

WHEREAS, it is the responsibility of the Assessor to determine that an application for a Class 6(b) classification or renewal of a Class 6(b) classification is eligible pursuant to the Ordinance; and

WHEREAS, the Ordinance requires that, in connection with the filing of a Class 6(b) renewal application with the Assessor, an applicant must obtain from the municipality in which such real estate is located a resolution expressly stating that the municipality has determined that the industrial use of the property is necessary and beneficial to the local economy and that the municipality supports and consents to the renewal of the Class 6(b) classification; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

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RENEWAL RESOLUTION V4.DOCX

SECTION 1: That the City determines that the industrial use of the Subject Property is necessary and beneficial to the local economy in which the Subject Property is located.

SECTION 2: That the City supports and consents to the renewal of the Class 6(b) classification with respect to the Subject Property.

SECTION 3: That the Clerk of the City of Chicago is authorized to and shall send a certified copy of this resolution to the Office of the Cook County Assessor, Room 312, County Building, Chicago, Illinois 60602 and a certified copy of this resolution may be included with the Class 6(b) renewal application filed with the Assessor by the Applicant, as applicant, in accordance with the Ordinance.

SECTION 4: That this resolution shall be effective immediately upon its passage and approval.

Honor§bfe Anthony Beale Alderman,
9th Ward

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INTERNET FILES\CONTENT OUTLOOK\PXRW43HW\KEEBLER COMPANY_6D RENEWAL RESOLUTION V4 DOCX

EXHIBIT A

[[SUBJECT TO CONFIRMATION BY DEVELOPER; TITLE & SURVEY AND DPD]] Legal

Description of Subject Property-Parcel 1:

That part of Lot 7 in Enjay Construction Company's Pullman Industrial District, being a subdivision of parts of the West 1/2 of Section 14 and the East 1/2 of Section 15, all in Township 37 North, Range 14, East of the Third Principal Meridian, in Hyde Park Township, described as follows:

Beginning at the Southeast corner of said Lot 7, running thence West along the South line of said Lot 7, being the North line of East 110th Street, a distance of 373.50 feet; thence North at right angles to the said South line of Lot 7; thence East along said North line, being a curved line convexed to the North, with a radius of 269.22 feet, a distance of 36.53 feet (arc); thence continuing along said North line on a curved line, with a radius of 387.65 feet, a distance of 64.50 feet (arc); thence continuing along said North line, being a straight line tangent to the last described curved line, a distance of 422.17 feet to the Northeast corner of said Lot 7; thence Southwesterly along the Easterly line of said Lot 7, a distance of 568.06 feet to the point of beginning, in Cook County, Illinois.

Parcel 2:

That part of Lot 7 in Enjay Construction Company's Pullman Industrial District, being a subdivision of parts of the West 1/2 of Section 14 and the East 1/2 of Section 15, all in Township 37 North, Range 14, East of the Third Principal Meridian, described as follows:

Beginning on the South line of said Lot 7, being the North line of East 110th Street at a point, 373.50 feet West of the Southeast corner of said Lot 7, running thence North at right angles to said South line, a distance of 533.66 feet to the North line of said Lot 7; thence West along said North line, being a curved line convexed to the North, with a radius of 269.22 feet, a distance of 59.95 feet (arc); thence continuing along said North line, being a straight line tangent to last described curved line, a distance of 57.63 feet; thence continuing along said North line, being a curved line tangent to last described straight line, convexed to the South, with a radius of 303.92 feet, a distance of 108.03 feet (arc) to the West line of said Lot 7, being the East line of South Langley Avenue; thence South along said line, a distance of 348.51 feet; thence continuing along the Westerly line of said Lot 7, being a curved line tangent to the last described line, convexed to the Southwest tangent to last described line, with a radius of 105.5 feet, a distance of 118.07 feet (arc) to the South line of said Lot 7; thence East along said South line, a distance of 143.41 feet to the point of beginning, in Cook County, Illinois.

Parcel 3:

The South 2 feet of lot 4, except the East 31.67 feet thereof, together with Lot 5, except the East 31.67 feet thereof, in Enjay Construction Company's Pullman Industrial District, being a subdivision of the West 1/2 of Section 14 and the East 1/2 of Section 15, all in Township 37 North, Range 14, East of the Third Principal Meridian in Hyde Park Township, Cook County, Illinois.

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COMPANY_6B RENEWAL RESOLUTION V4.DOCX

EXHIBIT A (continued)

Parcel 4:

A parcel of land in the Southeast 1/4 of Section 15 and Southwest 1/4 of Section 14, all in Township 37 North, Range 14, East of the Third Principal Meridian, Described as follows:

Beginning at a point on the center line South Langley Avenue, extended South, as occupied and laid out in the original town of Pullman, 60.00 feet South of the North Line of the South 1/2 of the Southeast 1/4 of Section 15 or the South Line of Northeast 1/4 of the Southeast 1/4 of Section 15; thence North along said Center Line of South Langley Avenue, 107.50; thence East along a line drawn parallel with and 47.50 feet north of said South line of Northeast 1/4 of the Southeast 1/4 of Section 15 553.82 feet; thence Northeasterly on a curved line convexed to the Southeasterly, tangent to the last described parallel line and having a radius of 291.50 feet, a distance of 354.56 feet (arc), thence Northeasterly on a straight line tangent to the last described curved line, 25.89 feet to its intersection with the Westerly line of Pullman Railroad, (being 30.00 feet wide); thence Southwesterly along said Westerly Line 249.23 feet, to a point on a line drawn 21.65 feet North of said South Line of the Northeast 1/4 of the Southeast 1/4 of Section 15, extended East into Section 14; thence West along the last described parallel line, 422.17 feet; thence Southwesterly on a curved line, convexed Northwesterly, tangent to last described parallel line and having a radius of 387.65 feet, a distance of 64.50 feet (arc); thence Southwesterly on a curved line, convexed Northwesterly, having a common tangent with last described curved line and having a radius of 269.22 feet, a distance of 96.48 feet (arc); thence Southwesterly tangent to last described curved line, 57.63 feet; thence continuing on a curved line, convexed Southeasterly, tangent to last described straight line, having a radius of 303.92 feet, a distance of 150.31 feet (arc); thence Westerly on a straight line, tangent to last curved line, a distance of 167.52 feet to a point on a curved line convexed Northwesterly, having a radius of 278.07 feet; thence Southwesterly along said curved line, a distance of 187.10 feet (arc) to its intersection with a line drawn parallel with and 317 feet West of the aforesaid centerline of South Langley Avenue, extended South; thence South along said parallel line, a distance of 148.51 feet to a point on a line drawn parallel with and 346.00 feet South of said North line of South 1/2 of the Southeast 1/4 of Section 15; thence West along said parallel line, 68.41 feet; thence Northeasterly on a curved line, convexed Northwesterly, having a radius of 295.07 feet, a distance of 192.16 feet (arc) to its intersection with said line drawn parallel with and 317.00 feet West of said centerline of South Langley Avenue, extended South; thence North along said parallel line, 109.72 feet to a point on a line drawn parallel with and 60.00 feet South of said North line of the South 1/2 of the Southeast 1/4 of Section 15; thence East along said parallel line, 317.00 feet to point of beginning, in Cook County, Illinois.

Parcels 1,2,3 and 4 can also be described as:

A parcel of land in the Southeast 1/4 of Section 15 and part of the Southwest 1/4 of Section 14, all in Township 37 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois, described as follows:

Beginning at a point on the centerline of South Langley Avenue extended South as occupied and laid out in the original Town of Pullman, 60 feet South of the North line of the South 1/2 of the Southeast 1/4 of Section 15 or the South Line of the Northeast 1/4 of the Southeast 1/4 of Section

EXHIBIT A (continued)

15; thence North along said centerline of South Langley Avenue, 107.50 feet; thence East along a line drawn parallel with and 47.50 feet North of said South line of the Northeast 1/4 of the Southeast 1/4 of Section 15, 42.50 feet; thence North 03 degrees 05 minutes 40 seconds West along the East right of way line of South Langley Avenue, 327.00 feet; thence North 87 degrees 11 minutes 38 seconds East, 519.54 feet along a line 2.00 feet North of the South line of Lot 4 in Enjay Construction Company's Pullman Industrial District Subdivision, thence South 02 degrees 44 minutes 12 seconds East, 326.78 feet along a line 31.67 feet West of and parallel with the East line of Lots 4 and 5 in said Enjay Construction Company's Pullman Industrial District Subdivision, to a point on the North right of way line of the Norfolk Southern Railway Company; thence Northeasterly along said right of way, being a curve concave to the Northwest, having a radius of 291.50 feet, an arc length of 348.57 feet, a chord distance of 328.17 feet and a chord bearing of North 51 degrees 44 minutes 25 seconds East; thence continuing along said right of way North 18 degrees 07 minutes 46 seconds East, 25.89 feet to a point on the Westerly right of way line of the Chicago Rock Island and Pacific Railroad (Pullman Railroad); thence South 12 degrees 27 minutes 25 seconds west, 817.93 feet along said Westerly right of way line to a point on the North right of way line of East 110th Street; thence South 87 degrees 15 minutes 38 seconds West, 517.15 feet along said North right of way line to a point of non-tangential curve; thence Northwesterly along a curve concave to the Northeast having a radius of 105.50 feet, an arc length of 118.99 feet, a chord distance of 112.78 feet and a chord bearing of North 34 degrees 28 minutes 58 seconds West; thence North 03 degrees 05 minutes 40 seconds West, 348.51 feet along the East right of way of South Langley Avenue to a point on the South right of way line of the Norfolk Southern Railway Company; thence Southwesterly along a curve concave to the Northwest having a radius of 303.92 feet, an arc length of 42.01 feet, a chord distance of 41.98 feet and a chord bearing of South 81 degrees 29 minutes 18 seconds West; thence South 85 degrees 26 minutes 54 seconds West, 167.52 feet along said South right of way line to a point of curve; thence Southwesterly along a curve concave to the Southeast having a radius of 278.07 feet, an arc length of 187.33 feet, a chord distance of 183.81 feet and a chord bearing of South 51 degrees 43 minutes 52 seconds West; thence South 03 degrees 05 minutes 40 seconds East, 148.51 feet along a line parallel with and 317.00 feet West of the centerline of South Langley Avenue extended South and laid out in the original Town of Pullman; thence South 87 degrees 10 minutes 40 seconds West 68.41 feet along a line parallel with and 346.00 South of the North line of the Southeast 1/4 of the Southeast 1/4 of Section 15; thence Northeasterly along a curve concave to the Southeast having a radius of 295.07 feet, an arc length of 192.16 feet, a chord distance of 188.79 feet and a chord bearing of North 18 degrees 09 minutes 02 seconds East; thence North 03 degrees 05 minutes 40 seconds West, 109.72 feet along a line parallel with and 317.00 feet West of the centerline of South Langley Avenue extended South and laid out in the original Town of Pullman; thence North 87 degrees 10 minutes 40 seconds East, 317.00 feet along a line parallel with and 60.00 feet South of the North line of the Southeast 1/4 of the Southeast 1/4 of Section 15, to the point of beginning, all in Cook County, Illinois.

Permanent Real Estate Tax Index Numbers (PINS) for the Subject Property:

25-14-300-003-0000 25-15-406-009-0000 25-15-406-038-0000 25-15-406-039-0000 25-15-406-048-0000
10301 S. Woodlawn Avenue 10910 S. Langley Avenue 10901 S. Langley Avenue
10930 S. Langley Avenue 10839 S. Langley Avenue

CITY OF CHICAGO AFFIDAVIT FOR COOK COUNTY CLASS

6b TAX INCENTIVE

On behalf of Keebler Company (the "Applicant"), I hereby certify, represent and warrant the following to the City of Chicago:

1. Attached as Exhibit 1 hereto and hereby incorporated herein is a true and correct Disclosure of the Ownership Interests of the Applicant as set forth in Cook County's Code of Ethical Conduct (Cook County, 111., Code, Ch. 2, Art. VII, Div. 2, Subdiv. VI, Section 2-610), including but not limited to a true and correct list of all real estate owned in Cook County, Illinois by the Applicant, including all permanent index numbers associated with such real estate.
2. Attached as Exhibit 2 hereto and hereby incorporated herein is a true and correct Cook County Incentives Class Living Wage Ordinance Affidavit ("Living Wage Affidavit") for the Applicant. The Applicant hereby represents and warrants that it shall provide a Living Wage Affidavit to the City for any lessees of the Subject Property (as hereinafter defined) who enter into a lease for the Subject Property on or after July 1, 2020.
3. The Applicant is not delinquent in the payment of any property taxes administered by Cook County or by a local municipality.
4. The Applicant is in compliance with all applicable laws, as required by the Cook County Real Property Assessment Classification Ordinance, as amended from time to time (the "Classification Ordinance").

Under penalty of perjury, I hereby certify, represent and warrant that I have the knowledge and the authority to provide this Affidavit to the City of Chicago on behalf of the Applicant. This Affidavit shall be deemed to be the Applicant's Economic Disclosure Statement, as defined in the Classification Ordinance. The Applicant hereby submits this Affidavit to the City of Chicago for purposes of complying with the provisions of the Classification Ordinance.

