

### Class Action Settlement Agreement

This Settlement Agreement and Release (“Agreement”), effective upon the date of the signatories below, is made by and between Post Foods, LLC (“Post”) and the Class Representatives (defined below) on behalf of the Class (defined below) (collectively, the “Parties”), in the matter of *Krommenhock v. Post Foods, LLC*, No. 16-cv-4958-WHO (N.D. Cal.) (“*Krommenhock*” or the “Action”).

**WHEREAS**, on August 29, 2016, Class Representatives Debbie Krommenhock and Stephen Hadley commenced the *Krommenhock* lawsuit for alleged violations of California’s consumer protection and warranty laws in the United States District Court for the Northern District of California;

**WHEREAS**, Post denies the allegations contained in the Action; and

**WHEREAS**, Post and the Class Representatives on behalf of the Class (as defined below) wish to resolve any and all past, present, and future claims that the Class has or may have against Post on a nationwide basis, of any nature whatsoever, as they relate to the allegations in the Action regarding the Class Products;

**NOW THEREFORE**, the Parties, for good and valuable consideration, the sufficiency of which is hereby acknowledged, understand and agree to the following terms and conditions.

#### **1. DEFINITIONS.**

As used in this Agreement, the following capitalized terms have the meanings specified below.

**1.1. “Action”** means the matter of *Krommenhock v. Post Foods, LLC*, No. 16-cv-4958-WHO (N.D. Cal.) (“*Krommenhock*”).

**1.2. “Agreement” or “Settlement Agreement”** means this Class Action Settlement Agreement.

**1.3. “Cash Award”** means a cash payment from the Settlement Fund to a Settlement Class Member with an Approved Claim.

**1.4. “Claim”** means a request for relief submitted by or on behalf of a Class Member on a Claim Form filed with the Class Administrator in accordance with the terms of this Agreement.

**(a) “Approved Claim”** means a claim approved by the Class Administrator, according to the terms of this Agreement.

**(b) “Claimant”** means any Class Member who submits a Claim Form for the purpose of claiming benefits, in the manner described in Section 4 of this Agreement.

(c) **“Claim Form”** means the document to be submitted by Claimants seeking direct monetary benefits pursuant to this Agreement.

(d) **“Claims Deadline”** means the date by which a Claimant must submit a Claim Form to be considered timely. The Claims Deadline shall be sixty-three (63) calendar days after the Settlement Notice Date.

(e) **“Claims Process”** means the process by which Class Members may make claims for relief, as described in Section 4 of this Agreement.

1.5. **“Class” or “Settlement Class”** means all persons in the United States who, between August 29, 2012 and November 2, 2020 (the “Class Period”), purchased in the United States, for household use and not for resale or distribution, one of the Class Products, as defined below.

1.6. **“Class Member”** means any person who is a member of the Class.

1.7. **“Class Period”** means August 29, 2012 to November 2, 2020.

1.8. **“Class Products”** means any of the specific Post products identified in Appendix 1 hereto.

1.9. **“Class Administrator”** means the independent company approved by the Court to provide the Class Notice and to administer the Claims Process.

1.10. **“Claims Administration”** means the administration of the Claims Process by the Class Administrator.

1.11. **“Class Counsel”** means the following attorneys of record for the Class Representatives and Class in the Action, unless otherwise modified by the Court:

Jack Fitzgerald  
Trevor M. Flynn  
Melanie Persinger  
The Law Office of Jack Fitzgerald, PC  
Hillcrest Professional Building  
3636 Fourth Avenue, Suite 202  
San Diego, California 92103  
Phone: (619) 692-3840

Sidney W. Jackson, III  
Jackson & Foster, LLC  
75 St. Michael Street  
Mobile, Alabama 36602  
Phone: (251) 433-6699

**1.12. “Class Notice”** means both those documents notifying Class Members, pursuant to the Notice Plan, of the Settlement, and the substance of those documents.

(a) **“Long Form Notice”** refers to the proposed full Class Notice that is attached to this Agreement as Exhibit 1, which the Parties acknowledge may be modified by the Court without affecting the enforceability of this Agreement.

(b) **“Short Form Notice”** means the summary Class Notice that is attached to this Agreement as Exhibit 2, which the Parties acknowledge may be modified by the Court without affecting the enforceability of this Agreement.

(c) **“Notice Plan”** means the plan for dissemination of Class Notice to be submitted to the Court in connection with a motion for preliminary approval of this Settlement.

(d) **“Settlement Notice Date”** means twenty-one (21) calendar days after the date the Court issues the Preliminary Approval Order.

**1.13. “Class Representative(s)”** means named plaintiffs Debbie Krommenhock and Stephen Hadley.

**1.14. “Court”** means the Northern District of California, the Honorable William H. Orrick presiding, or any judge who will succeed him as the Judge in this Action.

**1.15. “Effective Date”** means the date on which the Judgment becomes final. For purposes of this definition, the Judgment shall become final: (a) if no appeal from the Judgment is filed, the date of expiration of the time for filing or noticing any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for certiorari seeking review of the appellate judgment is filed and denied, the date the petition is denied; or (d) if a petition for writ of certiorari is filed and granted, the date of final affirmance or final dismissal of the review proceeding initiated by the petition for a writ of certiorari.

**1.16. “Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.17. “Final Approval Hearing”** means the hearing to be conducted by the Court to determine whether to finally approve the Settlement and to enter Judgment.

**1.18. “Final Approval Order”** means the order to be submitted to the Court in connection with a Motion for Final Approval and the Final Approval Hearing, substantially in the form attached hereto as Exhibit 3.

**1.19. “Judgment”** means the Court’s act of entering a final judgment on the docket as described in Federal Rule of Civil Procedure 58.

**1.20. “Label Changes Deadlines”** means the date by which Post will remove the statements specified in Paragraphs 5.3-5.11 from the Class Products internally and is set as 6 months after the date that the Final Approval Order is issued.

**1.21. “Label Changes End Date”** means the date through which Post will not produce the Class Products with labels that contain the statements specified in Paragraphs 5.3-5.11 and is set as December 31, 2022.

**1.22. “Notice and Other Administrative Costs”** means all costs and expenses actually incurred by the Class Administrator in administering the Settlement, including the publication of Class Notice, establishment of the Settlement Website, providing CAFA notice, the processing, handling, reviewing, and paying of claims made by Claimants, and paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants). All taxes on the income of the Settlement Fund, and any costs or expenses incurred in connection with the taxation of the Settlement Fund shall be paid out of the Settlement Fund, shall be considered to be a Notice and Other Administrative Cost, and shall be timely paid by the Class Administrator without prior order of the Court. The Parties shall have no liability or responsibility for the payment of any such taxes.

