. Plaintiffs have incurred actual damages as a result of Defendant's unlawful conduct.

148. In addition, Defendant, per its personnel, acted with a culpable state of mind and engaged in a pattern of unlawful conduct wantonly, wilfully, deliberately and intentionally, with conscious disregard of the rights of others. Punitive damages are therefore appropriate.

THIRD CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION

149. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

150. By virtue of the relationship between Plaintiffs and Kellogg, Plaintiffs in morals and good conscience had the right to rely upon Kellogg for information. Kellogg, through its employees and agents, repeatedly and negligently misrepresented the true facts regarding Defendant's intention to exit its then-existing DSD distribution model in favor of returning to a centralized warehouse distribution system.

151. Defendant negligently misrepresented the true facts concerning the matters misrepresented with the intent to induce reliance thereon by Plaintiffs.

152. Plaintiffs reasonably relied upon the negligent statements and misrepresentations made by Defendant and other statements as set forth above.

153. Had the material facts concerning the matters misrepresented to Plaintiffs been known, Plaintiffs would not have continued to invest their capital and other resources into acquiring, maintaining, and otherwise servicing, their respective distribution routes as they did in reliance on Defendant's statements and omissions.

154. As a direct and proximate result of Defendant's misrepresentations and omissions of material facts, Plaintiffs have suffered damages in an amount to be determined according to proof.

FOURTH CAUSE OF ACTION– QUANTUM MERUIT

155. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

156. Plaintiffs all rendered services in good faith to Defendant, performing as distributors of certain snack products manufactured by and under the ownership of Defendant, and, in the case of Mr. Aaronson, providing warehouse services to Kellogg.

157. Defendant willingly accepted Plaintiffs' services and derived tangible benefit from Plaintiffs' ongoing performance in delivering Defendant's product throughout the New York metropolitan market.

158. Plaintiffs all paid valuable consideration to acquire their respective distribution routes, and Defendant accepted the services of Plaintiffs in the performance described above, and accordingly, Plaintiffs are entitled to compensation for the value of their services on a quantum meruit basis.

FIFTH CAUSE OF ACTION – UNJUST ENRICHMENT

159. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

160. Plaintiffs all rendered services to Defendant, performing as distributors of certain snack products in the New York metropolitan market that were manufactured by and under the ownership of Defendant and, in the case of Mr. Aaronson, providing warehouse services to Kellogg.

161. The Defendant benefited from Plaintiffs' ongoing performance.

162. The Defendant's unilateral decision to abandon its DSD distribution model in favor of returning to a centralized warehouse model was carried out at the Plaintiffs' expense.

163. It is against equity and good conscience to permit Defendant to retain benefits and value obtained at Plaintiff's expense and by virtue of Plaintiffs' ongoing performance. Defendant should be required to make restitution in a sum to be determined at trial.

JURY DEMAND

164. Plaintiffs demand a jury trial on all causes of action so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment:

(a) Awarding money damages, including prejudgment interest, on each claim in an amount to be established at trial;

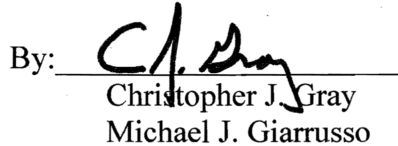
(b) Awarding punitive damages in an amount to be established at trial;

(c) Imposing a constructive trust on sums by which Defendant has been enriched at the expense of Plaintiffs disgorging any and all sums by which Defendant has been unjustly enriched;

(d) Granting such other relief as to this Court may seem just and proper.

Dated: New York, New York
October 8, 2018

LAW OFFICE OF
CHRISTOPHER J. GRAY, P.C.

By: 
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