I hereby acknowledge that the City of Chicago has not, and will not independently verify the certifications, representations and warranties contained herein. I further acknowledge that the City of Chicago is entitled to and is in fact relying upon the certifications, representations and warranties contained herein in connection with its support and consent for the Class 6b application of the Applicant to the Office of the Assessor of Cook County, Illinois pursuant to the Classification Ordinance in connection with property located at 750 East 110th Street, in Chicago, Illinois (the "Subject Property").

I understand and acknowledge that if the certifications, representations or warranties contained herein are untrue in any respect, the support and consent of the City of Chicago for the Class 6b classification of the Subject Property may be revoked, and other penalties at law or in equity may apply.

APPLICANT:

Name of Company: Keebler Company Pant Name of

Signatory: .

(Circuit) 4th Street

Print Title of Signatory: Vice President

Signed and sworn before me on /L(&A)JI JUD'/H' (Date)

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Notary Public

My Commission expires on paihnnn County, Michigan
My Commission Expires January 18,2021

EXHIBIT 1

See attached Cook County Disclosure of Ownership Interests of the Applicant.

COOK COUNTY DISCLOSURE OF OWNERSHIP INTEREST STATEMENT

The Cook County Code of Ordinances (§2-610 et seq.) requires that any Applicant for any County Action must disclose information concerning ownership interests in the Applicant. This Disclosure of Ownership Interest Statement must be completed with all information current as of the date this Statement is signed. Furthermore, this Statement must be kept current, by filing an amended Statement, until such time as the County Board or County Agency shall take action on the application. The information contained in this Statement will be maintained in a database and made available for public viewing. County reserves the right to request additional information to verify veracity of information contained in this statement.

If you are asked to list names, but there are no applicable names to list, you must state NONE. An incomplete Statement will be returned and any action regarding this contract will be delayed. A failure to fully comply with the ordinance may result in the action taken by the County Board or County Agency being voided.

"Applicant" means any Entity or person making an application to the County for any County Action.

"County Action" means any action by a County Agency, a County Department, or the County Board regarding an ordinance or ordinance amendment, a County Board approval, or other County agency approval, with respect to contracts, leases, or sale or purchase of real estate.

"Person" "Entity" or "Legal Entity" means a sole proprietorship, corporation, partnership, association, business trust, estate, two or more persons having a joint or common interest, trustee of a land trust, other commercial or legal entity or any beneficiary or beneficiaries thereof.

This Disclosure of Ownership Interest Statement must be submitted by :

1. An Applicant for County Action and
2. **A Person that holds stock or a beneficial interest in the Applicant and is listed on the Applicant's Statement (a "Holder") must file a Statement and complete #1 only under Ownership Interest Declaration.**

Please print or type responses clearly and legibly. Add additional pages if needed, being careful to identify each portion of the form to which each additional page refers.

This Statement is being made by the Applicant or [J] Stock/Beneficial Interest Holder

This Statement is an: Identifying Information:

Name Keebler Company

FEIN # Only: 36-1894790

street Address: One Kellogg Square

City: Battle Creek

£majj]. kevin.kilpatrick@kellogg.com <mailto:kevin.kilpatrick@kellogg.com>

Cook County Business Registration Number.

(Sole Proprietor, Joint Venture Partnership)

Corporate File Number (if applicable):

Form of Legal Entity:

Sole Proprietor Partnership Corporation Trustee of Land Trust

Business Trust Estate Association Joint Venture

Other (describe)

DISCLOSURE OF OWNERSHIP INTEREST - 1

Ownership Interest Declaration:

1. List the name(s), address, and percent ownership of each Person having a legal or beneficial interest (including ownership) of more than five percent (5%) in the Applicant/Holder.

Percentage Interest in Applicant/Holder

N/A

2. If the interest of any Person listed in (1) above is held as an agent or agents, or a nominee or nominees, list the name and address of the principal on whose behalf the interest is held.

Name of Agent/Nominee N/A

3. Is the Applicant constructively controlled by another person or Legal Entity? Yes No
If yes, state the name, address and percentage of beneficial interest of such person, and the relationship under which such control is being or may be exercised.

Name	Address	Percentage of Relationship Beneficial Interest
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Kellogg Company; One Kellogg Square, Battle Creek, MI 49017; 100%; Indirect subsidiary

Corporate Officers, Members and Partners Information:

For all corporations, list the names, addresses, and terms for all corporate officers. For all limited liability companies, list the names, addresses for all members. For all partnerships and joint ventures, list the names, addresses, for each partner or joint venture.

Title (specify title of Office, or whether manager or partner/joint venture)

See attached officer listing

Declaration (check the applicable box):

- |/j I state under oath that the Applicant has withheld no disclosure as to ownership interest in the Applicant nor reserved any information, data or plan as to the intended use or purpose for which the Applicant seeks County Board or other County Agency action.
- | jj I state under oath that the Holder has withheld no disclosure as to ownership interest nor reserved any information required to be disclosed

DISCLOSURE OF OWNERSHIP INTEREST - 2
REAL ESTATE OWNERSHIP DISCLOSURES.

The Applicant must indicate by checking the appropriate provision below and providing all required information that either:

real estate owned by the Applicant in Cook County:

25-14-300-003-0000; 25-15-406-009-0000 25-15-406-038-0000; 25-15-406-039-0000 25-15-406-048-0000

(ATTACH SHEET IF NECESSARY TO LIST ADDITIONAL INDEX NUMBERS)

The Applicant owns no real estate in Cook County.

EXCEPTIONS TO CERTIFICATIONS OR DISCLOSURES.

If the Applicant is unable to certify to any of the Certifications or any other statements contained in this EDS and not explained elsewhere in

this EDS, the Applicant must explain below:

If the letters, "NA", the word "None" or "No Response" appears above, or if the space is left blank, it will be conclusively presumed that the Applicant certified to all Certifications and other statements contained in this EDS.

DISCLOSURE OF OWNERSHIP INTEREST - 3

Cook County Disclosure of Ownership Interest Statement Corporate Officers, Members and Partners Information:

Table with 4 columns: Name, Address, Title, Term of Office. Lists individuals like Hirst, Alistair D., Libbing, Michael J., etc., with their respective roles and contact information.

EXHIBIT 2

attached Living Wage Affidavit for the Applicant.

Cook County Assessor's Office

118 North Clark Street, Chicago, IL 60602
PHONE: 312.443.7550 WEBSITE: WWW.COOKCOUNTYASSESSOR.COM
<http://WWW.COOKCOUNTYASSESSOR.COM>

Incentives Class Living Wage Ordinance Affidavit

I, [Name], as agent for the applicant set forth below, who is seeking a classification incentive as referenced below, I do hereby state under oath as follows: Class 6b

- 1. As the agent for the applicant set forth below, I have personal knowledge as to the facts stated herein.
2. The property identified by PIN(s) with commonly known address(es), listed in Exhibit A attached and herein incorporated, are/is the subject of a pending application/renewal (circle as appropriate) for one of the following development incentives provided by the Code of Ordinances of Cook County, Chapter 74, Article II, Division 2, The Cook County Real Property Assessment Classification Ordinance, Sec.74-60 et seq., as amended:

X

Class 8 (industrial property)

Class 9

- 3. The Cook County Assessor's Office has issued the following control number regarding this application/renewal (circle as appropriate), ; .
- 4. I have reviewed the Code of Ordinances of Cook County, Chapter 34, Article IV, Division 1 and The Cook County Living Wage Ordinance, Sec. 34-127 et seq., as amended (the "Ordinance"), and certify that the applicant is in compliance with the above referenced Cook County Living Wage Ordinance, due to one of the following options (check as appropriate):

X Applicant is currently paying a living wage to its employees, as defined in the Ordinance.

OR

Applicant is not required to pay a living wage, pursuant to the Ordinance.

One Kellogg Square, Battle Creek, MI 49017 Agent's Mailing Address

Richard Schell Applicant's Name

Rick,Schell@Kellogg.com <mailto:Schell@Kellogg.com>Applicant's e-mail address

Richard Schell, VP - Assistant Treasurer Agent's Name & Title

(269) 961-2000

Agent's Telephone Number

One Kellogg Square, Battle Creek, MI 49017 Applicant's Mailing Address

day of.



Subscribed and sworn before me this ' /

Koiary ■ uo'tc Calt'oun County, W> cHqnn My CommiGslon F>c?;fes January 18, 2021

Exhibit A

(Please type or Print)

	PIN(s)	Common Address
25-14-300-003-0000		10301 S. Woodlawn Ave., Chicago, IL 60628
25-15-406-009-0000		10910 S. Langley Ave., Chicago, IL 60628
25-15-406-038-0000		10901 S. Langley Ave., Chicago, IL 60628

25-15-406-039-0000

10930 S. Langley Ave., Chicago, IL 60628

10839 S. Langley Ave., Chicago, IL .60628

**CITY OF CHICAGO ECONOMIC DISCLOSURE
STATEMENT AND AFFIDAVIT**

SECTION I - GENERAL INFORMATION

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable: Keebler
Company

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. the Applicant

OR

2. a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name:

OR

3. a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: One Kellogg Square
Battle Creek, MI 49016-3599

C. Telephone: (269) 961-2000 Fax: (269) 660-4178 Email: kevin.kilpatrick@kellogg.com
<mailto:kevin.kilpatrick@kellogg.com>

D. Name of contact person: Kevin Kilpatrick

E. Federal Employer Identification No. (if you have one): j /

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

Amendment to existing TIF RDA agreement and resolution in support of renewal of Class 6B at 750 East 110th Street

G. Which City agency or department is requesting this EDS? Department of Planning and Development

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # and *Contract #* ■. _

SECTION II - DISCLOSURE OF OWNERSHIP INTERESTS

A. NATURE OF THE DISCLOSING PARTY

- Person
- Publicly registered business corporation
- Privately held business corporation
- Sole proprietorship
- General partnership
- Limited partnership
- Trust
- Limited liability company Limited liability partnership Joint venture Not-for-profit corporation (Is the not-for-profit corporation also a 501(c)(3))?
- Yes No Other (please specify) Disclosing Party is a 100% wholly owned, indirect subsidiary of Kellogg

Delaware

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- Yes No Organized in Illinois

B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) for not-for-profit corporations, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) for trusts, estates or other similar entities, the trustee, executor, administrator, or similarly situated party; (iv) for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name Title See attached officer/director listing

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

NOTE: Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Keebler Foods Company	One Kellogg Square Battle Creek, MI 49016-3599	100%

Keebler Foods Company is the direct owner of Disclosing Party (see Section 11(A)(1))

SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? Yes No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? Yes No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

Yes No ;

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partners) and describe the financial interest(s).

SECTION IV - DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

[x] Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities. SECTION V -- CERTIFICATIONS

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

Yes No No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

Yes No

B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer

charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

Page 4 of 14

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section 11(B)(1) of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;

b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

See related comment per page 7

c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;

See related comment per page 7

d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and

e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other

official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Page 5 of 14

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date, of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

Ver.2017-1

Page 6 of 14

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

With respect to Section V(B)(3)(b) and (c), please see the "Memorandum of law in support of Defendant Kellogg Company's Partial Motion to Dismiss the County of Cook's complaint" attached at the end of this Economic Disclosure Statement and Affidavit.

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

is is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

Page 7 of 14

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary): Not applicable

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

Yes No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Not applicable Does the Matter involve a City Property Sale?

Yes No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Not applicable

Name	Business Address	Nature of Financial Interest
------	------------------	------------------------------

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

Page 8 of 14

E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

^x 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

SECTION VI ~ CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

Not applicable

NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the

Matter: (Add sheets if necessary):

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

Ver.2017-1

Page 9 of 14

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations. Matter not federally funded - Not applicable

Is the Disclosing Party the Applicant?

Yes

No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal

regulations? (See 41 CFR Part 60-2.)

Yes

No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

Yes

No

Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

Yes

No

If you checked "No" to question (1) or (2) above, please provide an explanation:

Page 10 of 14

SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosure's, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at www.cityofchicago.org/Ethics <<http://www.cityofchicago.org/Ethics>>, and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article 1 (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

Page 11 of 14

CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and Appendices A and B (if applicable), on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and Appendices A and B (if applicable), are true, accurate and complete as of the date furnished to the City.

Keebler Company

(Sign here)

(Print or type name of person signing)

(Print or type title of person signing)

Notary Public

Signed and sworn to before me on (date) at CytjJ rl£(xn County, fOtdUOM (state).