**1.23. “Objection Deadline”** means the date by which Class Members must file with the Court a written statement objecting to any terms of the Settlement or to Class Counsel’s request for fees or expenses, and shall be sixty-three (63) calendar days after the Settlement Notice Date.

**1.24. “Opt-Out Deadline”** means the deadline by which a Class Member must exercise his or her option to opt out of the settlement so as not to release his or her claims as part of the Released Claims, and shall be sixty-three (63) days after the Settlement Notice Date.

**1.25. “Party” or “Parties”** means the Class Representatives, on behalf of the Class, and Post.

**1.26. “Person”** means any individual, corporation, partnership, association, or any other legal entity.

**1.27. “Plaintiffs”** means the Class Representatives, either individually or on behalf of the Class.

**1.28. “Post”** means Post Foods, LLC, the defendant in the Action.

**1.29. “Preliminary Approval Date”** means the date of entry of the Court’s order granting preliminary approval of the Settlement.

**1.30. “Preliminary Approval Order”** means the proposed order to be submitted to the Court in connection with the Motion for Preliminary Approval, substantially in the form attached hereto as Exhibit 4.

**1.31. “Released Claims”** means the claims released by the Class Members via this Agreement.

**1.32. “Request for Exclusion”** means the written submission submitted by a Settlement Class Member to be excluded from the Settlement consistent with the terms of this Agreement.

**1.33. “Service Award”** means any award approved by the Court that is payable to the Class Representatives from the Settlement Fund.

**1.34. “Settlement”** means the resolution of this Action embodied in the terms of this Agreement.

**1.35. “Settlement Fund”** means the qualified settlement fund this Agreement obligates Post to fund in the amount of \$15,000,000, which is in the form of a non-reversionary common fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

**1.36. “Settlement Payment”** means the amount to be paid to valid Claimants as detailed in Section 4.

**1.37. “Settlement Website”** means a website maintained by the Class Administrator to provide the Class with information relating to the Settlement.

## **2. SETTLEMENT FUND**

**2.1. Settlement Consideration.** Post agrees to establish a non-reversionary common fund of \$15,000,000 (the “Settlement Fund”), which shall be used to pay all Settlement expenses, including Notice and Other Administrative Costs; Fee Award; Service Awards; and Class Members’ Claims. Post will pay nothing apart from the Settlement Fund.

**2.2. Creation and Administration of Qualified Settlement Fund.** The Class Administrator is authorized to establish the Settlement Fund under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Settlement Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Class Administrator operating as administrator of the Settlement Fund shall be construed as costs of Claims Administration and shall be borne solely by the Settlement Fund. Interest on the Settlement Fund shall inure to the benefit of the Class.

**2.3. Schedule of Payments into Settlement Fund.** Post will make payments into the Settlement Fund in accordance with the following schedule:

(a) *Notice and Other Administrative Costs.* Amounts for the Notice and Other Administrative Costs, to be paid at a time agreed upon between Post and the Class Administrator.

(b) *Fee Award.* An amount equal to the Fee Award described at Paragraph 3.2, to be paid within fourteen (14) days after the entry of Judgment.

(c) *Payment of Service Awards and Valid Cash Claims.* An amount equal to \$15,000,000 less the sum of all prior payments made into the Settlement Fund, to be paid five (5) days after the Effective Date.

### **3. ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS.**

**3.1. Application for Attorneys' Fees and Costs and Service Awards.** At least 35 days before the Objection Deadline, Class Counsel and Class Representatives shall file a motion, set for hearing on the same date as the Final Approval Hearing, requesting a Fee Award and Service Awards, to be paid from the Settlement Fund.

**3.2. Distribution of Attorneys' Fees and Costs.** The Class Administrator shall pay to Class Counsel from the Settlement Fund the amount of attorneys' fees and costs awarded by the Court within twenty-one (21) calendar days of entry of Judgment, notwithstanding the filing of any appeals, or any other proceedings which may delay the Effective Date of the Settlement or a final Judgment in the case, subject to Class Counsel providing all payment routing information and tax ID numbers for The Law Office of Jack Fitzgerald, as agent for Class Counsel. Payment of the Fee Award will be made from the Settlement Fund by wire transfer to The Law Office of Jack Fitzgerald, as agent for Class Counsel, for distribution to and among Class Counsel, in accordance with the wire instructions to be provided by the Law Office of Jack Fitzgerald, and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason, the Fee Award is overturned, reduced, vacated, or otherwise modified, Class Counsel shall be obligated to return any difference between the amount of the original award and any reduced award. If the Settlement remains in force, the difference shall be returned to the Settlement Fund; if the Settlement is not in force, the difference shall be returned to Post.

**3.3. Distribution of Service Awards.** Any Service Award approved by the Court for the Class Representatives shall be paid from the Settlement Fund in the form of a check to the Class Representatives that is sent care of Class Counsel within the earlier of thirty (30) days after the Effective Date, or the date the Class Administrator begins making distributions to claimants.

**3.4. Settlement Independent of Award of Fees, Costs, and Service Awards.** The awards of attorneys' fees and costs, and payment to the Class Representatives are subject to and dependent upon the Court's approval. However, this Settlement is not dependent or conditioned upon the Court's approving Class Counsel's and Class Representatives' requests for such payments or awarding the particular amounts sought by Class Counsel and Class

Representatives. In the event the Court declines Class Counsel's or Class Representatives' requests or awards less than the amounts sought, this Settlement will continue to be effective and enforceable by the Parties, provided, however, that the Class Representatives and Class Counsel retain the right to appeal the amount of the Fee Award, even if the Settlement is otherwise approved by the Court.

#### **4. CLAIMS PROCESS.**

**4.1. General Process.** To obtain monetary relief as part of the Settlement, a Class Member must fill out and submit a Claim Form, completed online or in hard copy mailed to the Class Administrator. The claim made via the Claim Form will proceed through the following general steps:

(a) The Claimant will be asked to provide identifying information.

(b) The Claimant will be asked to identify which of the 11 Class Products he or she has purchased since August 2012. For each Class Product purchased since August 2012, the Claimant will be asked to state his or her approximate number of purchases over a typical three-month period. The Claimant will be asked to identify the year he or she began purchasing the product.

