



August 9, 2023

Michelle Eisele, Director  
Kenneth Bird, Regional Attorney  
Indianapolis District Office  
U.S. Equal Employment Opportunity Commission  
101 West Ohio St, Ste 1900  
Indianapolis, IN 46204

**Investigation Request: The Kellogg Company**

Dear Ms. Eisele and Mr. Bird:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write, according to 29 C.F.R. § 1601.6(a), seeking issuance of a commissioners’ charge for an inquiry into Kellogg Company (“Kellogg’s”) unlawful employment practices.

Kellogg’s is a publicly traded corporation with its corporate headquarters located at One Kellogg Square, Battle Creek, Michigan 49016-3599. Title VII of the Civil Rights Act of 1964 prohibits Kellogg’s from discriminating against an employee or an applicant for employment because of race, color, religion, sex, or national origin; to limit, segregate, or classify employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of race, color, religion, sex, or national origin; or to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training. However, the evidence is that Kellogg’s is knowingly, intentionally, and systematically engaging in unlawful employment practices.

**I. Evidence of Unlawful Employment Practices**

The evidence is that Kellogg’s engages in unlawful employment practices by seeking to “balance” its workforce based on race, color, national origin, and sex.<sup>1</sup> Instead of equality of opportunity, which Kellogg’s defines as “giving each person the same

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<sup>1</sup> See *Our Approach*, KELLOGG COMPANY, <https://tinyurl.com/2p8ea6vu> (last visited June 20, 2023); Kris Bahner, *Message from the SR. VP, Chief Global Corporate Affairs Officer*, KELLOGG COMPANY (Aug. 2022), <https://tinyurl.com/3ep76pv6>.

things,” Kellogg’s employment practices are unlawfully based on “equity,”<sup>2</sup> which is a euphemism for illegal discrimination. Specifically:

- Kellogg’s “Better Days’ Promise” specifies that by the end of 2025, it will achieve “25% underrepresented talent [sic] at the management level in the United States.”<sup>3</sup>
- Between 2020 and 2022, the percentage of racially underrepresented talent increased by almost exactly 2% across all position levels.<sup>4</sup> Given Kellogg’s commitment to “diversifying” leadership, advancing favored groups at the expense of others because of their skin color merits investigation.
- The ethnic composition of individuals in positions defined as “All Managers Roles and Above” especially appears suspiciously engineered by race.<sup>5</sup> While the ethnicity breakdown varies slightly more within the positions of Directors and VPs, Asians, Blacks, and Hispanics, each make up *precisely* 7% of the individuals who are managers or above.<sup>6</sup>
- Through 2022, Kellogg’s operated an “accelerated development program for Racially Underrepresented Talent [sic] at the management level.”<sup>7</sup>
- Kellogg’s operates a “Chef in Residence” program, a “paid postgraduate fellowship for Black chefs to work with our Research and Development (R&D) team to help them better understand food’s role in Black communities worldwide.”<sup>8</sup> Unlawfully, only Black or African American chefs are allowed to apply, even if individuals of other races are otherwise qualified.<sup>9</sup>

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<sup>2</sup> *Features 2021: Equity, Diversity & Inclusion Annual Report*, KELLOGG COMPANY, <https://tinyurl.com/tyxjjhm5> (last visited June 20, 2023), at 4.

<sup>3</sup> *Progress Toward Our Commitments, 2020-2021*, KELLOGG COMPANY, <https://tinyurl.com/sjhbnwp5> (last visited June 20, 2023).

<sup>4</sup> From 2020-2022, the percentage of racially underrepresented individuals out of all employees increased from 36.3% to 38.1%; out of all salaried employees, from 21.9% to 23.7%; out of “All Managers & Above,” from 20.8% to 22.7%; and out of “All Directors & Above” (called “Senior Management” in 2020), from 19.2% to 23.1%. Between 2021 and 2022, “All VPs & above” increased from 25.6% to 27.6%. See *Features 2021: Equity, Diversity & Inclusion Annual Report*, KELLOGG COMPANY, <https://tinyurl.com/tyxjjhm5> (last visited June 20, 2023), at 10; *Kellogg Company Moves Closer to Achieving Equity, Diversity and Inclusion Goals*, KELLOGG’S CORPORATE & U.S. NEWS (Apr. 10, 2023), <https://tinyurl.com/3mx538fs>.