Commission expires:

ViCKIE L VAN HORN
Notary Public
Calhoun County, Michigan
My Commission Expires
January 18,2021

**CITY OF CHICAGO ECONOMIC DISCLOSURE STATEMENT
AND AFFIDAVIT
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND
DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

Yes

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

**CITY OF CHICAGO ECONOMIC DISCLOSURE STATEMENT AND
AFFIDAVIT
APPENDIX B**

BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

Yes No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

Yes No The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

Not applicable

Page 14 of 14

City of Chicago
Economic Disclosure Statement and Affidavit Section 11(B)(1) - Officer and director list

Name	Officer title	Director
Hirst, Alistair D.	Executive Vice President	
Libbing, Michael J.	Vice President	
Pilnick, Gary H.	Executive Vice President and Secretary	X
Renwick IV, John P.	Vice President/CFO, Finance	
Schell, Richard W.	Vice President and Assistant Treasurer	
VanderKooi, Joel A.	Vice President and Treasurer	X
Haigh, Todd W.	Vice President and Assistant Secretary	X
Kilpatrick, Kevin S.	Assistant Treasurer	

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 1 of 10 PageID#:66

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS EASTERN DIVISION

COUNTY OF COOK, a body politic and corporate of the state of Illinois,

Plaintiff,

KELLOGG COMPANY, a Delaware corporation, Defendant.

Case No. 16-cv-3399

Judge John Z. Lee

Magistrate Judge Maria Valdez

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT KELLOGG COMPANY'S PARTIAL MOTION TO
DISMISS THE COUNTY OF COOK'S COMPLAINT

Defendant Kellogg Company ("Kellogg") submits this Memorandum in support of its
Partial Motion to Dismiss Count II of the County of Cook's ("the County") Complaint pursuant to

Federal Rule of Civil Procedure 12(b)(6).

INTRODUCTION

This case is about the County's belated demand that Kellogg pay more than \$2 million for past steam heat services that the County had gratuitously provided to Kellogg for nearly ten years, and to previous occupants for over thirty years. From June 2005 until February 2015, the County provided steam heat to a facility owned by Kellogg located at 3124 South Sacramento, Chicago, Illinois ("Facility"). The County never gave Kellogg any notice that it expected payment for this steam, and never charged Kellogg. Instead, in February 2015, after nearly a decade, the County sent Kellogg a bill out of the blue for over \$2 million based on a seemingly arbitrary per month charge. The County demanded immediate payment and that Kellogg enter into a service agreement for steam going forward. Kellogg rejected both demands and informed the County that Kellogg did not require steam at the Facility. This suit followed.

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 2 of 10 PageID #:67

The County's Complaint sets forth two counts, but only Count II is the subject of this Motion.¹ In Count II, the County seeks payment for the provision of steam services based on a theory of quasi-contract. Count II should be dismissed for two reasons. First, Count I should be dismissed because the County does not plead any facts showing that Kellogg's retention of the alleged benefit was in any way unjust or improper. Second, Count II should be dismissed with prejudice because the County's own allegations show that the alleged benefit was provided gratuitously, without any contemporaneous expectation of payment for ten years, and as a result, Kellogg could not have reasonably believed that the County expected payment. Based on the County's insufficient pleadings, Count II should be dismissed with prejudice pursuant to Rule 12(b)(6).

FACTS ALLEGED

In June 2005, Keebler Co., a subsidiary of Kellogg (Keebler Co. and Kellogg will be referred to collectively as "Kellogg"), acquired the Facility at 3124 South Sacramento, and Kellogg has occupied the Facility continuously ever since. (Doc. No. 1, Exhibit A at ^ 10.) The County has provided steam heat to the Facility since 1973. {Id. at 11.) The County does not allege that it has ever charged any occupant of the Facility for steam. Nearly ten years after Kellogg

purchased the Facility, in February 2015, the County informed Kellogg-for the first time-that it owed the County over \$2 million for steam heat that the County provided to the Facility from the date Kellogg acquired the Facility. {Id. at 13.) At the same time, the County sought to enter into a service agreement with Kellogg for the provision of steam heat in the future. {Id. at ^1 13, Exhibit 3.) Kellogg did not pay the over \$2 million demanded by the County and did not agree to the proposed service agreement for steam heat going forward. {Id. at fflj 14-17, Exhibits 4-5.) The

¹ In Count I, the County seeks a declaratory judgment regarding the interpretation of a covenant running with the land located within the 1973 sales contract for the Facility.

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 3 of 10 PageID #:68

County discontinued steam heat service at the Facility at some point after October 9, 2015. (Id. at 1116, Exhibit 5.)

The County's meagre factual allegations are not only insufficient to state an unjust enrichment claim, but they also belie its claim. The County does not allege that prior to February 2015 it ever notified Kellogg that it expected payment for the steam provided. The County does not allege that, prior to February 2015, it ever attempted to enter into a service agreement for Kellogg to pay the County for steam heat. Rather, the County conclusorily asserts that Kellogg "knew that the provision of steam heat would not ordinarily be free of charge"-despite the fact that the County never gave any indication to that the steam was anything but gratuitous. (Id. at \ 24.) The County then baldly states that Kellogg has been unjustly enriched by its provision of steam services. (Id. at \ 28.) The County's insufficient and ultimately contradictory allegations show that it is not entitled to relief. This Court should therefore dismiss Count II with prejudice.

ARGUMENT

A motion to dismiss pursuant to Rule 12(b)(6) "tests the sufficiency of the complaint, not the merits of the case." *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 878 (7th Cir. 2012). The allegations must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A plaintiff need not provide detailed factual allegations but must provide enough factual support to raise his right to relief above a speculative level. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint must be facially plausible, which means that the pleadings must "allow [] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The claim must be asserted "in sufficient detail to give the defendant 'fair notice of what the...claim is and the grounds upon which it rests.'" *E.E.O.C. v. Concentra Health Servs., Inc.*, 496

3

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 4 of 10 PageID #:69

F.3d 773,776 (7th Cir. 2007) (quoting Twombly, 550 U.S. at 555). "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" Iqbal, 556 U.S. at 678. (quoting Twombly, 550 U.S. at 555) "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient to withstand a Rule 12(b)(6) motion to dismiss under Iqbal. Id.

I. The County's Conclusory Unjust Enrichment Claim (Count II) Should Be Dismissed With Prejudice Pursuant to Rule 12(b)(6).

Under Illinois law, a quasi-contract claim for unjust enrichment may be asserted when one party performs a service for the benefit of another, the other party accepts the benefit, and the surrounding circumstances indicate that the service was not intended to be gratuitous. *Midwest Emerg. Assocs.-Elgin Ltd. v. Harmony Health Plan of Ill., Inc.*, 382 Ill. App. 3d 973, 982 (1st Dist. 2008). "It is not enough that a defendant has received a benefit; rather, circumstances must exist such that the defendant's retention of the benefit would violate the fundamental principles of justice, equity, and good conscience." *C. Szabo Contracting, Inc. v. Lorig Const. Co.*, 2014 IL App (2d) 131328, U 24 (internal citation omitted).

The Seventh Circuit has stated that an unjust enrichment claim rests upon some improper conduct by the defendant, not simply the defendant's retention of a benefit. *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 517 (7th Cir. 2011). Moreover, a party who performs services gratuitously, with no expectation of payment for services rendered, cannot claim that another party has been unjustly enriched. *Midcoast Aviation, Inc. v. Gen. Elec. Credit Corp.*, 907 F.2d 732, 740 (7th Cir. 1990). Here, the County fails to state a claim because it does not (and cannot) allege that Kellogg acted improperly or that the surrounding circumstances indicate that the service was not intended to be gratuitous.

4

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 5 of 10 PageID #:70

A. The County's Unjust Enrichment Claim Should be Dismissed Because the County Fails to Allege Facts Showing that Kellogg's Retention of the Benefit was Improper or Unjust.

The County fails to plead facts showing that Kellogg's retention of the alleged benefit was improper or unjust. Count II should consequently be dismissed. Unjust enrichment claims require factual allegations showing that the defendant engaged in some form of improper or unjust conduct. *Pennington v. Travelex Currency Services, Inc.*, 114 F. Supp. 3d 697,706 (N.D. 111. 2015) (citing *Cleary* 656 F. 3d at 517, and *Siegel v. Shell Oil Co.*, 612 F. 3d 932, 937 (7th Cir.2010)). The mere fact that one party benefits another is not itself sufficient to require restitution under a theory of quasi-contract. *Hayes Mechanical, Inc. v. First Industrial, LP.*, 351 Ill.App.3d I, 9 (1st Dist. 2004).

In *Murad v. Banks*, the court dismissed plaintiffs quantum meruit claim because the plaintiff failed to allege facts showing that defendant's retention of the alleged benefit was unjust. 2015 WL 2455127, at *7 (N.D. III. May 22, 2015).² The plaintiff in *Murad* sought compensation for construction services undertaken to repair a property owned by defendant. *Id.* at * 1. Although no contract for the services existed between the plaintiff and defendant, the plaintiff alleged that the defendant, as the owner of the property, owed plaintiff \$78,000 for plaintiffs provision of these construction services. *Id.* The court rejected plaintiffs quasi-contract claim based on these allegations. *Id.* at *7.

³ Illinois state and federal courts treat the quasi-contract theories of quantum meruit and unjust enrichment essentially the same, and courts often apply the theories interchangeably. See, e.g., *Stark Excavating, Inc. v. Carter Const. Services, Inc.*, 2012 IL App (4th) 110357, H 37 (citing *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill.App.3d 1, 9 (1st Dist. 2004)) (stating that proof of the same elements is required for quantum meruit and unjust enrichment); see also, *Spitz v. Proven Winners N. Am., LLC*, 969 F. Supp. 2d 994, 1007 (N.D. III. 2013) aff'd 759 F.3d 724 (7th Cir. 2014) (same); *CoveMgmt. v. AFLAC, Inc.*, 2013 IL App (1st) 120884, ¶¶34-35 (referring to quantum meruit and unjust enrichment interchangeably). The only difference between the two claims is the measure of recovery. For a quantum meruit claim, it is the reasonable value of the work and material provided; whereas in an unjust enrichment action, the measure of recovery focuses on the value of the benefit received and retained. *Stark Excavating, Inc.*, 2012 IL App (4th) 110357, ¶37.

The court reasoned that Illinois law required more than merely alleging that one party benefitted another. Id. Rather, "Illinois law requires a plaintiff seeking recovery in quantum meruit or unjust enrichment to allege facts demonstrating that the defendant's retention of the conferred benefit would be unjust, such as the defendant having requested the work and then refused to pay for it, somehow enticed the work or suggested that it would pay for it, or demanded other work that rendered necessary the additional work sued over." Id. (citing C. Szabo Contracting, Inc., 2014 IL App (2d) 131328, ¶ 42, and Stark Excavating, Inc. v. Carter Const. Services, Inc., 2012 IL App (4th) 110357, ¶ 39). Because the plaintiff failed to allege any facts demonstrating that defendant's retention of the benefit was unjust, the court dismissed plaintiff's quasi-contract claim. Id.

Here, as in Murad, the County fails to allege any facts showing that Kellogg's retention of the alleged benefit was unjust or improper. The County does not allege that Kellogg requested or enticed it to provide steam heat by suggesting or implying that Kellogg would pay for the steam. The County does not even allege that it put Kellogg on notice that it expected payment until February 2015-ten years after Kellogg purchased the property. Under the facts alleged, Kellogg's retention of the purported benefit was not improper or unjust. See Pennington, Inc., 114 F. Supp. 3d at 706 (dismissing plaintiff's unjust enrichment claim where plaintiff failed to allege improper conduct by the defendant). Consequently, Count II should be dismissed for failure to sufficiently plead a claim.

- B. The County's Unjust Enrichment Claim Should be Dismissed With Prejudice Because the County Fails to Allege that It Expected Payment for the Steam Provided, and the County's Allegations Show that Kellogg Reasonably Could Not Have Believed the County Expected Payment.

Additionally, quasi-contractual relief, such as unjust enrichment, "is not available where the benefit is conferred officiously or gratuitously,... the plaintiff did not contemplate a fee at the

time the services were rendered, or the defendant could not have reasonably believed that plaintiff expected a fee." *Plastics & Equip. Sales Co., Inc. v. DeSoto, Inc.*, 91 Ill. App. 3d 1011, 1017 (1st Dist. 1980) (citing *Bloomgarden v. Coyer*, 479 F.2d 201 (D.C.Cir.1973)); *Knows v. Dennler*, 170 Ill. App. 3d 746, 750-51 (5th Dist. 1988). The County fails to allege, and cannot allege,

that prior to February 2015 it expected payment for the steam provided to the Facility. Moreover, having never received any indication that the County expected payment, Kellogg could not have reasonably believed that the County expected to be paid for steam.

1. The County Never Expected Payment Prior to February 2015.

. Count II of the County's Complaint should be dismissed because it does not allege that the County expected payment for the steam at any time prior to February 2015. *Plastics & Equip. Sales Co., Inc.*, 91 Ill. App. 3d at 1017. The County alleges that it has provided steam to the Facility since 1973 (Doc. No. 1, Exhibit A at % 11), but it does not allege that it has ever sought payment from any occupant until February 2015. It fails to allege that it charged Kellogg or any previous owner of the Facility for steam heat. Nothing in the County's factual pleadings indicates that it expected payment for steam provided to the Facility at the time the steam was allegedly provided. See *Euramca Ecosystems, Inc. v. Roediger Pittsburgh, Inc.*, 581 F. Supp. 415, 422-23 (N.D. Ill. 1984) (citing *Plastics & Equip. Sales Co., Inc.*, 91 Ill. App. 3d at 1017) (stating that quantum meruit relief may not be obtained where plaintiffs do not expect payment for the services at the time the services were performed.)