(c) An equation running "behind the scenes" will calculate the extrapolated number of units of each Class Product purchased by the Claimant during the Class Period, taking into account the year the Claimant began purchasing the Class Product, the date the Class Product was discontinued (if any), and the date the Class Product stopped using the statements challenged by the complaints in this Action (if any). Settlement Class Members' claims without proof of purchase will be subject to per-product caps based on a reasonable average use for the products of 4 boxes per month, but Settlement Class Members' claims with proof of purchase will have no cap. The equation will then calculate a dollar amount of "Base Damages" by multiplying the number of units of each Class Product purchased, by a standardized refund for that product based on the Class's damages models in the Action. The refund amounts and caps that will apply to calculate the Base Damages are as follows:

<b>Product</b>	<b>Amount Per Box</b>
Raisin Bran	11 cents
Bran Flakes	18 cents
Selects	11 cents
Great Grains	11 cents
Honey Bunches of Oats	8 cents
Honey Bunches of Oats Granola	8 cents

<b>Product</b>	<b>Amount Per Box</b>
Shredded Wheat	10 cents
Alpha-Bits	14 cents
Golden Crisp	10 cents
Honeycomb	1 cent
Waffle Crisp	14 cents

Based on the distribution of Base Damages calculated for all Claimants, each Claimant will be placed into one of five quintiles. Each quintile will be assigned a standardized cash refund, calculated by taking the average Base Damages amount for that quintile.

**(d)** All Cash Awards will be adjusted pro rata up or down as described in Section 4.5 below.

**4.2. The Claim Form and Timing.** The Claim Form will be available on the Settlement Website, and may be submitted to the Class Administrator online. A maximum of one Claim Form may be submitted for each household. Claim Forms must be submitted or postmarked on or before the Claims Deadline to be considered timely. The Claims Deadline shall be clearly and prominently stated in the Preliminary Approval Order, the Class Notice, on the Settlement Website, and on the Claim Form.

**4.3. Substance of the Claim Form.** In addition to information about the Class Products as set forth in Paragraph 4.1 above, the Claim Form will request customary identifying information (including the Claimant's name, address, email address, and telephone number), and may seek limited additional information from Claimants to provide reasonable bases for the Class Administrator to monitor for and detect fraud. Such additional information may include, for example, retailers and locations (city and state) at which the Class Products were purchased. In addition, the Claim Form will require the Claimant to declare that the information provided is true and correct to the best of the Claimant's memory and understanding.

**4.4. Claim Validation.** The Class Administrator shall be responsible for reviewing all claims to determine their validity. The Class Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of this Section 4, that is submitted after the Claims Deadline, or that the Class Administrator identifies as fraudulent. The Class Administrator shall retain sole discretion in accepting or rejecting claims and shall have no obligation to notify Claimants of rejected claims unless otherwise ordered by the Court.

**4.5. Pro Rata Adjustment of Cash Awards.** If the total value of all approved Claims either exceeds or falls short of the funds available for distribution to Class Members, then the amounts of the cash payments will be reduced or increased pro rata, as necessary, to use all of



the funds available for distribution to Class Members. Any such pro rata adjustment will be calculated prior to distribution of funds (*i.e.*, will be made in a single distribution).

**4.6. Timing of Distribution.** The Class Administrator shall pay out Approved Claims in accordance with the terms of this Agreement commencing within thirty (30) days after the Effective Date, or as otherwise ordered by the Court. The Parties shall work with the Class Administrator to choose a manner of payment that is secure, cost-effective, and convenient for Claimants.

**4.7. Uncleared Payments: Second Distribution and Cy Pres.** Those Class Members whose payments are not cleared within one hundred and eighty (180) days after issuance will be ineligible to receive a cash settlement benefit and the Class Administrator will have no further obligation to make any payment from the Settlement Fund pursuant to this Settlement Agreement or otherwise to such Class Member. Any funds that remain unclaimed or remain unused after the initial distribution will be distributed to Class Members who cashed the initial payment, on a pro rata basis, to the extent the cost of such redistribution is considered economical by the Class Administrator, Class Counsel, and Post. If such redistribution is not considered economical, or if unpaid funds remain after a second distribution, any unpaid funds will be donated *cy pres* in equal shares to the American Heart Association, the National Advertising Division of the Better Business Bureau, and the UCLA Resnick Center for Food Law and Policy, or, if not approved by the Court, to one or more other Court-approved non-sectarian, not-for-profit firms whose work is sufficiently tethered to the allegations in this action.

**4.8. Taxes on Distribution.** Any person that receives a Cash Award will be solely responsible for any taxes or tax-related expenses owed or incurred by that person by reason of that Award. Such taxes and tax-related expenses will not be paid from the Settlement Fund. In no event will Post, the Class Representatives, Class Counsel, the Class Administrator, or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Cash Awards or other payments made from the Settlement Fund to Class Representatives, Settlement Class Members, or any other person or entity.

## **5. INJUNCTIVE RELIEF.**

**5.1.** Post either has modified or will modify the labels of the Class Products, and will commit not to use the labeling statements identified below through December 31, 2022 (the "Label Changes End Date") on the Class Products, so long as the product contains more than 10% of calories from added sugar per serving. The Label Changes End Date refers to the date through which Post will not produce the Class Products with labels that contain the specified statements.

**5.2.** For label statements that are currently in use, Post shall use commercially reasonable efforts to remove those statements from its packaging within 6 months of the date of the Final Approval Order (the "Label Changes Deadline"), provided, however, that Post shall

be permitted to sell through existing inventory. The Parties acknowledge that Post cannot easily control the disposition of products once they have left Post's custody, and for this reason the Label Changes Deadline is the date by which Post will remove the agreed-upon statements internally. Post cannot control when the updated labels will be available for purchase, particularly given the approximate one-year shelf life of cereal products.

**5.3. Great Grains.**

- "Less Processed" and "good for you" claims relating to "less processed" (e.g., "Less Processed Nutrition You Can See," "Why less processed? Quite simply, because it's good for you!")
- "Whole Foods" claims (e.g., "It's whole foods from the field to your bowl")

**5.4. Honey Bunches of Oats.**

- "Our Post Promise / No High Fructose Corn Syrup"
- "Rich in nutrients"

**5.5. Shredded Wheat.**

- "THE BISCUIT OF BENEFITS ... So what does this mean in terms of health benefits for you? They are so plentiful, the cereal could be renamed Biscuit of Benefits"
- "Natural source of fiber"
- "100% Natural"
- "No High Fructose Corn Syrup"

**5.6. Raisin Bran.**

- "Natural advantage"

**5.7. Bran Flakes.**

- "help keep you healthy"

**5.8. Alpha-Bits.**

- "Nutrients that are building blocks for your child's development"
- "Smart Snack"

**5.9. Honeycomb.**

- “Nutritious”
- “Healthy”

**5.10. Waffle Crisp.**

- “Iron & Zinc for Growth”

**5.11. Golden Crisp.**

- “Wholesome”

**6. CLASS NOTICE AND CLAIMS ADMINISTRATION.**

**6.1. Class Administrator.** The Class Administrator shall assist with various administrative tasks including, without limitation:

- (a) Establishing and operating the Settlement Fund;
- (b) Arranging for the dissemination of the Class Notice pursuant to the Notice Plan agreed to by the Parties and approved by the Court;
- (c) Making any mailings required under the terms of this Agreement or any Court order or law, including handling returned mail;
- (d) Answering inquiries from Class Members and/or forwarding such inquiries to Class Counsel;
- (e) Receiving and maintaining Requests for Exclusion;
- (f) Establishing a Settlement Website;
- (g) Establishing a toll-free informational telephone number for Class Members;
- (h) Receiving and processing (including monitoring for fraud and validating or rejecting) Class Member claims and distributing payments to Class Members;
- (i) Providing regular updates on the claims status to counsel for all Parties; and
- (j) Otherwise assisting with the implementation and administration of the Settlement.