<sup>5</sup> See *Kellogg Company Moves Closer to Achieving Equity, Diversity and Inclusion Goals*, KELLOGG’S CORPORATE & U.S. NEWS (Apr. 10, 2023), <https://tinyurl.com/3mx538fs>.

<sup>6</sup> *Id.*

<sup>7</sup> *2023 Top 50 Companies for Diversity: Kellogg Company*, FAIR360, <https://tinyurl.com/3rzznb3k> (last visited June 20, 2023).

<sup>8</sup> *3 Strategies to Reach Diverse Consumers*, KELLOGG’S CORPORATE & U.S. NEWS (June 14, 2023), <https://tinyurl.com/2cnaj8cw>.

<sup>9</sup> *Supra*, note 4.

- Kellogg’s promises that by the end of 2025, it will achieve its “aspirational gender parity goal [sic] of 50/50 at the management level” in its global operations.<sup>10</sup> To that end, Kellogg’s has initiated a Leadership Development program only for women called “ASPIRE.”<sup>11</sup> Although the number of total and salaried employees has remained relatively stable since 2018, the percentage of women in management globally has jumped from 40.7% in 2018 to 45.7% in 2023.<sup>12</sup> Between 2021 and 2022, the number of women in “All VPs & Above” positions rose from 32.8% to 34.1%.<sup>13</sup> In posts titled “All Directors & Above,” the percentage of women leaped from 38.4% to 41.2%.<sup>14</sup> This is strong evidence that Kellogg’s is unlawfully preferring women in hiring, training, and promotions.

## II. Conclusion

Kellogg’s discriminatory hiring, training programs, and promotion practices are illegal and deeply harmful. Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”<sup>15</sup> The Company’s employment practices foment contention and resentment—they are “odious and destructive.”<sup>16</sup> It truly “is a sordid business, this divvying us up” by race or sex.<sup>17</sup> Therefore, a Commissioner’s charge is particularly appropriate here because of ample evidence that Kellogg’s has knowingly and intentionally violated federal law and will continue to do so.

[Signature page follows]

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<sup>10</sup> *Progress Toward Our Commitments, 2020-2021* [Report], KELLOGG COMPANY, <https://tinyurl.com/sjhbnwp5> (last visited June 20, 2023).

<sup>11</sup> *3 Strategies to Reach Diverse Consumers*, KELLOGG’S CORPORATE & U.S. NEWS (June 14, 2023), <https://tinyurl.com/2cnaj8cw>.

<sup>12</sup> *See Kellogg Company Moves Closer to Achieving Equity, Diversity and Inclusion Goals*, KELLOGG’S CORPORATE & U.S. NEWS (Apr. 10, 2023), <https://tinyurl.com/3mx538fs>.

<sup>13</sup> *See id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954); *see also, Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U. S. \_\_\_\_ (2023), (No. 20–1199), 2023 U.S. LEXIS 2791, \*54 (The Supreme Court found that “[o]ne of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities.”) (internal citations omitted).

<sup>16</sup> *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

<sup>17</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

Thank you in advance for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Reed D. Rubinstein