The County's failure to allege facts demonstrating that it expected payment for the steam when it was provided is fatal to its claim. See Owen Wagener & Co. v. U.S. Bank, 297 Ill. App. 3d 1045, 1054 (1st Dist. 1998) (affirming dismissal of the plaintiffs' quantum meruit claim where the plaintiff failed to allege any expectation of payment for its services from defendant); see also

Motorola, Inc. v. Lemko Corp., Case No. 08 C 5427, 2010 WL 960348, at *5 (N.D. Ill. Mar. 15, 2010) (dismissing unjust enrichment claim because the counter-plaintiff failed to allege that he expected to benefit from the services he provided to the counter-defendant).

2. Kellogg Could Not Have Believed Payment was Expected. Moreover, based on the County's alleged course of conduct, Kellogg could not have reasonably believed that the County expected payment for the steam. *Plastics & Equip. Sales Co., Inc.*, 91 Ill. App. 3d at 1017. Though the County conclusorily asserts that Kellogg "knew that the provision of steam heat would not ordinarily be free of charge" (Doc. No. 1, Exhibit A at f 24), it also alleges that it demanded

payment from Kellogg for the first time in February 2015 (Id. at ^ 26)-even though Kellogg has owned the Facility since 2005 (Id. at % 10). Kellogg had no reason to know that the County expected payment because the County never charged Kellogg during Kellogg's entire tenure as owner of the Facility up to that point. The County alleges no facts showing that it had given Kellogg any notice whatsoever that it expected payment. See *Berry Law PLLC v. Kraft Foods Group, Inc.*, 777 F.3d 505, 508 (D.C. Cir. 2015) (affirming dismissal of plaintiffs quasi-contract claim where defendant could not reasonably have known that the plaintiff contemplated payment) (citing *Bloomgarden*, 479 F.2d at 212). Indeed, as soon as Kellogg discovered that the County expected payment for the steam, Kellogg rejected the proposed service agreement with the County and chose to go without steam. (Doc. No. I, Exhibit A at ff 13-16, Exhibits 3-5.)

The facts alleged belie the County's conclusory claim for unjust enrichment. The County's pleadings demonstrate that it knowingly provided steam services to the Facility without the expectation of payment for over forty years, and, having never been notified or billed, Kellogg reasonably did not expect to pay for the steam. The County's allegations show that it is not entitled

to relief for unjust enrichment. See *Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008) (stating that a plaintiff may plead itself out of court by alleging facts that show it is not entitled to relief). Therefore Count U should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, and those stated in Kellogg's Partial Motion to Dismiss the County of Cook's Complaint, Kellogg respectfully requests that this Court dismiss with prejudice Count II of Cook County's complaint for failure to state a claim and grant any and all other such relief as this Court may deem just.

Dated: March 24, 2016

Respectfully submitted,

KELLOGG COMPANY

By: /s/Roberts. Markin One of Its Attorneys

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Counsel for Kellogg Company

9

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 10 of 10 PageID #:75

CERTIFICATE OF SERVICE

I, Robert S. Markin, an attorney, hereby certify that on this 24th day of March 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the court's system.

Sisavanh Baker
Michael Lapinski
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602
michael.lapinski@cookcountyil.gov <mailto:michael.lapinski@cookcountyil.gov>
Attorney for Plaintiff County of Cook

Isl Robert S. Markin

**CITY OF CHICAGO ECONOMIC
DISCLOSURE STATEMENT AND AFFIDAVIT**

SECTION 1 -- GENERAL INFORMATION

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Keebler Foods Company

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. the Applicant

OR

2. a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as

the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal

2. name: Keebler Company

OR

3. a legal entity with a direct or indirect right of control of the Applicant (see Section 11(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: One Kellogg Square

Battle Creek, MI 49016-3599

C. Telephone: (269) 961-2000 fax: (269) 660-4178

Email: kevin.kilpatrick@kellogg.com

[<mailto:kevin.kilpatrick@kellogg.com>](mailto:kevin.kilpatrick@kellogg.com)

D. Name of contact person: Kevin Kilpatrick

E. Federal Employer Identification No. (if you have one): ' j

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

Amendment to existing TIF RDA agreement and resolution in support of renewal of Class 6B at 750 East 110th Street

G. Which City agency or department is requesting this EDS? Department of Planning and Development

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # and Contract #

Ver.2017-1

Page of 14

SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

A. NATURE OF THE DISCLOSING PARTY

- 1. Indicate the nature of the Disclosing Party:

- Person Limited liability company
- Publicly registered business corporation Limited liability partnership
- Privately held business corporation Joint venture
- Sole proprietorship Not-for-profit corporation
- General partnership (Is the not-for-profit corporation also a 501(c)(3))?
- Limited partnership Yes No
- Trust Other (please specify)

Disclosing Party is a 100% wholly owned, indirect subsidiary of Kellogg Company, which is a publicly registered business corporation

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Delaware

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity? •

- Yes No Organized in Illinois

B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) for not-for-profit corporations, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) for trusts, estates or other similar entities, the trustee, executor, administrator, or similarly situated party; (iv) for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name Title See attached officer/director listing

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

NOTE: Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Keebler Holding Corp	One Kellogg Square 100% Battle Creek, MI 49016-3599	

SECTION in -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? Yes No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? Yes No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party? Yes No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner (s) and describe the financial interest(s).

SECTION IV » DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
---	-------------------------	---	--

(Add sheets if necessary)

[x] Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities. SECTION V - CERTIFICATIONS

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

Yes No No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

Yes No

B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer

charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

Page 4 of 14

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section 11(B)(1) of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;

b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

See related comment per page 7

c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;

See related comment per page 7

d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and

e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other

official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party," any Contractor or any Affiliated Entity (collectively "Agents").

Page 5 of 14

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
 - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
 - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
 - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any-"sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be

hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

Ver.2017-1

Page 6 of 14

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

With respect to Section V(BK3)(b) and (c), please see the "Memorandum of law in support of Defendant Kellogg Company's Partial Motion to Dismiss the County of Cook's complaint" attached at the end of this Economic Disclosure Statement and Affidavit.

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient. None

C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

is is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

Page 7 of 14

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary): Not applicable

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

Yes No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Not applicable Does the Matter involve a City Property Sale?

Yes No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Not applicable

Name	Business Address	Nature of Financial Interest
------	------------------	------------------------------

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

Page 8 of 14

E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

^x 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

Not applicable

NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the

Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

Ver.2017-1

Page 9 of 14

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations. Matter not federally funded. Not applicable

Is the Disclosing Party the Applicant?

Yes

No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

Yes

No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

Yes

No

Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

Yes

No

If you checked "No" to question (1) or (2) above, please provide an explanation:

Page 10 of 14

SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at www.cityofchicago.org/Ethics, and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1 -23 and Section 2-154-020.

Page 11 of 14

CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and Appendices A and B (if applicable), on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and Appendices A and B (if applicable), are true, accurate and complete as of the date furnished to the City.

(Sign here) '

Keebler Foods Company (Print or type exact legal name of
Disclosing Party)

(Print or type name of person signing)

(Print or type title of person signing)

(date) *Wardh tot?*

VICKIE L. VAN HORN
Notary Public
Calhoun County, Michigan
My Commission Expires
January 18.2Q21

**CITY OF CHICAGO ECONOMIC DISCLOSURE STATEMENT
AND AFFIDAVIT
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND
DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

Yes No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

**CITY OF CHICAGO ECONOMIC DISCLOSURE STATEMENT AND
AFFIDAVIT
APPENDIX B**

BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

Yes No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

Yes No The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

Not applicable

Page 14 of 14

City of Chicago

Economic Disclosure Statement and Affidavit Section 11(B)(1) - Officer and director list

Name	Officer title	Director
Hirst, Alistair D.	Executive Vice President	
Libbing, Michael J.	Vice President	
Pilnick, Gary H.	Executive Vice President and Secretary	X
Renwick IV, John P.	Vice President/CFO, Finance	
Schell, Richard W.	Vice President and Assistant Treasurer	
VanderKooi, Joel A. ■	Vice President and Treasurer	X
Haigh, Todd W.	Vice President and Assistant Secretary	X
Kilpatrick, Kevin S.	Assistant Treasurer	

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 1 of 10 PageID#:66

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS EASTERN DIVISION**

COUNTY OF COOK, a body politic and corporate of the state of Illinois,

Plaintiff,

v.

KELLOGG COMPANY, a Delaware corporation, Defendant.

Case No. 16-cv-3399

Judge John Z. Lee

Magistrate Judge Maria Valdez

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT KELLOGG COMPANY'S PARTIAL MOTION TO
DISMISS THE COUNTY OF COOK'S COMPLAINT**

Defendant Kellogg Company ("Kellogg") submits this Memorandum in support of its Partial Motion to Dismiss Count II of the County of Cook's ("the County") Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

INTRODUCTION

This case is about the County's belated demand that Kellogg pay more than \$2 million for past steam heat services that the

County had gratuitously provided to Kellogg for nearly ten years, and to previous occupants for over thirty years. From June 2005 until February 2015, the County provided steam heat to a facility owned by Kellogg located at 3124 South Sacramento, Chicago, Illinois ("Facility"). The County never gave Kellogg any notice that it expected payment for this steam, and never charged Kellogg. Instead, in February 2015, after nearly a decade, the County sent Kellogg a bill out of the blue for over \$2 million based on a seemingly arbitrary per month charge. The County demanded immediate payment and that Kellogg enter into a service agreement for steam going forward. Kellogg rejected both demands and informed the County that Kellogg did not require steam at the Facility. This suit followed.

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 2 of 10 PageID #:67

The County's Complaint sets forth two counts, but only Count II is the subject of this Motion.' In Count II, the County seeks payment for the provision of steam services based on a theory of quasi-contract. Count II should be dismissed for two reasons. First, Count II should be dismissed because the County does not plead any facts showing that Kellogg's retention of the alleged benefit was in any way unjust or improper. Second, Count II should be dismissed with prejudice because the County's own allegations show that the alleged benefit was provided gratuitously, without any contemporaneous expectation of payment for ten years, and as a result, Kellogg could not have reasonably believed that the County expected payment. Based on the County's insufficient pleadings, Count II should be dismissed with prejudice pursuant to Rule 12(b)(6).

FACTS ALLEGED

In June 2005, Keebler Co., a subsidiary of Kellogg (Keebler Co. and Kellogg will be referred to collectively as "Kellogg"), acquired the Facility at 3124 South Sacramento, and Kellogg has occupied the Facility continuously ever since. (Doc. No. 1, Exhibit A at [10.) The County has provided steam heat to the Facility since 1973. (Id. at % 11.) The County does not allege that it has ever charged any occupant of the Facility for steam. Nearly ten years after Kellogg purchased the Facility, in February 2015, the County informed Kellogg-for the first time-that it owed the County over \$2 million for steam heat that the County provided to the Facility from the date Kellogg acquired the Facility. (Id. at \ 13.) At the same time, the County sought to enter into a service agreement with Kellogg for the provision of steam heat in the future. (Id. at ^ 13, Exhibit 3.) Kellogg did not pay the over \$2 million demanded by the County and did not agree to the proposed service agreement for steam heat going forward. (Id. at ffij 14-17, Exhibits 4-5.) The

¹ In Count I, the County seeks a declaratory judgment regarding the interpretation of a covenant running with the land located within the 1973 sales contract for the Facility.

2

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 3 of 10 PageID #:68

County discontinued steam heat service at the Facility at some point after October 9, 2015. (Id. at H 16, Exhibit 5.)

The County's meagre factual allegations are not only insufficient to state an unjust enrichment claim, but they also belie its claim. The County does not allege that prior to February 2015 it ever notified Kellogg that it expected payment for the steam provided. The County does not allege that, prior to February 2015, it ever attempted to enter into a service agreement for Kellogg to pay the County for steam heat. Rather, the County conclusorily asserts that Kellogg "knew that the provision of steam heat would not ordinarily be free of charge"-despite the fact that the County never gave any indication to that the steam was anything but gratuitous. (Id. at \ 24.) The County then baldly states that Kellogg has been unjustly enriched by its provision of steam services. (Id. at 1f 28.) The County's insufficient and ultimately contradictory allegations show that it is not entitled to relief. This Court should therefore dismiss Count II with prejudice.

ARGUMENT

A motion to dismiss pursuant to Rule 12(b)(6) "tests the sufficiency of the complaint, not the merits of the case." *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 878 (7th Cir. 2012). The allegations must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A plaintiff need not provide detailed factual allegations but must provide enough factual support to raise his right to relief above a speculative level. *Bell Ail. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint must be facially plausible, which means that the pleadings must "allow [] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The claim must be asserted "in sufficient detail to give the defendant 'fair notice of what the...claim is and the grounds upon which it rests.'" *E.E.O.C. v. Concentra Health Servs., Inc.*, 496

3

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 4 of 10 PageID #:69

F.3d 773, 776 (7th Cir. 2007) (quoting Twombly, 550 U.S. at 555). "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" Iqbal, 556 U.S. at 678. (quoting Twombly, 550 U.S. at 555) "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient to withstand a Rule 12(b)(6) motion to dismiss under Iqbal. Id.