**6.2. Notice.** Notice of the Settlement will be made to the Class, and to certain federal and state officials.

**6.3. To the Class.** Class Notice will be effectuated through advertisement in suitable print publications and through targeted internet and social-media based advertisements. Class Notice will also be provided through direct email to Settlement Class Members identified in Post's records, subject to the Court entering a Preliminary Approval Order in a substantially similar form as the proposed order attached as Exhibit 4, which requires Post to provide these email addresses to the Class Administrator, and requires that the Class Administrator use the information solely for purposes of disseminating Class Notice and maintain the confidentiality of the information. The Class Notice will conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and will otherwise be in the manner and form approved by the Parties and Court.

**6.4. Timing of Class Notice.** Class Notice will commence no later than twenty-one (21) calendar days following entry of the Preliminary Approval Order ("Settlement Notice Date").

**6.5. CAFA Notice.** The Class Action Fairness Act of 2005 ("CAFA") requires Post to inform certain federal and state officials about this Agreement and proposed Settlement. See 28 U.S.C. § 1715. Under the provisions of CAFA, the Class Administrator, on behalf of Post, will serve notice upon the appropriate officials within ten (10) calendar days after the Parties file the proposed Agreement with the Court. See 28 U.S.C. § 1715(b). The costs of such notice will be paid from the Settlement Fund.

**6.6. Opt-Out Procedures.** Class Members who wish to opt out of and be excluded from the Settlement must submit a Request for Exclusion to the Class Administrator, postmarked no later than the Opt-Out Deadline. The Request for Exclusion must be personally completed and submitted by the Class Member or his or her attorney, and so-called "mass" or "class" opt-outs shall not be permitted or recognized. The Class Administrator shall periodically notify Class Counsel and Post's counsel of any Requests for Exclusion. All Class Members who submit a timely, valid Request for Exclusion will be excluded from the Class and will not be bound by the terms of this Agreement, and all Class Members who do not submit a timely, valid Request for Exclusion will be bound by this Agreement and the Judgment, including the release in Paragraph 8.1 below.

**6.7. Procedures for Objecting to the Settlement.** Class Members have the right to appear and show cause why the Settlement should not be granted final approval, subject to each of the provisions of this paragraph:

**(a) Timely Written Objection Required.** Any objection to the Settlement must be in writing and must be filed with the Court or postmarked on or before the Objection Deadline.

**(b) Form of Written Objection.** Any objection regarding or related to the Agreement must contain (i) a caption or title that clearly identifies the Action and that the document is an objection, (ii) information sufficient to identify and contact the objecting Class Member or his or her attorney if represented, (iii) information sufficient to establish the person's standing as a Settlement Class Member, (iv) a clear and concise statement of the Class Member's objection, as well as any facts and law supporting the objection, (v) the objector's signature, and (vi) the signature of the objector's counsel, if any (the "Objection").

**(c) Authorization of Objections Filed by Attorneys Representing Objectors.** Class Members may object either on their own or through an attorney hired at their own expense, but a Class Member represented by an attorney must sign either the Objection itself, or execute a separate declaration stating that the Class Member authorizes the filing of the Objection.

**(d) Effect of Both Opting Out and Objecting.** If a Class Member submits both an Opt-Out Form and Objection, the Class Member will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class Member who has not timely submitted a completed Opt-Out Form will be bound by the terms of the Agreement upon the Court's final approval of the Settlement.

**(e) Appearance at Final Approval Hearing.** Objecting Class Members may appear at the Final Approval Hearing and be heard. If an objecting Class Member chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court or postmarked no later than the Objection Deadline.

**(f) Right to Discovery.** Upon Court order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Class Member on topics relevant to the Objection.

**(g) Response to Objections.** The Parties shall have the right, but not the obligation, either jointly or individually, to respond to any objection, with a written response due the same day as the Motion for Final Approval, or as otherwise ordered by the Court.

## **7. COURT APPROVAL.**

**7.1. Preliminary Approval.** After executing this Agreement, and no later than January 18, 2021 unless otherwise agreed in writing, the Parties will submit to the Court this Agreement, and will request that the Court enter the Preliminary Approval Order in substantially similar form as the proposed order attached as Exhibit 4. In the Motion for Preliminary Approval, Plaintiffs will request that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Class for settlement purposes and appoint Class Counsel, approve the forms of Notice and find that the Notice Plan satisfies Due Process and Rule 23 of the Federal Rules of Civil Procedure, and schedule a Final Approval Hearing to

determine whether the Settlement should be granted final approval, whether an application for attorneys' fees and costs should be granted, and whether an application for service awards should be granted.

**7.2. Final Approval.** A Final Approval Hearing to determine final approval of the Agreement shall be scheduled as soon as practicable, subject to the calendar of the Court, but no sooner than 116 days after the Preliminary Approval Date. If the Court issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than fourteen (14) calendar days before the Final Approval Hearing and eighteen (18) days after the Objection Deadline all Parties will request, individually or collectively, that the Court enter the Final Approval Order in substantially similar form as the proposed order attached as Exhibit 3, with Class Counsel filing a memorandum of points and authorities in support of the motion. Post may, but is not required to, file a memorandum in support of the motion.

**7.3. Failure to Obtain Approval.** If this Agreement is not given preliminary or final approval by the Court, or if an appellate court reverses final approval of the Agreement, the Parties will seek in good faith to revise the Agreement as needed to obtain Court approval, provided, however, that no party may use subsequent legal developments or other intervening events, other than the decision(s) denying or reversing approval of the Agreement, as justification for renegotiating the settlement. Failing this, the Parties will be restored to their respective places in the litigation. In such event, the terms and provisions of this Agreement will have no further force or effect; the Parties' right and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed; and any orders entered by the Court in connection with this Agreement will be vacated.

