

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4 STEPHEN HADLEY, et al.

Case No. 5:16-cv-04955-LHK

5 v.

[Fed. R. Civ. P. 23(a), (b), (e), (h)]

6 KELLOGG SALES COMPANY

Judge Lucy H. Koh

7 **OPPOSITION TO MOTION FOR PRELIMINARY APPROVAL [377]**

8 Counsel who certified a “Californian Class” (“California-Class Counsel”) claims that the new nationwide deal has “no obvious deficiencies”—as before. DE 377 at 24. This third-time-charm backfired again as before, because one can spot 10 obvious deficiencies, and the burden is on Plaintiffs to show all of why it deserves 11 preliminary approval, and not “if it has no ‘obvious deficiency’, it is worth approval.”

12 Fed. R. Civ. Proc. 23 placed an affirmative burden on California-Class 13 Counsel, such that “[a] party seeking class certification must affirmatively 14 demonstrate his compliance with the Rule—that is, he must be prepared to prove 15 that there are *in fact* sufficiently numerous parties, common questions of law or 16 fact, etc.” *Wal-Mart Stores v. Dukes*, 568 U.S. 338, 349 (2011). As California-Class 17 Counsel repeatedly seek to settle on a *nationwide* basis—of which does not have a 18 certified litigation class, and failed twice—the standard must be heightened: 19 “Confronted with a request for settlement-only class certification ... [rules] 20 designed to protect absentees by blocking unwarranted or overbroad class 21 definitions—demand undiluted, even heightened, attention in the settlement

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1 California-Class Counsel is basically asking “a delegation of judicial power to the  
2 plaintiffs, who can obtain class certification just by hiring a competent expert.”  
3 *West v. Prudential Sec.*, 282 F.3d 935, 938 (7th Cir. 2002) (Easterbrook, J.). Maybe  
4 it takes a statistician to tell whether the “quintiles” are fairly allocated, or what  
5 else might be really “behind the scenes”—but *cy pres* is for sure behind the scenes.

6 The “black box” combines with “*cy pres* in, coupons out” still offers grave  
7 concerns that the “Class” still will get next to nothing from “black box” mysteries,  
8 so that a substantial cut might *really* go to *cy pres*. *Cy pres* is permitted in this  
9 Circuit, only when a direct distribution will be “infeasible given that each class  
10 member's direct recovery would be *de minimis*.” *Lane v. Facebook*, 696 F.3d 811,  
11 821 (9th Cir. 2012). But clearly, Class will get *some* funds *anyway*, making  
12 “infeasibility of distribution” impossible, and the Class deserves the *entire* fund *pro*  
13 *rata* without resorting to *cy pres*, which has full of problems as an Article III  
14 standing’s redressability problem, *see* Brief for the U.S. as *Amicus Curiae*, *Frank*  
15 *v. Gaos*, 139 S. Ct. 1041 (2019), 2018 WL 3456069, at 15-28 (U.S. July 16, 2018), or  
16 as a settlement fairness / allocation / excess fee problem. *See Dennis v. Kellogg Co.*,  
17 697 F.3d 858 (9th Cir. 2012). *Pearson v. NBTY*, 772 F.3d 778 (7th Cir. 2014).

18 ***Third***, Californian-Class Counsel appears to have abdicated its duty for the  
19 entire Californian class, by seeking to settle a ***nationwide class that treats***  
20 ***Californian claims*** undervalued: Whether or not one is in California class, “every  
21 Class Member who makes a claim will be subject to the same claims process that

1 provides the same remedy based on the claimant's purchase history." DE 377 at 27.  
2 But it is more than obvious that California-Class' *litigable claims* have more  
3 worth than nationwide *non-litigable* claims—without a certified class to proceed in  
4 a trial. "A fundamental conflict exists where [Californian Litigation Class]  
5 members [are] harmed by the same conduct that benefitted [Nationwide] members  
6 of the class." *Valley Drug Co. v. Geneva Pharms.*, 350 F.3d 1181, 1189 (11th Cir.  
7 2003). The Court should set dates for a trial so that this Court's judicial resources  
8 need not be wasted further by endless attempts to settle profitably without *real*,  
9 relief. Or, "[a] district court may decertify a class at any time." *Rodriguez v. West*  
10 *Publishing Corp.*, 563 F.3d 948, 966 (9th Cir. 2009) (citation omitted).

### 11 CONCLUSION

12 For the foregoing reasons, the motion should be denied.

13 Dated: March 15, 2021

Respectfully Submitted,

14 /s/ Shiyang Huang

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17 *Pro Per*

### 18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on March 15, 2021, I mailed the foregoing paper with  
20 the Court. CM/ECF will notify all counsels of record.

21 /s/ Shiyang Huang