I. The County's Conclusory Unjust Enrichment Claim (Count II) Should Be Dismissed With Prejudice Pursuant to Rule 12(b)(6).

Under Illinois law, a quasi-contract claim for unjust enrichment may be asserted when one party performs a service for the benefit of another, the other party accepts the benefit, and the surrounding circumstances indicate that the service was not intended to be gratuitous. *Midwest Emerg. Assocs.-Elgin Ltd. v. Harmony Health Plan of III, Inc.*, 382 Ill. App. 3d 973,982 (1st Dist. 2008). "It is not enough that a defendant has received a benefit; rather, circumstances must exist such that the defendant's retention of the benefit would violate the fundamental principles of justice, equity, and good conscience." *C. Szabo Contracting, Inc. v. Lorig Const. Co.*, 2014 IL App (2d) 131328, ¶ 24 (internal citation omitted).

The Seventh Circuit has stated that an unjust enrichment claim rests upon some improper conduct by the defendant, not simply the defendant's retention of a benefit. *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 517 (7th Cir. 2011). Moreover, a party who performs services gratuitously, with no expectation of payment for services rendered, cannot claim that another party has been unjustly enriched. *Midcoast Aviation, Inc. v. Gen. Elec. Credit Corp.*, 907 F.2d 732, 740 (7th Cir. 1990). Here, the County fails to state a claim because it does not (and cannot) allege that Kellogg acted improperly or that the surrounding circumstances indicate that the service was not intended to be gratuitous. i

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 5 of 10 PageID #:70

A. The County's Unjust Enrichment Claim Should be Dismissed Because the County Fails to Allege Facts Showing that Kellogg's Retention of the Benefit was Improper or Unjust.

The County fails to plead facts showing that Kellogg's retention of the alleged benefit was improper or unjust. Count II should consequently be dismissed. Unjust enrichment claims require factual allegations showing that the defendant engaged in some form of improper or unjust conduct. *Pennington v. Travelex Currency Services, Inc.*, 114 F. Supp. 3d 697,706 (N.D. 111. 2015) (citing *Clery* 656 F. 3d at 517, and *Siegel v. Shell Oil Co.*, 612 F. 3d 932, 937 (7th Cir.2010)). The mere fact that one party benefits another is not itself sufficient to require restitution under a theory of quasi-contract. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill.App.3d <<http://Ill.App.3d>> 1, 9 (1st Dist. 2004).

In *Murad v. Banks*, the court dismissed plaintiffs quantum meruit claim because the plaintiff failed to allege facts showing that defendant's retention of the alleged benefit was unjust. 2015 WL 2455127, at *7 (N.D. Ill. May 22,2015).² The plaintiff in *Murad* sought compensation for construction services undertaken to repair a property owned by defendant. *Id.* at * 1. Although no contract for the services existed between the plaintiff and defendant, the plaintiff alleged that the defendant, as the owner of the property, owed plaintiff \$78,000 for plaintiff's provision of these construction services. *Id.* The court rejected plaintiffs quasi-contract claim based on these allegations. *Id.* at *7.

² Illinois state and federal courts treat the quasi-contract theories of quantum meruit and unjust enrichment essentially the same, and courts often apply the theories interchangeably. See, e.g., *Stark Excavating, Inc. v. Carter Const. Services, Inc.*, 2012 IL App (4th) 110357, H 37 (citing *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill.App.3d 1, 9 (1st Dist. 2004)) (stating that proof of the same elements is required for quantum meruit and unjust enrichment); see also *Spitz v. Proven Winners N. Am., LLC*, 969 F. Supp. 2d 994, 1007 (N.D. 111. 2013) *affd*> 759 F.3d 724 (7th Cir. 2014) (same); *Cove Mgmt. v. AFLAC, Inc.*, 2013 IL App (1st) 120884, 34-35 (referring to quantum meruit and unjust enrichment interchangeably). The only difference between the two claims is the measure of recovery. For a quantum meruit claim, it is the reasonable value of the work and material provided; whereas in an unjust enrichment action, the measure of recovery focuses on the value of the benefit received and retained. *Stark Excavating, Inc.*, 2012 IL App (4th) 110357,1|37.

The court reasoned that Illinois law required more than merely alleging that one party benefitted another. Id. Rather, "Illinois law requires a plaintiff seeking recovery in quantum meruit or unjust enrichment to allege facts demonstrating that the defendant's retention of the conferred benefit would be unjust, such as the defendant having requested the work and then refused to pay for it,

somehow enticed the work or suggested that it would pay for it, or demanded other work that rendered necessary the additional work sued over." Id. (citing C. Szabo Contracting, Inc., 2014 IL App (2d) 131328, U 42, and Stark Excavating, Inc. v. Carter Const. Services, Inc., 2012 IL App (4th) 110357, \ 39). Because the plaintiff failed to allege any facts demonstrating that defendant's retention of the benefit was unjust, the court dismissed plaintiff's quasi-contract claim. Id.

Here, as in Murad, the County fails to allege any facts showing that Kellogg's retention of the alleged benefit was unjust or improper. The County does not allege that Kellogg requested or enticed it to provide steam heat by suggesting or implying that Kellogg would pay for the steam. The County does not even allege that it put Kellogg on notice that it expected payment until February 2015-ten years after Kellogg purchased the property. Under the facts alleged, Kellogg's retention of the purported benefit was not improper or unjust. See Pennington, Inc., 114 F. Supp. 3d at 706 (dismissing plaintiff's unjust enrichment claim where plaintiff failed to allege improper conduct by the defendant). Consequently, Count II should be dismissed for failure to sufficiently plead a claim.

B. The County's Unjust Enrichment Claim Should be Dismissed With Prejudice Because the County Fails to Allege that It Expected Payment for the Steam Provided, and the County's Allegations Show that Kellogg Reasonably Could Not Have Believed the County Expected Payment

Additionally, quasi-contractual relief, such as unjust enrichment, "is not available where the benefit is conferred officiously or gratuitously,... the plaintiff did not contemplate a fee at the

time the services were rendered, or the defendant could not have reasonably believed that plaintiff expected a fee." *Plastics & Equip. Sales Co., Inc. v. DeSoto, Inc.*, 91 111. App. 3d 1011, 1017 (1st Dist. 1980) (citing *Bloomgarden v. Coyer*, 479 F.2d 201 (D.C.Cir.1973)); *Knaus v. Dennler*, 170 111. App. 3d 746, 750-51 (5th Dist. 1988). The County fails to allege, and cannot allege, that prior to February 2015 it expected payment for the steam provided to the Facility. Moreover, having never received any indication that the County expected payment, Kellogg could not have reasonably believed that the County expected to be paid for steam.

1. The County Never Expected Payment Prior to February 2015. Count II of the County's Complaint should be dismissed because it does not allege that the County expected payment for the steam at any time prior to February 2015. *Plastics & Equip. Sales Co., Inc.*, 91 111. App. 3d at 1017. The County alleges that it has provided steam to the Facility since 1973 (Doc. No. 1, Exhibit A at

U 11), but it does not allege that it has ever sought payment from any occupant until February 2015. It fails to allege that it charged Kellogg or any previous owner of the Facility for steam heat. Nothing in the County's factual pleadings indicates that it expected payment for steam provided to the Facility at the time the steam was allegedly provided. See *Euramca Ecosystems, Inc. v. Roediger Pittsburgh, Inc.*, 581 F. Supp. 415, 422-23 (N.D. Ill. 1984) (citing *Plastics & Equip. Sales Co., Inc.*, 91 Ill. App. 3d at 1017) (stating that quantum meruit relief may not be obtained where plaintiffs do not expect payment for the services at the time the services were performed.)

The County's failure to allege facts demonstrating that it expected payment for the steam when it was provided is fatal to its claim. See Owen Wagener & Co. v. U.S. Bank, 297 Ill. App. 3d 1045, 1054 (1st Dist. 1998) (affirming dismissal of the plaintiffs quantum meruit claim where the plaintiff failed to allege any expectation of payment for its services from defendant); see also

Motorola, Inc. v. Lemko Corp., Case No. 08 C 5427, 2010 WL 960348, at *5 (N.D. Ill. Mar. 15, 2010) (dismissing unjust enrichment claim because the counter-plaintiff failed to allege that he expected to benefit from the services he provided to the counter-defendant).

2. Kellogg Could Not Have Believed Payment was Expected. Moreover, based on the County's alleged course of conduct, Kellogg could not have reasonably believed that the County expected payment for the steam. *Plastics & Equip. Sales Co., Inc.*, 91 Ill. App. 3d at 1017. Though the County conclusorily asserts that Kellogg "knew that the provision of steam heat would not ordinarily be free of charge" (Doc. No. 1, Exhibit A at ^ 24), it also alleges that it demanded payment from Kellogg for the first time in February 2015 (Id. at U 26)-even though Kellogg has owned the Facility since 2005 (Id. at ^J 10). Kellogg had no reason to know that the County expected payment because the County never charged Kellogg during Kellogg's entire tenure as owner of the Facility up to that point. The County alleges no facts showing that it had given Kellogg any notice whatsoever that it expected payment. See *Berry Law PLLC v. Kraft Foods Group, Inc.*, Ill F.3d 505, 508 (D.C. Cir. 2015) (affirming dismissal of plaintiffs quasi-contract claim where defendant could not reasonably have known that the plaintiff contemplated payment) (citing *Bloomgarden*, 479 F.2d at 212). Indeed, as soon as Kellogg discovered that the County expected payment for the steam, Kellogg rejected the proposed service agreement with

the County and chose to go without steam. (Doc. No. 1, Exhibit A at 13-16, Exhibits 3-5.)

The facts alleged belie the County's conclusory claim for unjust enrichment. The County's pleadings demonstrate that it knowingly provided steam services to the Facility without the expectation of payment for over forty years, and, having never been notified or billed, Kellogg reasonably did not expect to pay for the steam. The County's allegations show that it is not entitled

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 9 of 10 PageID #:74

to relief for unjust enrichment. See *Tamayo v. Blagojevich*, 526 F. 3d 1074, 1086 (7th Cir. 2008) (stating that a plaintiff may plead itself out of court by alleging facts that show it is not entitled to relief). Therefore Count II should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, and those stated in Kellogg's Partial Motion to Dismiss the County of Cook's Complaint, Kellogg respectfully requests that this Court dismiss with prejudice Count II of Cook County's complaint for failure to state a claim and grant any and all other such relief as this Court may deem just.

Dated: March 24, 2016

Respectfully submitted,

KELLOGG COMPANY

By: *is/* Robert S. Markin One of Its Attorneys

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m wal 1 in@chiconunes .com

Counsel for Kellogg Company

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 10 of 10 PageID #:75

CERTIFICATE OF SERVICE

I, Robert S. Markin, an attorney, hereby certify that on this 24th day of March 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the court's system.

Sisavanh Baker
Michael Lapinski
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602
michael.lapinski@cookcountyil.gov <mailto:michael.lapinski@cookcountyil.gov>
Attorney for Plaintiff County of Cook

1st Robert S. Markin

**CITY OF CHICAGO ECONOMIC DISCLOSURE
STATEMENT AND AFFIDAVIT**

SECTION I - GENERAL INFORMATION

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable: Keebler
Holding Corp.

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. the Applicant
OR

2. a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a

direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: *Keebler Company*,

OR

3. [] a legal entity with a direct or indirect right of control of the Applicant (see Section 11(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: One Kellogg Square
Battle Creek, MI 49016-3599

C. Telephone: (269) 961-2000 fax: (269) 660-4178 Email: kevin.kilpatrick@kellogg.com

[<mailto:kevin.kilpatrick@kellogg.com>](mailto:kevin.kilpatrick@kellogg.com)

D. Name of contact person: Kevin Kilpatrick =

E. Federal Employer Identification No. (if you have one): vT~ . _ \

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

Amendment to existing TIF RDA agreement and resolution in support of renewal of Class 6B at 750 East 110th Street

G. Which City agency or department is requesting this EDS? Department of Planning and Development

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # and Contract #
Ver.2017-1 Paget of 14

SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- Person
- Publicly registered business corporation
- Privately held business corporation
- Sole proprietorship
- General partnership
- Limited partnership
- Trust
- Limited liability company
- Limited liability partnership
- Joint venture
- Not-for-profit corporation
- (Is the not-for-profit corporation also a 501 (c)(3))?
 Yes No
- Other (please specify)

Disclosing Party is a 100% wholly owned, indirect subsidiary of Kellogg Company, which is a publicly registered business corporation

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Georgia

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

Yes No Organized in Illinois

B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) for not-for-profit corporations, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) for trusts, estates or other similar entities, the trustee, executor, administrator, or similarly situated party; (iv) for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name Title See attached officer/director listing

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

Page 2 of 14

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

NOTE: Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Kellogg USA Inc	One Kellogg Square Battle Creek, MI 49016-3599	100%

SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? Yes No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? Yes No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party? Yes No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Page 3 of 14

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
---	-------------------------	---	--

(Add sheets if necessary)

[x] Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities. SECTION V -- CERTIFICATIONS

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

Yes No No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

Yes No

B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

Page 4 of 4

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section 11(B)(1) of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;

b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

See related comment per page 7

c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;

See related comment per page 7

d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and

e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Page 5 of 14

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;

b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or

d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33 E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1 -23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

Ver.2017-1

Page 6 of 14

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

With respect to Section V(B)(3)(b) and (c), please see the "Memorandum of law in support of Defendant Kellogg Company's Partial Motion to Dismiss the County of Cook's complaint" attached at the end of this Economic Disclosure Statement and Affidavit.