## **8. RELEASE.**

**8.1. Release of Post and Related Persons.** Upon the Effective Date, each Class Member who has not opted out will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released Post and all of its current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, and all of their respective current, future, and former employees, officers, directors, shareholders, assigns, agents, trustees, administrators, executors, insurers, attorneys, and customers (collectively, the "Released Parties"), from any and all of Class Members' causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, attorneys' fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature, including but not limited to, all claims arising out of any state, local, or federal statute, ordinance, regulation, or claim at common law or equity, whether past, present, or future, known or unknown, asserted or unasserted, that arise out of or relate to the facts alleged or the claims asserted in any of the complaints filed in the Action, including without limitation the labeling, marketing, advertising, promotion, or distribution of the Class Products at any time during the Class Period (the "Released Claims"). The release of known or unknown and suspected or unsuspected claims includes waiver of all rights under Section 1542 of the California Civil Code (or any other state equivalent), which reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

This release is intended to cover the full scope allowed by *Hesse v. Sprint Corporation*, 598 F.3d 581 (9th Cir. 2010), but is not intended to go beyond that scope.

**8.2. Covenant Not to Sue.** Plaintiffs agree and covenant, and each Class Member who has not opted out will be deemed to have agreed and covenanted, not to sue any of Released Parties, with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

**8.3. Release of Class Representatives and Class Counsel.** Upon the Effective Date, Post will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged Class Representatives and Class Counsel from any and all claims, demands, rights, suits, liabilities, and causes of action, whether past, present, or future, known or unknown, asserted or unasserted, that arise out of or relate to the filing and conduct of the Action.

## **9. TERMINATION.**

**9.1. Post's Option to Terminate.** If more than 350 Class Members opt out, Post has the right in its sole discretion, but not the obligation, to terminate the Settlement Agreement and revert to the status quo ante, provided, however, that (i) the time for Post to exercise this right shall expire 17 days after the Opt-Out Deadline, and (ii) Post may only exercise the option after meeting and conferring in good faith with Class Counsel.

## **10. NO ADMISSION OF LIABILITY.**

**10.1. No Admission of Liability.** Post, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the action on the terms stated in this Agreement to avoid further expense, inconvenience, and burden, and therefore has determined that this Settlement Agreement on the terms set forth herein is in Post's best interests. Post denies any liability or wrongdoing of any kind associated with the claims alleged in this Action, and denies the material allegations of all the complaints filed in this Action. Neither the Settlement Agreement nor any actions taken to carry out the Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any party, including but not limited to an admission that this Action is properly brought on a class or representative basis, or that a class or classes may be certified, other than for settlement purposes. Neither the Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission, concession, presumption, inference, or evidence

thereof of any wrongdoing by Post or of the appropriateness of these or similar claims for class certification in any proceeding.

**11. POST'S POSITION ON CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS.**

**11.1. Post's Position on the Conditional Certification of Settlement Class.** Post disputes that certification of the litigation subclasses in this Action was proper and maintains that the certified litigation subclasses would be reversed on appeal. Solely for purposes of avoiding the expense and inconvenience of further litigation, Post does not oppose the certification of the Class for the purposes of this Settlement only. Preliminary certification of the Class will not be deemed a concession that certification of a litigation class or subclasses is appropriate, nor will Post be precluded from challenging class certification in further proceedings in this Action or in any other action if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, the certification of the Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in this Action or any other judicial proceeding. No agreements made by or entered into by Post in connection with the Settlement Agreement may be used by Plaintiffs, any Class Member, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other judicial proceeding.

**12. MISCELLANEOUS.**

**12.1. Change of Time Periods.** The time periods and/or dates described in this Settlement Agreement are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

**12.2. Time for Compliance.** If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

**12.3. Entire Agreement.** This Agreement shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of the Agreement has been made or relied upon except as expressly set forth herein.



**12.4. Notices Under Agreement.** All notices or mailings required by this Agreement to be provided to or approved by Class Counsel and Post, or otherwise made pursuant to this Agreement, shall be provided as follows:

***Class Counsel***

Jack Fitzgerald  
*jack@jackfitzgeraldlaw.com*  
The Law Office of Jack Fitzgerald, PC  
Hillcrest Professional Building  
3636 Fourth Avenue, Suite 202  
San Diego, CA 92103

***Post***

Aaron Van Oort  
*aaron.vanoort@faegredrinker.com*  
Faegre Drinker Biddle & Reath LLP  
2200 Wells Fargo Center  
90 South 7th Street, Suite 2200  
Minneapolis, Minnesota 55402

**12.5. Good Faith.** The Parties acknowledge that each intends to implement the Agreement. The Parties have at all times acted in good faith and shall continue to, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement.

**12.6. Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of the Parties to the Agreement and the released Parties and persons.

**12.7. Arms'-Length Negotiations.** This Agreement compromises claims that are contested, and the Parties agree that the consideration provided to the Class and other terms of this Agreement were negotiated in good faith and at arms' length by the Parties, and reflect an Agreement that was reached voluntarily, after consultation with competent legal counsel, and guided in part by the Parties' private Settlement Conference with Chief Magistrate Judge Joseph C. Spero; and by the Parties' previous private mediation sessions with the Honorable James Holderman (Ret.), former Chief Judge of the Northern District of Illinois, of JAMS, and the Honorable Edward Infante (Ret.), both experienced mediators. The parties reached the Agreement after considering the risks and benefits of litigation. The determination of the terms of, and the drafting of, this Agreement, has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. Accordingly, the rule of construction that any ambiguities are to be construed against the drafter shall have no application.

**12.8. Publicity.** Until the Settlement is finally approved by the Court, the Parties and their counsel will not make any public statements about this Settlement, except (a) in filings and appearances made in Court, (b) through the Class Notice provided through the Class Administrator, and (c) in language agreed upon in advance by the Parties to be used in answering any questions by the press, provided, however, that agreement on language shall not be unreasonably withheld by one Party so long as the language proposed by the other Party is non-disparaging.

**12.9. Waiver.** The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

**12.10. Modification in Writing Only.** This Agreement and any and all parts of it may be amended, modified, changed, or waived only by a writing signed by duly authorized agents of Post and Plaintiffs.

**12.11. Headings.** The descriptive headings of any paragraph or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

**12.12. Governing Law.** This Agreement shall be interpreted, construed and enforced according to the laws of the State of California, without regard to conflicts of law.