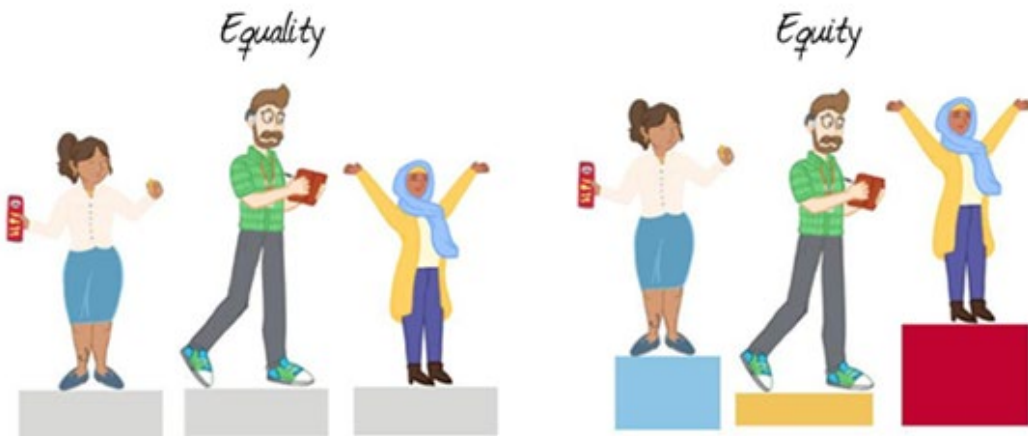
Reed D. Rubinstein

America First Legal Foundation

Cc: The Honorable Charlotte A. Burrows, Commission Chair  
The Honorable Jocelyn Samuels, Commission Vice Chair  
The Honorable Keith E. Sonderling, Commissioner  
The Honorable Andrea R. Lucas, Commissioner  
The Honorable Kalpana Kotagal, Commissioner

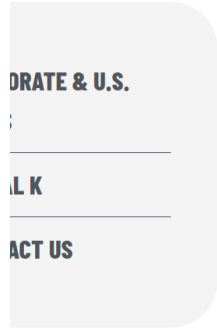
## APPENDIX

Living Our Founder's Values	Addressing food security	Advocacy	Engage 1.5 billion people in the interconnected	<ul style="list-style-type: none"> <li>• 137,602,338 people engaged in 2020</li> <li>• 553,695,039 people engaged from 2015 baseline</li> </ul>
	Equity, diversity & inclusion	Gender parity	By the end of 2025, achieve aspirational gender parity goal of 50/50 at the management level	As of July 31, 2021: <ul style="list-style-type: none"> <li>• 35.8% Salaried/Production</li> <li>• 45.7% Salaried</li> <li>• 43.4% Management</li> <li>• 36.6% Executive</li> </ul>
		Racial equity	By the end of 2025, achieve aspirational goal of 25% underrepresented talent at the management level in the U.S.	As of July 31, 2021: <ul style="list-style-type: none"> <li>• 36.3% Salaried/Production</li> <li>• 22.2% Salaried</li> <li>• 21.1% Management</li> <li>• 25.5% Executive</li> </ul>



**Equity** is not the same as Equality. It is not about giving each person the same things; it **is about giving each person the unique support needed to lift them up to the same opportunity.**

# SOCIAL K



Home > [Social K](#)

## 50:50! The story behind Kellogg Europe's journey to gender parity



Everyone has a seat at the table at Kellogg.

And in Kellogg Europe, that table looks more balanced each day now that the team has reached its [Better Days® Promise](#) goal of having 50% female representation at the manager level and above.

A founding member of the Leading Executives Advancing Diversity (LEAD) Network, Kellogg Europe signed a pledge in 2019 to reach 50/50 representation by 2025. Turns out the team only needed until December 2022 to make it happen.

"Together With Pride cereal marks the latest chapter in a years long partnership with GLAAD and is the evolution of the much-loved All Together cereal, which previously was only available online," said Doug VanDeVelde, General Manager of Kellogg U.S. Cereal Category. "Our delicious new recipe features berry-flavored, rainbow hearts dusted with edible glitter. We can't wait for fans to try our latest limited run."

Together With Pride cereal is now available at select major retailers nationwide while supplies last.



## EQUITY, DIVERSITY & INCLUSION

Our Chef in Residency Fellowship is bringing more Black chefs into food research and development. The yearlong program helps leading Black chefs understand how companies develop new foods and introduces Kellogg to new tastes, ingredients and flavors enjoyed by Black consumers. Our Chefs in Residence are proving that the culinary arts are a great way to make cultural connections.



These efforts to create a good and just world for years to come can only happen with the help of our employees, shareowners, customers, people who enjoy our foods, suppliers, government leaders, nongovernmental organizations and partners. We're grateful for your support as we continue to create better days around the world.