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient. None

C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

is is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

Page 7 of 14

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

Not applicable

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

Yes No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Not applicable Does the Matter involve a City Property Sale?

Yes No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Not applicable Name	Business Address	Nature of Financial Interest
------------------------	------------------	------------------------------

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

Page 8 of 14

E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

^x 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery

or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

SECTION VI - CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

Not applicable ^ NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

Ver.2017-1

Page 9 of 14

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of

the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations. Matter not federally funded - Not applicable

Is the Disclosing Party the Applicant?

Yes No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

Yes No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

Yes No Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

Yes No

If you checked "No" to question (1) or (2) above, please provide an explanation:

SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply

with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at www.cityofchicago.org/Ethics <<http://www.cityofchicago.org/Ethics>>, and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1 -23 and Section 2-154-020.

Page 11 of 14

CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and Appendices A and B (if applicable), on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and Appendices A and B (if applicable), are true, accurate and complete as of the date furnished to the City.

(Sign here)

Keebler Holding Corp (Print or type exact legal name)

of Disclosing Party)

(Print or type name of person signing)

.5 fanf* ~freasarte

(Print or type title of person signing)

Signed and sworn to before me on

VICKIE L. VAN HORN Notary Public Calhoun County, Michigan My Commission Expires

Page 12 of 14

City of Chicago

Economic Disclosure Statement and Affidavit Section 11(B)(1) - Officer and director list

Name	Officer title	Director
Hirst, Alistair D.	Executive Vice President	
Libbing, Michael J.	Vice President	
Pilnick, Gary H.	Executive Vice President and Secretary	X
Renwick IV, John P.	Vice President/CFO, Finance	
Schell, Richard W.	Vice President and Assistant Treasurer	
VanderKooi, Joel A.	Vice President and Treasurer	X
Haigh, Todd W.	Vice President and Assistant Secretary	X
Kilpatrick, Kevin S.	Assistant Treasurer	

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 1 of 10 PageID #:66

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS EASTERN DIVISION

Case No. 16-cv-3399

Judge John Z. Lee

Magistrate Judge Maria Valdez

COUNTY OF COOK, a body politic and corporate of the state of Illinois,

Plaintiff,

v.

KELLOGG COMPANY, a Delaware corporation, Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT KELLOGG COMPANY'S PARTIAL MOTION TO
DISMISS THE COUNTY OF COOK'S COMPLAINT**

Defendant Kellogg Company ("Kellogg") submits this Memorandum in support of its Partial Motion to Dismiss Count II of the County of Cook's ("the County") Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

INTRODUCTION

This case is about the County's belated demand that Kellogg pay more than \$2 million for past steam heat services that the County had gratuitously provided to Kellogg for nearly ten years, and to previous occupants for over thirty years. From June 2005 until February 2015, the County provided steam heat to a facility owned by Kellogg located at 3124 South Sacramento, Chicago, Illinois ("Facility"). The County never gave Kellogg any notice that it expected payment for this steam, and never charged Kellogg. Instead, in February 2015, after nearly a decade, the County sent Kellogg a bill out of the blue for over \$2 million based on a seemingly arbitrary per month charge. The County demanded immediate payment and that Kellogg enter into a service agreement for steam going forward. Kellogg rejected both demands and informed the County that Kellogg did not require steam at the Facility. This suit followed.

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 2 of 10 PageID#:67

The County's Complaint sets forth two counts, but only Count II is the subject of this Motion.¹ In Count II, the

County seeks payment for the provision of steam services based on a theory of quasi-contract. Count II should be dismissed for two reasons. First, Count II should be dismissed because the County does not plead any facts showing that Kellogg's retention of the alleged benefit was in any way unjust or improper. Second, Count II should be dismissed with prejudice because the County's own allegations show that the alleged benefit was provided gratuitously, without any contemporaneous expectation of payment for ten years, and as a result, Kellogg could not have reasonably believed that the County expected payment. Based on the County's insufficient pleadings, Count II should be dismissed with prejudice pursuant to Rule 12(b)(6).

FACTS ALLEGED

In June 2005, Keebler Co., a subsidiary of Kellogg (Keebler Co. and Kellogg will be referred to collectively as "Kellogg"), acquired the Facility at 3124 South Sacramento, and Kellogg has occupied the Facility continuously ever since. (Doc. No. 1, Exhibit A at 10.) The County has provided steam heat to the Facility since 1973. (Id. at 11.) The County does not allege that it has ever charged any occupant of the Facility for steam. Nearly ten years after Kellogg purchased the Facility, in February 2015, the County informed Kellogg-for the first time-that it owed the County over \$2 million for steam heat that the County provided to the Facility from the date Kellogg acquired the Facility. (Id. at 13.) At the same time, the County sought to enter into a service agreement with Kellogg for the provision of steam heat in the future. (Id. at 13, Exhibit 3.) Kellogg did not pay the over \$2 million demanded by the County and did not agree to the proposed service agreement for steam heat going forward. (Id. at 14-17, Exhibits 4-5.) The

¹ In Count I, the County seeks a declaratory judgment regarding the interpretation of a covenant running with the land located within the 1973 sales contract for the Facility.

County discontinued steam heat service at the Facility at some point after October 9, 2015. (Id. at 16, Exhibit 5.)

The County's meagre factual allegations are not only insufficient to state an unjust enrichment claim, but they also belie its claim. The County does not allege that prior to February 2015 it ever notified Kellogg that it expected payment for the steam provided. The County does not allege that, prior to February 2015, it ever attempted to enter into a service agreement for Kellogg to

pay the County for steam heat. Rather, the County conclusorily asserts that Kellogg "knew that the provision of steam heat would not ordinarily be free of charge"-despite the fact that the County never gave any indication to that the steam was anything but gratuitous. (Id. at ^ 24.) The County then baldly states that Kellogg has been unjustly enriched by its provision of steam services. (Id. at ^ 28.) The County's insufficient and ultimately contradictory allegations show that it is not entitled to relief. This Court should therefore dismiss Count II with prejudice.

ARGUMENT

A motion to dismiss pursuant to Rule 12(b)(6) "tests the sufficiency of the complaint, not the merits of the case." *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 878 (7th Cir. 2012). The allegations must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A plaintiff need not provide detailed factual allegations but must provide enough factual support to raise his right to relief above a speculative level. *Bell Ail. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint must be facially plausible, which means that the pleadings must "allow [] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The claim must be asserted "in sufficient detail to give the defendant 'fair notice of what the...claim is and the grounds upon which it rests.'" *E.E.O.C. v. Concentra Health Servs., Inc.*, 496

F.3d 773,776 (7th Cir. 2007) (quoting Twombly, 550 U.S. at 555). "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" Iqbal, 556 U.S. at 678. (quoting Twombly, 550 U.S. at 555) "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient to withstand a Rule 12(b)(6) motion to dismiss under Iqbal. Id.

I. The County's Conclusory Unjust Enrichment Claim (Count II) Should Be Dismissed With Prejudice Pursuant to Rule 12(b)(6).

Under Illinois law, a quasi-contract claim for unjust enrichment may be asserted when one party performs a service for the benefit of another, the other party accepts the benefit, and the surrounding circumstances indicate that the service was not intended to

be gratuitous. *Midwest Emerg. Assocs.-Elgin Ltd. v. Harmony Health Plan of Ill., Inc.*, 382 Ill. App. 3d 973, 982 (1st Dist. 2008). "It is not enough that a defendant has received a benefit; rather, circumstances must exist such that the defendant's retention of the benefit would violate the fundamental principles of justice, equity, and good conscience." *C. Szabo Contracting, Inc. v. Lorig Const. Co.*, 2014 IL App (2d) 131328, U 24 (internal citation omitted).

The Seventh Circuit has stated that an unjust enrichment claim rests upon some improper conduct by the defendant, not simply the defendant's retention of a benefit. *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 517 (7th Cir. 2011). Moreover, a party who performs services gratuitously, with no expectation of payment for services rendered, cannot claim that another party has been unjustly enriched. *Midcoast Aviation, Inc. v. Gen. Elec. Credit Corp.*, 907 F.2d 732, 740 (7th Cir. 1990). Here, the County fails to state a claim because it does not (and cannot) allege that Kellogg acted improperly or that the surrounding circumstances indicate that the service was not intended to be gratuitous.

4

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 5 of 10 PageID #:70

A. The County's Unjust Enrichment Claim Should be Dismissed Because the County Fails to Allege Facts Showing that Kellogg's Retention of the Benefit was Improper or Unjust.

The County fails to plead facts showing that Kellogg's retention of the alleged benefit was improper or unjust. Count II should consequently be dismissed. Unjust enrichment claims require factual allegations showing that the defendant engaged in some form of improper or unjust conduct. *Pennington v. Travelex Currency Services, Inc.*, 114 F. Supp. 3d 697,706 (N.D. 111. 2015) (citing *Cleary* 656 F. 3d at 517, and *Siegel v. Shell Oil Co.*, 612 F. 3d 932, 937 (7th Cir.2010)). The mere fact that one party benefits another is not itself sufficient to require restitution under a theory of quasi-contract. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill.App.3d 1, 9 (1st Dist. 2004).

In *Murad v. Banks*, the court dismissed plaintiffs quantum meruit claim because the plaintiff failed to allege facts showing that defendant's retention of the alleged benefit was unjust. 2015 WL 2455127, at *7 (N.D. 111. May 22, 2015).² The plaintiff in

Murad sought compensation for construction services undertaken to repair a property owned by defendant. Id. at * 1. Although no contract for the services existed between the plaintiff and defendant, the plaintiff alleged that the defendant, as the owner of the property, owed plaintiff \$78,000 for plaintiff's provision of these construction services. Id. The court rejected plaintiff's quasi-contract claim based on these allegations. Id. at *7.

^z Illinois state and federal courts treat the quasi-contract theories of quantum meruit and unjust enrichment essentially the same, and courts often apply the theories interchangeably. See, e.g., *Stark Excavating, Inc. v. Carter Const. Services, Inc.*, 2012 IL App (4th) 110357, ¶ 37 (citing *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill.App.3d 1, 9 (1st Dist. 2004)) (stating that proof of the same elements is required for quantum meruit and unjust enrichment); see also *Spitz v. Proven Winners N. Am., LLC*, 969 F. Supp. 2d 994, 1007 (N.D. Ill. 2013) *aff'd*, 759 F.3d 724 (7th Cir. 2014) (same); *Cove Mgmt. v. AFLAC, Inc.*, 2013 IL App (1st) 120884, ¶¶ 34-35 (referring to quantum meruit and unjust enrichment interchangeably). The only difference between the two claims is the measure of recovery. For a quantum meruit claim, it is the reasonable value of the work and material provided; whereas in an unjust enrichment action, the measure of recovery focuses on the value of the benefit received and retained. *Stark Excavating, Inc.*, 2012 IL App (4th) 110357, ¶1137.

The court reasoned that Illinois law required more than merely alleging that one party benefitted another. Id. Rather, "Illinois law requires a plaintiff seeking recovery in quantum meruit or unjust enrichment to allege facts demonstrating that the defendant's retention of the conferred benefit would be unjust, such as the defendant having requested the work and then refused to pay for it, somehow enticed the work or suggested that it would pay for it, or demanded other work that rendered necessary the additional work sued over." Id. (citing C. Szabo Contracting, Inc., 2014 IL App (2d) 131328, ¶ 42, and Stark Excavating, Inc. v. Carter Const. Services, Inc., 2012 IL App (4th) 110357, ¶ 39). Because the plaintiff failed to allege any facts demonstrating that defendant's retention of the benefit was unjust, the court dismissed plaintiff's quasi-contract claim. Id.

Here, as in *Murad*, the County fails to allege any facts showing that Kellogg's retention of the alleged benefit was unjust or improper. The County does not allege that Kellogg requested or enticed it to provide steam heat by suggesting or implying that Kellogg would pay for the steam. The County does not even allege that it put Kellogg on notice that it expected payment until February 2015—ten years after Kellogg purchased the property. Under the facts alleged, Kellogg's retention of the purported benefit was not improper or unjust. See *Pennington, Inc.*, 114 F. Supp. 3d at 706 (dismissing plaintiff's unjust enrichment claim where plaintiff failed to allege improper conduct by the defendant). Consequently, Count II should be dismissed for failure to sufficiently plead a claim.