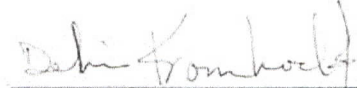
**12.13. Continuing Jurisdiction.** After entry of the Judgment, the Court shall have continuing jurisdiction over the Action solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

**12.14. Execution.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Photocopies and electronic copies (e.g., PDF copies) shall be given the same force and effect as original signed documents.

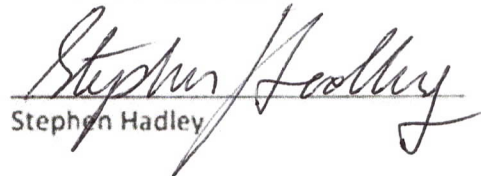
**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

**Plaintiffs, on behalf of the Class**

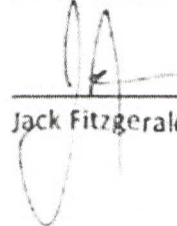
  
\_\_\_\_\_  
Debbie Krommenhock

Dated: January 15, 2021

  
\_\_\_\_\_  
Stephen Hadley

Dated: JANUARY 15<sup>th</sup>, 2021

**Class Counsel**

  
\_\_\_\_\_  
Jack Fitzgerald

Dated: January 15, 2021

**On behalf of Defendant Post Foods, LLC**

\_\_\_\_\_  
Jill Bollettieri  
Senior Vice President & General Counsel  
Post Consumer Brands, LLC

Dated: \_\_\_\_\_, 2021

**IN WITNESS WHEREOF**, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

**Plaintiffs, on behalf of the Class**

\_\_\_\_\_  
Debbie Krommenhock

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Stephen Hadley

Dated: \_\_\_\_\_, 2021

**Class Counsel**

\_\_\_\_\_  
Jack Fitzgerald

Dated: \_\_\_\_\_, 2021

**On behalf of Defendant Post Foods, LLC**

  
\_\_\_\_\_  
Jill Bollettieri

Senior Vice President & General Counsel  
Post Consumer Brands, LLC

Dated: 1/15, 2021

## Appendix 1: Class Products

Product	Flavors / Variations	Box Sizes
<i>Raisin Bran</i>	NA	20 oz. 25 oz.
<i>Bran Flakes</i>	NA	16 oz.
<i>Selects</i>	Blueberry Morning	13.5 oz.
<i>Great Grains</i>	Blueberry Morning	13.5 oz.
	Cranberry Almond Crunch	14 oz.
	Banana Nut Crunch	14.75 oz.
	Raisin Dates & Pecans	15.5 oz.
	Crunchy Pecans	15.9 oz.
	Blueberry Pomegranate	16 oz.
	Protein Blend: Honey, Oats & Seeds	17 oz.
	Protein Blend: Cinnamon Hazelnut	19 oz.
<i>Honey Bunches of Oats</i>		20.8 oz.
		40.5 oz.
		2.25 oz.
		4.3 oz.
		12.25 oz.
		12.5 oz.
	Honey Roasted	13 oz.
	Almonds	14 oz.
	Raisin Medley	14.5 oz.
	Pecan Bunches	14.75 oz.
	Cinnamon Bunches	15 oz.
	Vanilla Bunches	15.5 oz.
	Apples & Cinnamon Bunches	16 oz.
	Real Strawberries	16.5 oz.
	Real Peaches	17 oz.
	Fruit Blends Banana Blueberry	18 oz.
	Fruit Blends Peach Raspberry	19.5 oz.
	Tropical Blends Mango Coconut	20 oz.
	Whole Grain with Vanilla Bunches	23 oz.
	Whole Grain Honey Crunch	24.5 oz.
Greek Honey Crunch	27 oz.	
Greek Mixed Berry	28 oz.	
Morning Energy Cinnamon Crunch	30.5 oz.	
Morning Energy Chocolatey Almond Crunch	35.5 oz.	
	36 oz.	
	39 oz.	
	40 oz.	
	48 oz.	

<b>Product</b>	<b>Flavors / Variations</b>	<b>Box Sizes</b>
<i>Honey Bunches of Oats Granola</i>	Honey Roasted Raspberry Cinnamon Protein Dark Chocolate	10 oz. 11 oz. 20 oz.
<i>Shredded Wheat</i>	Honey Nut Crunch!	18.25 oz. 19 oz. 20 oz.
<i>Alpha-Bits</i>	NA	1 oz. 11.5 oz. 12 oz. 18 oz.
<i>Golden Crisp</i>	NA	14.75 oz. 17 oz. 23 oz. 29.5 oz. 30 oz. 39.5 oz.
<i>Honeycomb</i>	NA	12.5 oz. 16 oz. 25 oz. 35.5 oz. 33 oz. 35 oz.
<i>Waffle Crisp</i>	NA	11.5 oz.

# **Exhibit 1**

**Attention All Persons Who Purchased Certain Post Cereals Since August 29, 2012**

**This Notice May Affect Your Rights  
Please Read it Carefully**

*The United States District Court for the Northern District of California authorized this notice.  
This is not a solicitation from a lawyer.*

*Krommenhock v. Post Foods, LLC, No. 16-cv-4958-WHO (N.D. Cal.)*

You may be a Class Member entitled to monetary compensation if you purchased certain varieties of any of the following Post brand cereals between August 2012 and November 2020:

- Honey Bunches of Oats
- Great Grains
- Post Raisin Bran
- Post Bran Flakes
- Honey Bunches of Oats Granola
- Post Selects – Blueberry Morning
- Honeycomb
- Shredded Wheat
- Alpha-Bits
- Waffle Crisp
- Golden Crisp

**THIS NOTICE CONCERNS YOUR LEGAL RIGHTS, WHICH ARE AFFECTED WHETHER YOU ACT OR DON'T. PLEASE READ IT CAREFULLY.**

Summary of Your Legal Rights & Options	
<b>Submit a Claim Form</b>	The only way to get a monetary payment. Claim Forms must be submitted either online at the settlement website, <a href="http://www.AddedSugarClassAction">www.AddedSugarClassAction</a> , or by mail to the following address: [ ]. <b>Claims must be submitted or postmarked by [Claims Deadline].</b>
<b>Ask to be Excluded</b>	<b>Get out of this lawsuit. Get no benefits from it. Keep your rights.</b> If you ask to be excluded you will not be bound by what the Court does in this case and will keep any right you might have to sue Post separately about the same legal claims in this lawsuit. If there is a recovery in this case, including under the proposed Settlement, you will not share in that recovery. You must request to be excluded by <b>[Opt-Out Deadline]</b> .
<b>Object</b>	<b>Tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate.</b> You may file a written objection no later than <b>[Objection Deadline]</b> and/or appear at the Final Approval Hearing to tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate.
<b>Do Nothing</b>	<b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b> By doing nothing, you will get no cash payment and give up any right you may have to sue Post separately about the same legal claims in this lawsuit because you will be bound by the Settlement and the class judgment.