- B. The County's Unjust Enrichment Claim Should be Dismissed With Prejudice Because the County Fails to Allege that It Expected Payment for the Steam Provided, and the County's Allegations Show that Kellogg Reasonably Could Not Have Believed the County Expected Payment.

Additionally, quasi-contractual relief, such as unjust enrichment, "is not available where the benefit is conferred officiously or gratuitously, .. the plaintiff did not contemplate a fee at the

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Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 7 of 10 PageID #:72

time the services were rendered, or the defendant could not have reasonably believed that plaintiff expected a fee." *Plastics & Equip. Sales Co., Inc. v. DeSoto, Inc.*, 91 111. App. 3d 1011, 1017 (1st Dist. 1980) (citing *Bloomgarden v. Coyer*, 479 F.2d 201 (D.C.Cir.1973)); *Knaus v. Dennler*, 170 111. App. 3d 746, 750-51 (5th Dist. 1988). The County fails to allege, and cannot allege, that prior to February 2015 it expected payment for the steam provided to the Facility. Moreover, having never received any indication that the County expected payment, Kellogg could not have reasonably believed that the County expected to be paid for steam.

1. The County Never Expected Payment Prior to February 2015.

Count II of the County's Complaint should be dismissed because it does not allege that the County expected payment for the steam at any time prior to February 2015. *Plastics & Equip. Sales Co., Inc.*, 91 111. App. 3d at 1017. The County alleges that it has provided steam to the Facility since 1973 (Doc. No. 1, Exhibit A at ^ 11), but it does not allege that it has ever sought payment from any occupant until February 2015. It fails to allege that it charged Kellogg or any previous owner of the Facility for steam heat. Nothing in the County's factual pleadings indicates that it expected payment for steam provided to the Facility at the time the steam was allegedly provided. See *Euramca Ecosystems, Inc. v. Roediger Pittsburgh, Inc.*, 581 F. Supp. 415, 422-23 (N.D. 111. 1984) (citing *Plastics & Equip. Sales Co., Inc.*, 91 111. App. 3d at 1017) (stating that quantum meruit relief may not be obtained where plaintiffs do not expect payment for the services at the time the services were performed.)

The County's failure to allege facts demonstrating that it expected payment for the steam when it was provided is fatal to its claim. See Owen Wagener & Co. v. U.S. Bank, 297 111. App. 3d 1045, 1054 (1st Dist. 1998) (affirming

dismissal of the plaintiffs quantum meruit claim where the plaintiff failed to allege any expectation of payment for its services from defendant); see also

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Case: l:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 8 of 10 PageID #:73

Motorola, Inc. v. Lemko Corp., Case No. 08 C 5427, 2010 WL 960348, at *5 (N.D. Ill. Mar. 15, 2010) (dismissing unjust enrichment claim because the counter-plaintiff failed to allege that he expected to benefit from the services he provided to the counter-defendant).

2. Kellogg Could Not Have Believed Payment was Expected. Moreover, based on the County's alleged course of conduct, Kellogg could not have reasonably believed that the County expected payment for the steam. *Plastics & Equip. Sales Co., Inc.*, 91 Ill. App. 3d at 1017. Though the County conclusorily asserts that Kellogg "knew that the provision of steam heat would not ordinarily be free of charge" (Doc. No. 1, Exhibit A at ^ 24), it also alleges that it demanded payment from Kellogg for the first time in February 2015 (Id. at % 26)-even though Kellogg has owned the Facility since 2005 (Id. at ^ 10). Kellogg had no reason to know that the County expected payment because the County never charged Kellogg during Kellogg's entire tenure as owner of the Facility up to that point. The County alleges no facts showing that it had given Kellogg any notice whatsoever that it expected payment. See *Berry Law PLLC v. Kraft Foods Group, Inc.*, Ill F.3d 505, 508 (D.C. Cir. 2015) (affirming dismissal of plaintiffs quasi-contract claim where defendant could not reasonably have known that the plaintiff contemplated payment) (citing *Bloomgarden*, 479 F.2d at 212). Indeed, as soon as Kellogg discovered that the County expected payment for the steam, Kellogg rejected the proposed service agreement with the County and chose to go without steam. (Doc. No. I, Exhibit A at fflf 13-16, Exhibits 3-5.)

The facts alleged belie the County's conclusory claim for unjust enrichment. The County's pleadings demonstrate that it knowingly provided steam services to the Facility without the expectation of payment for over forty years, and, having never been notified or billed, Kellogg reasonably did not expect to pay for the steam. The County's allegations show that it is not entitled

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 9 of 10 PageID #:74

to relief for unjust enrichment. See *Tamayo v. Blagojevich*, 526 F. 3d 1074, 1086 (7th Cir. 2008) (stating that a plaintiff may plead itself out of court by alleging facts that show it is not entitled to relief). Therefore Count II should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, and those stated in Kellogg's Partial Motion to Dismiss the County of Cook's Complaint, Kellogg respectfully requests that this Court dismiss with prejudice Count II of Cook County's complaint for failure to state a claim and grant any and all other such relief as this Court may deem just.

Dated: March 24,2016

Respectfully submitted,

KELLOGG COMPANY

By: /s/ Robert S. Markin One of Its Attorneys

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Counsel for Kellogg Company

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 10 of 10 PageID #:75

CERTIFICATE OF SERVICE

I, Robert S. Markin, an attorney, hereby certify that on this 24th day of March 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the court's system.

Sisavanh Baker
Michael Lapinski
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602
michael.lapinski@cookcountyil.gov <mailto:michael.lapinski@cookcountyil.gov>
Attorney for Plaintiff County of Cook

/s/ Robert S. Markin

**CITY OF CHICAGO ECONOMIC DISCLOSURE
STATEMENT AND AFFIDAVIT**

SECTION I - GENERAL INFORMATION

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable: Kellogg USA
Inc.

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. the Applicant
OR

2. a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: Keebler Company

OR

3. a legal entity with a direct or indirect right of control of the Applicant (see Section 11(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: One Kellogg Square
Battle Creek, MI 49016-3599

C. Telephone: (269) 961-2000 p^; (269) 660-4178 Email: kevin.kilpatrick@kellogg.com
<mailto:kevin.kilpatrick@kellogg.com>

D. Name of contact person: Kevin Kilpatrick

E. Federal Employer Identification No. (if you have one): j !

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

Amendment to existing TIF RDA agreement and resolution in support of renewal of Class 6B at 750 East 110th Street

G. Which City agency or department is requesting this EDS? Department of Planning and Development

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # and Contract #
Ver.2017-1 Page 1 of 14

SECTION II - DISCLOSURE OF OWNERSHIP INTERESTS

A. NATURE OF THE DISCLOSING PARTY

Limited liability company Limited liability partnership Joint venture Not-for-profit corporation (Is the not-for-profit corporation also a 501(c)(3))?

1. Indicate the nature of the Disclosing Party:

- Person
- Publicly registered business corporation
- Privately held business corporation
- Sole proprietorship
- Yes No Other (please specify)
- General partnership (
- Limited partnership
- Trust

Disclosing Party is a 100% wholly owned, direct subsidiary of Kellogg Company, which is a publicly registered business corporation

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Michigan

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

Organized in Illinois

B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) for not-for-profit corporations, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) for trusts, estates or other similar entities, the trustee, executor, administrator, or similarly situated party; (iv) for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name Title See attached officer/director listing

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

Page 2 of 14

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

NOTE: Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Kellogg Company	One Kellogg Square Battle Creek, MI 49016-3599	100%

SECTION III - INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the ' 12-month period preceding the date of this EDS? [] Yes [x] No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? [] Yes [x] No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

Yes No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner (s) and describe the financial interest(s).

SECTION IV - DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Page 3 of 14

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

[x] Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities. SECTION V ~ CERTIFICATIONS

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

Yes No No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

Yes No

B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

Page 4 of 14

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section 11(B)(1) of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;

b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

See related comment per page 7

c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;

See related comment per page 7

d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and

e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations,

instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Page 5 of 14

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section 11(B)(1) of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;

b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

See related comment per Page 7

c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;

d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and

e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Page 5 of 14

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720

ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

Ver.2017-1

Page 6 of 14

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

With respect to Section V(BH3)(b) and (c), please see the "Memorandum of law in support of Defendant Kellogg Company's Partial Motion to Dismiss the County of Cook's complaint" attached at the end of this Economic Disclosure Statement and Affidavit.

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a

complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)
 is is not

a "financial institution" as defined in MCC Section 2-32-455(b).~

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

Page 7 of 14

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary): Not applicable

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

Yes No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Not applicable Does the Matter involve a City Property Sale?

Yes No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Not applicable
Name Business Address Nature of Financial Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

^x 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

SECTION VI - CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

Not applicable

NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended; have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

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Page 9 of 14

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and

must make such certifications promptly available to the City upon request.

B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations. Matter not federally funded - Not applicable

Is the Disclosing Party the Applicant?

Yes No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

Yes No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

Yes No Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

Yes No

If you checked "No" to question (1) or (2) above, please provide an explanation:

- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at www.cityofchicago.org/Ethics <<http://www.cityofchicago.org/Ethics>>, and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

Page 11 of 14

CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and Appendices A and B (if applicable), on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and Appendices A and B (if applicable), are true, accurate and complete as of the date furnished to the City.

Kellogg USA Inc.

(Sign here) ?

(Print or type name of person signing)

(Print or type title of person signing)

*(date) fflir&h bf2*Otf,*

VICKIE L VAN HORN
Notary Public
Calhoun County, Michigan
My Commission Expires
January 18, 2021

Page 12 of 14

City of Chicago

Economic Disclosure Statement and Affidavit Section 11(B)(1) - Officer and director list

Name	Officer title	Director
Hirst, Alistair D.	Executive Vice President	
Libbing, Michael J.	Vice President	
Pilnick, Gary H.	Executive Vice President and Secretary	X
Renwick IV, John P.	Vice President/CFO, Finance	
Schell, Richard W.	Vice President and Assistant Treasurer	
VanderKooi, Joel A.	Vice President and Treasurer	X
Haigh, Todd W.	Vice President and Assistant Secretary	X
Kilpatrick, Kevin S.	Assistant Treasurer	

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 1 of 10 PageID #:66

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION

Case No. 16-cv-3399

Judge John Z. Lee

Magistrate Judge Maria Valdez

COUNTY OF COOK, a body politic and corporate of the state of Illinois,

Plaintiff,

v.

KELLOGG COMPANY, a Delaware corporation, Defendant.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT KELLOGG COMPANY'S PARTIAL MOTION TO DISMISS THE COUNTY OF COOK'S COMPLAINT

Defendant Kellogg Company ("Kellogg") submits this Memorandum in support of its Partial Motion to Dismiss Count II of the County of Cook's ("the County") Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

INTRODUCTION

This case is about the County's belated demand that Kellogg pay more than \$2 million for past steam heat services that the County had gratuitously provided to Kellogg for nearly ten years, and to previous occupants for over thirty years. From June 2005 until February 2015, the County provided steam heat to a facility owned by Kellogg located at 3124 South Sacramento, Chicago, Illinois ("Facility"). The County never gave Kellogg any notice that it expected payment for this steam, and never charged Kellogg. Instead, in February 2015, after nearly a decade, the County sent Kellogg a bill out of the blue for over \$2 million based on a seemingly arbitrary per month charge. The County demanded immediate payment and that Kellogg enter into a service agreement for steam going forward. Kellogg rejected both demands and informed the County that Kellogg did not require steam at the Facility. This suit followed.

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 2 of 10 PageID #:67

The County's Complaint sets forth two counts, but only Count II is the subject of this Motion.¹ In Count II, the County seeks payment for the provision of steam services based on a theory of quasi-contract. Count II should be dismissed for two reasons. First, Count II should be dismissed because the County does not plead any facts showing that Kellogg's retention of the alleged benefit was in any way unjust or improper. Second, Count II should be dismissed with

prejudice because the County's own allegations show that the alleged benefit was provided gratuitously, without any contemporaneous expectation of payment for ten years, and as a result, Kellogg could not have reasonably believed that the County expected payment. Based on the County's insufficient pleadings, Count II should be dismissed with prejudice pursuant to Rule 12(b)(6).

FACTS ALLEGED

In June 2005, Keebler Co., a subsidiary of Kellogg (Keebler Co. and Kellogg will be referred to collectively as "Kellogg"), acquired the Facility at 3124 South Sacramento, and Kellogg has occupied the Facility continuously ever since. (Doc. No. 1, Exhibit A at ^ 10.) The County has provided steam heat to the Facility since 1973. (Id. at \ 11.) The County does not allege that it has ever charged any occupant of the Facility for steam. Nearly ten years after Kellogg purchased the Facility, in February 2015, the County informed Kellogg-for the first time-that it owed the County over \$2 million for steam heat that the County provided to the Facility from the date Kellogg acquired the Facility. (Id. at \ 13.) At the same time, the County sought to enter into a service agreement with Kellogg for the provision of steam heat in the future. (Id. at \ 13, Exhibit 3.) Kellogg did not pay the over \$2 million demanded by the County and did not agree to the proposed service agreement for steam heat going forward. (Id. at f^J 14-17, Exhibits 4-5.) The

¹ In Count I, the County seeks a declaratory judgment regarding the interpretation of a covenant running with the land located within the 1973 sales contract for the Facility.

County discontinued steam heat service at the Facility at some point after October 9, 2015. (Id. at H 16, Exhibit 5.)

The County's meagre factual allegations are not only insufficient to state an unjust enrichment claim, but they also belie its claim. The County does not allege that prior to February 2015 it ever notified Kellogg that it expected payment for the steam provided. The County does not allege that, prior to February 2015, it ever attempted to enter into a service agreement for Kellogg to pay the County for steam heat. Rather, the County conclusorily asserts that Kellogg "knew that the provision of steam heat would not ordinarily be free of charge"-despite the fact that the County never gave any indication to that the steam was anything but gratuitous. (Id. at \ 24.) The County then baldly states that Kellogg has been unjustly enriched by its provision of steam services. (Id. at \ 28.)

The County's insufficient and ultimately contradictory allegations show that it is not entitled to relief. This Court should therefore dismiss Count II with prejudice.

ARGUMENT

A motion to dismiss pursuant to Rule 12(b)(6) "tests the sufficiency of the complaint, not the merits of the case." *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 878 (7th Cir. 2012). The allegations must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A plaintiff need not provide detailed factual allegations but must provide enough factual support to raise his right to relief above a speculative level. *Sell All Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint must be facially plausible, which means that the pleadings must "allow [] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The claim must be asserted "in sufficient detail to give the defendant 'fair notice of what the...claim is and the grounds upon which it rests.'" *E.E.O.C. v. Concentra Health Servs., Inc.*, 496

3

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 4 of 10 PageID #:69

F.3d 773, 776 (7th Cir. 2007) (quoting Twombly, 550 U.S. at 555). "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" Iqbal, 556 U.S. at 678. (quoting Twombly, 550 U.S. at 555) "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient to withstand a Rule 12(b)(6) motion to dismiss under Iqbal. Id.

I. The County's Conclusory Unjust Enrichment Claim (Count II) Should Be Dismissed With Prejudice Pursuant to Rule 12(b)(6).

Under Illinois law, a quasi-contract claim for unjust enrichment may be asserted when one party performs a service for the benefit of another, the other party accepts the benefit, and the surrounding circumstances indicate that the service was not intended to be gratuitous. *Midwest Emerg. Assocs.-Elgin Ltd. v. Harmony Health Plan of Ill., Inc.*, 382 Ill. App. 3d 973, 982 (1st Dist. 2008). "It is not enough that a defendant has received a benefit; rather, circumstances must exist such that the defendant's retention of the benefit would violate the fundamental principles of justice, equity, and good conscience." *C. Szabo Contracting, Inc. v. Lorig Const. Co.*, 2014 IL App (2d) 131328, U 24 (internal citation omitted).

The Seventh Circuit has stated that an unjust enrichment claim rests upon some improper conduct by the defendant, not simply the defendant's retention of a benefit. *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 517 (7th Cir. 2011). Moreover, a party who performs services gratuitously, with no expectation of payment for services rendered, cannot claim that another party has been unjustly enriched. *Midcoast Aviation, Inc. v. Gen. Elec. Credit Corp.*, 907 F.2d 732, 740 (7th Cir. 1990). Here, the County fails to state a claim because it does not (and cannot) allege that Kellogg acted improperly or that the surrounding circumstances indicate that the service was not intended to be gratuitous.

4

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 5 of 10 PageID #:70

A. The County's Unjust Enrichment Claim Should be Dismissed Because the County Fails to Allege Facts Showing that Kellogg's Retention of the Benefit was Improper or Unjust.

The County fails to plead facts showing that Kellogg's retention of the alleged benefit was improper or unjust. Count II should consequently be dismissed. Unjust enrichment claims require factual allegations showing that the defendant engaged in some form of improper or unjust conduct. *Pennington v. Travelex Currency Services, Inc.*, 114 F. Supp. 3d 697,706 (N.D. 111. 2015) (citing *Cleary* 656 F. 3d at 517, and *Siegel v. Shell Oil Co.*, 612 F. 3d 932, 937 (7th Cir.2010)). The mere fact that one party benefits another is not itself sufficient to require restitution under a theory of quasi-contract. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill.App.3d 1,9 (1st Dist. 2004).

In *Murad v. Banks*, the court dismissed plaintiff's quantum meruit claim because the plaintiff failed to allege facts showing that defendant's retention of the alleged benefit was unjust. 2015 WL 2455127, at *7 (N.D. 111. May 22, 2015).² The plaintiff in *Murad* sought compensation for construction services undertaken to repair a property owned by defendant. *Id.* at * 1. Although no contract for the services existed between the plaintiff and defendant, the plaintiff alleged that the defendant, as the owner of the property, owed plaintiff \$78,000 for plaintiff's provision of these construction services. *Id.* The court rejected plaintiff's quasi-contract claim based on these allegations. *Id.* at *7.

² Illinois state and federal courts treat the quasi-contract theories of quantum meruit and unjust enrichment essentially the same, and courts often apply the theories interchangeably. See, e.g., *Stark Excavating, Inc. v. Carter Const. Services, Inc.*, 2012 [L App (4th) U0357, H 37 (citing *Hayes Mechanical, Inc. v. First Industrial, LP.*, 351 Ill.App.3d 1, 9 (1st Dist. 2004)) (stating that proof of the same elements is required for quantum meruit and unjust enrichment); see also. *Spitz v. Proven Winners N. Am., LLC*, 969 F. Supp. 2d 994, 1007 (N.D. Ill. 2013) *aff'd*, 759 F.3d 724 (7th Cir. 2014) (same); *Cove Mgmt. v AFLAC, Inc.*, 2013 ILApp(1st) 120884, ^34-35 (refemngto quantum meruit md unjust enrichment interchangeably). The only difference between the two claims is the measure of recovery. For a quantum meruit claim, it is the reasonable value of the work and material provided; whereas in an unjust enrichment action, the measure of recovery focuses on the value of the benefit received and retained. *Stark Excavating, Inc.*, 2012 IL App (4th) 110357,137.

Case: 1:16-cv-03399 Document #: 11 Filed: 03/24/16 Page 6 of 10 PageID #:71

The court reasoned that Illinois law required more than merely alleging that one party benefitted another. Id. Rather, "Illinois law requires a plaintiff seeking recovery in quantum meruit or unjust enrichment to allege facts demonstrating that the defendant's retention of the conferred benefit would be unjust, such as the defendant having requested the work and then refused to pay for it, somehow enticed the work or suggested that it would pay for it, or demanded other work that rendered necessary the additional work sued over." Id. (citing C. Szabo Contracting, Inc., 2014 IL App (2d) 131328, % 42, and Stark Excavating, Inc. v. Carter Const. Services, Inc., 2012 IL App (4th) 110357, | 39). Because the plaintiff failed to allege any facts demonstrating that defendant's retention of the benefit was unjust, the court dismissed plaintiff's quasi-contract claim. Id.

Here, as in *Murad*, the County fails to allege any facts showing that Kellogg's retention of the alleged benefit was unjust or improper. The County does not allege that Kellogg requested or enticed it to provide steam heat by suggesting or implying that Kellogg would pay for the steam. The County does not even allege that it put Kellogg on notice that it expected payment until February 2015-ten years after Kellogg purchased the property. Under the facts alleged, Kellogg's retention of the purported benefit was not improper or unjust. See *Pennington, Inc.*, 114 F. Supp. 3d at 706 (dismissing plaintiffs unjust enrichment claim where plaintiff failed to allege improper conduct by the defendant). Consequently, Count II should be dismissed for failure to sufficiently plead a claim.

- B. The County's Unjust Enrichment Claim Should be Dismissed With Prejudice Because the County Fails to Allege that It Expected Payment for the Steam Provided, and the County's Allegations Show that Kellogg Reasonably Could Not Have Believed the County Expected Payment.

Additionally, quasi-contractual relief, such as unjust enrichment, "is not available where the benefit is conferred officiously or gratuitously,... the plaintiff did not contemplate a fee at the

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 7 of 10 PageID#:72

time the services were rendered, or the defendant could not have reasonably believed that plaintiff expected a fee." *Plastics & Equip. Sales Co., Inc. v. DeSoto, Inc.*, 91 111. App. 3d 1011, 1017 (1st Dist. 1980) (citing *Bloomgarden v. Coyer*, 479 F.2d 201 (D.C.Cir.1973)); *Knaus v. Dennler*, 170 Ill. App. 3d 746, 750-51 (5th Dist. 1988). The County fails to allege, and cannot allege, that prior to February 2015 it expected payment for the steam provided to the Facility. Moreover, having never received any indication that the County expected payment, Kellogg could not have reasonably believed that the County expected to be paid for steam.

1. The County Never Expected Payment Prior to February 2015.

Count II of the County's Complaint should be dismissed because it does not allege that the County expected payment for the steam at any time prior to February 2015. *Plastics & Equip. Sales Co., Inc.*, 91 Ill. App. 3d at 1017. The County alleges that it has provided steam to the Facility since 1973 (Doc. No. 1, Exhibit A at ^ 11), but it does not allege that it has ever sought payment from any occupant until February 2015. It fails to allege that it charged Kellogg or any previous owner of the Facility for steam heat. Nothing in the County's factual pleadings indicates that it expected payment for steam provided to the Facility at the time the steam was allegedly provided. See *Euramca Ecosystems, Inc. v. Roediger Pittsburgh, Inc.*, 581 F. Supp. 415, 422-23 (N.D. 111. 1984) (citing *Plastics & Equip. Sales Co., Inc.*, 91 111. App. 3d at 1017) (stating that quantum meruit relief may not be obtained where plaintiffs do not expect payment for the services at the time the services were performed.)

The County's failure to allege facts demonstrating that it expected payment for the steam when it was provided is fatal to its claim. See Owen Wagener & Co. v. U.S. Bank, 297 111. App. 3d 1045, 1054 (1st Dist. 1998) (affirming dismissal of the plaintiffs quantum meruit claim where the plaintiff failed to allege any expectation of payment for its services from defendant); see also

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 8 of 10 PageID *:73

Motorola, Inc. v. Lemko Corp., Case No. 08 C 5427, 2010 WL 960348, at *5 (N.D. 111. Mar. 15, 2010) (dismissing unjust enrichment claim because the counter-plaintiff failed to allege that he expected to benefit from the services he provided to the counter-defendant).

2. Kellogg Could Not Have Believed Payment was Expected. Moreover, based on the County's alleged course of conduct, Kellogg could not have reasonably believed that the County expected payment for the steam. *Plastics & Equip. Sales Co., Inc.*, 91 111. App. 3d at 1017. Though the County conclusorily asserts that Kellogg "knew that the provision of steam heat would not ordinarily be free of charge" (Doc. No. 1, Exhibit A at H 24), it also alleges that it demanded payment from Kellogg for the first time in February 2015 (Id. at U 26)-even though Kellogg has owned the Facility since 2005 (Id. at ^ 10). Kellogg had no reason to know that the County expected payment because the County never charged Kellogg during Kellogg's entire tenure as owner of the Facility up to that point. The County alleges no facts showing that it had given Kellogg any notice whatsoever that it expected payment. See *Berry Law PLLC v. Kraft Foods Group, Inc.*, Ill F.3d 505, 508 (D.C. Cir. 2015)-(affirming dismissal of plaintiffs quasi-contract claim where defendant could not reasonably have known that the plaintiff contemplated payment) (citing *Bloomgarden*, 479 F.2d at 212). Indeed, as soon as Kellogg discovered that the County expected payment for the steam, Kellogg rejected the proposed service agreement with the County and chose to go without steam. (Doc. No. 1, Exhibit A at 13-16, Exhibits 3-5.)

The facts alleged belie the County's conclusory claim for unjust enrichment. The County's pleadings demonstrate that it knowingly provided steam services to the Facility without the expectation of payment for over forty years, and, having never been notified or billed, Kellogg reasonably did not expect to pay for the steam. The County's allegations show that it is not entitled

to relief for unjust enrichment. See *Tamayo v. Blagojevich*, 526 F. 3d 1074, 1086 (7th Cir. 2008) (stating that a plaintiff may plead itself out of court by alleging facts that show it is not entitled to relief). Therefore Count II should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, and those stated in Kellogg's Partial Motion to Dismiss the County of Cook's Complaint, Kellogg respectfully requests that this Court dismiss with prejudice Count II of Cook County's complaint for failure to state a claim and grant any and all other such relief as this Court may deem just.

Dated: March 24, 2016

Respectfully submitted,

KELLOGG COMPANY

By: /s/ Robert S. Markin One of Its Attorneys

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Counsel for Kellogg Company

9

Case: 1:16-cv-03399 Document*: 11 Filed: 03/24/16 Page 10 of 10 PageID #:75

CERTIFICATE OF SERVICE

I, Robert S. Markin, an attorney, hereby certify that on this 24th day of March 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the

court's system.

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/s/ Robert S. Markin