This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [www.AddedSugarClassAction.com](http://www.AddedSugarClassAction.com), or by contacting Class Counsel at (619) 692-3840 or [PostClassAction@jackfitzgeraldlaw.com](mailto:PostClassAction@jackfitzgeraldlaw.com), by accessing the Court docket in this case (for a fee) through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, file: *Krommenhock et al. v. Post Foods, LLC*, No. 16-cv-04958-WHO, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

Please read the remainder of this Notice for more detailed information about how to exercise your rights. To be excluded, you must act before **[Opt-Out Deadline]**.

\* \* \*

**WHAT THIS NOTICE CONTAINS**

**Basic Information..... 3**

1. Why is there a Notice?..... 3

2. What is this lawsuit about? ..... 3

3. Why is this a class action? ..... 3

4. Why is there a settlement? ..... 4

**Who is in the Settlement? ..... 4**

5. How do I know if I am part of the Settlement?..... 4

6. What if I am still not sure if I am included in the Settlement? ..... 4

**What are the Terms of the Settlement? ..... 4**

7. What types of relief does the Settlement provide? ..... 4

8. What is the Settlement Fund? ..... 4

9. What can I get from the Settlement?..... 4

10. What am I giving up to get a payment or stay in the Settlement? ..... 5

11. How do I make a claim for a Cash Refund? ..... 5

12. When will I get my Cash Refund?..... 5

13. What injunctive relief does the Settlement provide? ..... 5

**Excluding Yourself from the Settlement..... 6**

14. How do I get out of the Settlement? ..... 6

15. If I don’t exclude myself, can I sue the Defendant for the same thing later? ..... 6

16. If I exclude myself, can I still get a Settlement payment? ..... 7

**Objecting to the Settlement..... 7**

17. How do I tell the Court if I do not like the Settlement?..... 7

18. What is the difference between objecting and excluding myself?..... 7

**The Lawyers Representing You ..... 8**

19. Do I have a lawyer in the case? ..... 8

20. How will the lawyers be paid?..... 8

**The Court’s Final Approval Hearing..... 8**

21. When and where will the Court decide whether to approve the Settlement? ..... 8

22. Do I have to come to the hearing? ..... 9

23. May I speak at the hearing? ..... 9

**If You Do Nothing..... 9**

24. What happens if I do nothing at all? ..... 9

**Getting More Information ..... 9**

25. How can I get more information? ..... 9

**Appendix of Class Products ..... 11**

**Basic Information**

**1. Why is there a Notice?**

You have the right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement.

The court in charge of this case is the United States District Court for the Northern District of California (the “Court”), and the case is called *Debbie Krommenhock et al. v. Post Foods, LLC*, Case No. 16-cv-04958-WHO (N.D. Cal.). The case is assigned to the Honorable William H. Orrick. The individuals who sued are called the Plaintiffs or Class Representatives, and the company they sued, Post Foods, LLC (“Post”), is called the Defendant.

**2. What is this lawsuit about?**

The lawsuit alleges that Defendant violated certain laws in labeling certain breakfast cereals with claims that made the products seem healthy, when Plaintiffs allege they were in fact unhealthy due to their added sugar content. Defendant denies any wrongdoing of any kind, and maintains that the statements on its cereals labels are true and that its cereals are nutrient-dense, healthy foods.

**3. Why is this a class action?**

In a class action, one or more people called “Class Representatives” (in this case, Debbie Krommenhock and Stephen Hadley), sue on behalf of people who have similar claims, all of whom are a “Class,” or “Class Members.” Bringing a case, such as this one, as a class action allows the adjudication of many similar claims of consumers that might be economically too small to bring in individual actions. One court resolves the issues for all class members, except for those who exclude themselves from the class.

#### **4. Why is there a settlement?**

The Defendant denies that it did anything wrong. The parties have agreed to a Settlement, which will allow both sides to avoid the risk and cost of further litigation. The Court has not decided in favor of the Class Representatives or the Defendant. The Class Representatives and their attorneys think the Settlement is in the best interest of the Settlement Class.

#### **Who is in the Settlement?**

#### **5. How do I know if I am part of the Settlement?**

The Settlement Class includes all persons in the United States who, between August 29, 2012 and November 2, 2020 (the “Class Period”), purchased in the United States, for household use and not for resale or distribution, one of the Class Products. The Class Products include certain varieties and sizes of Post Raisin Bran, Post Bran Flakes, Post Selects – Blueberry Morning, Great Grains, Honey Bunches of Oats, Honey Bunches of Granola, Shredded Wheat, Alpha Bits, Golden Crisp, Honeycomb, and Waffle Crisp. The specific products included in the Settlement are identified in the attached Appendix.

#### **6. What if I am still not sure if I am included in the Settlement?**

If you are not sure whether you are a Class Member, or have any other questions about the Settlement, you should visit the Settlement Website, [www.AddedSugarClassAction.com](http://www.AddedSugarClassAction.com), or call the Class Administrator toll-free at (844) 970-1302.

#### **What are the Terms of the Settlement?**

#### **7. What types of relief does the Settlement provide?**

The Settlement provides both monetary damages and injunctive relief to all Class Members. Class Members who make claims will be entitled to monetary compensation, on a *pro rata* basis, depending on which and how many boxes of cereal they purchased during the Class Period. In addition, Post has agreed not to use some statements on the Class Products’ labeling through the end of 2022.

#### **8. What is the Settlement Fund?**

As part of the Settlement, Post has agreed to establish a \$15,000,000 “Settlement Fund” to pay all Settlement Expenses, including the costs of Class Notice and Administration, attorneys’ fees and costs, service awards for the Class Representatives, and cash refunds for Class Members who make claims.

#### **9. What can I get from the Settlement?**

Class Members who timely submit a valid approved claim are entitled to compensation. Each timely, valid claimant will receive a payment based on the type and estimated amount of Class Products purchased during the Class Period. Based on the estimated number of claims that will be made, the estimated average payment is approximately \$14.25. However, the actual amount any single person will receive depends on both the number of claims made, and each claimant’s

purchase history, and may be significantly more or less than \$14.25.

#### 10. What am I giving up to get a payment?

If you are a Class Member, unless you exclude yourself from the Settlement, you cannot sue Defendant, continue to sue, or be part of any other lawsuit against Defendant about the claims released in this Settlement. It also means that all decisions by the Court will bind you. The Released Claims and Released Post Persons are defined in the Settlement Agreement and describe the legal claims that you give up (or “release”) if you stay in the Settlement. The Released Claims relate to the Class Products and issues raised in the lawsuit. The Settlement Agreement is available on the Settlement Website, [www.AddedSugarClassAction.com](http://www.AddedSugarClassAction.com).

#### 11. How do I make a claim?

Class Members wishing to make a claim must either (a) visit the Settlement Website, [www.AddedSugarClassAction.com](http://www.AddedSugarClassAction.com), and submit a claim form online, or (b) print, fill out, and mail the claim form to the Class Administrator at the following address: [redacted]. **The deadline for submitting a claim is [Claims Deadline].**

#### 12. When will I get my Cash Refund?

Payments will be made to Class Members who make valid and timely Claim Forms after the Court grants “final approval” to the Settlement, and after any appeals are resolved. If the Court approves the Settlement, there may be appeals. It is always uncertain when these appeals will be resolved, and resolving them can take time. Please be patient.

#### 13. What injunctive relief does the Settlement provide?

As part of the Settlement, Post will modify (or in some cases has already modified) the labels of the Class Products, and will commit not to use the labeling statements identified below through December 31, 2022 on the Class Products, so long as the product contains more than 10% of calories from added sugar per serving. After being given a reasonable time to make and implement such changes, Post will not produce products with labels that contain the specified statements:

##### Great Grains

- “Less Processed” and “good for you” claims relating to “less processed (e.g., “Less Processed Nutrition You Can See,” “Why less processed? Quite Simply because it’s good for you!”)
- “Whole Foods” claims (e.g. “It’s whole foods from the field to your bowl”)

##### Honey Bunches of Oats

- “Our Post Promise / No High Fructose Corn Syrup”
- “Rich in nutrients”

##### Shredded Wheat

- “THE BISCUIT OF BENEFITS ... So what does this mean in terms of health benefits for you? They are so plentiful, the cereal could be renamed Biscuit of Benefits”
- “Natural source of fiber”

- “100% Natural”

**Post Raisin Bran.**

- “Natural advantage”

**Post Bran Flakes.**

- “help keep you healthy”

**Alpha-Bits.**

- “Nutrients that are building blocks for your child’s development”
- “Smart Snack”

**Honeycomb.**

- “Nutritious”
- “Healthy”

**Waffle Crisp.**

- “Iron & Zinc for Growth”

**Golden Crisp.**

- “Wholesome”

**Excluding Yourself from the Settlement**

**14. How do I get out of the Settlement?**

If you do not want to be bound by this Settlement, you must request to be excluded from the Class. If you request to be excluded, you will retain any individual rights you have against Defendant and will not have “released” it from any of the Released Claims. However, you will *not* be eligible to receive compensation under the Settlement, as described above. You also may not object to the Settlement if you request to be excluded.

To exclude yourself (or “opt-out”) from the Settlement, you must mail a written request to be excluded to the Class Administrator at the below address. Your written request must: (a) contain the name of this lawsuit, *Krommenhock v. Post Foods, LLC*, No. 5:16-cv-04958-WHO; (b) contain your full name and address; (c) state that you wish to be excluded from the Settlement; and (d) be signed by you or your attorney. You may access an example exclusion form from the Settlement Website, [www.AddedSugarClassAction.com](http://www.AddedSugarClassAction.com).

ADDRESS  
ADDRESS  
ADDRESS

**To be timely, an Opt-Out Form must be postmarked on or before [Opt-Out Deadline].**

**15. If I don’t exclude myself, can I sue Defendant for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that this Settlement resolves (i.e., those claims defined in the Settlement Agreement as the “Released Claims”). If you have a pending lawsuit against Defendant regarding similar claims, speak to your

lawyer in that lawsuit immediately. You may need to exclude yourself from this Settlement to continue your own lawsuit. If you properly exclude yourself from the Settlement, you will not be bound by any orders or judgments entered in the Action relating to the Settlement.

**16. If I exclude myself, can I still get a Settlement payment?**

No. You will not get any money from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not submit a Claim Form asking for benefits.

**Objecting to the Settlement**

**17. How do I tell the Court if I do not like the Settlement?**

If you are a Class Member, you can object to the proposed Settlement if you do not like any part of it. You can ask the Court to deny approval by filing an objection. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. Any objection to the Settlement should be in writing and either filed with the Court or postmarked and mailed to 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102 on or before [**Objection Deadline**]. Any objection should contain:

- A caption or title that clearly identifies the Action (*Krommenhock v. Post Foods, LLC*, No. 16-cv-4958-WHO (N.D. Cal.)), and that the document is an objection;
- Your name, current address, and telephone number, or your lawyer’s name, address, and telephone number if you are objecting through counsel;
- What Class Product(s) you bought during the Class Period;
- A clear and concise statement your objection, as well as any facts and law supporting the objection;
- If you (or your lawyer) want to appear and speak at the Final Approval Hearing, a statement that you wish to appear and speak;
- Your signature; and
- The signature of your counsel, if any.

You may object either on your own or through an attorney hired at your expense. If you object through an attorney, you must either sign the Objection itself, or execute a separate declaration stating that you authorize the filing of the Objection. If you want yourself or your own lawyer (instead of Class Counsel) to appear at the Final Approval Hearing, you should file a “Notice of Intent to Appear” with the Court no later than [**Objection Deadline**].

Remember, if you object to the Settlement, you can still make a claim by submitting a timely Claim Form. For directions on submitting a claim, see Question 11, above. TO BE VALID, ALL CLAIMS MUST BE POSTMARKED OR SUBMITTED ONLINE NO LATER THAN [**CLAIMS DEADLINE**].

**18. What is the difference between objecting and excluding myself?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding

yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you. Therefore, if you submit both an Opt-Out Form and Objection, you will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class Member who has not timely submitted a completed Opt-Out Form will be bound by the terms of the Agreement upon the Court's final approval of the Settlement.

### **The Lawyers Representing You**

#### **19. Do I have a lawyer in the case?**

Yes. The Court has appointed The Law Office of Jack Fitzgerald, PC, and Jackson & Foster LLC as Class Counsel. The lawyers will be compensated from the Settlement Fund, in an amount to be determined by the Court. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **20. How will the lawyers be paid?**

Class Counsel spent considerable time and effort prosecuting this matter on a purely contingent fee basis, and advanced the expenses of the litigation, in the expectation that they would receive a fee, and have expenses reimbursed, only if there was a benefit created for the Class.

Class Counsel will file a motion on or before [Fee Motion Deadline] seeking an award of up to one-third of the Settlement Fund in fees, and reimbursement of case expenses totaling up to \$986,400, plus any expenses incurred after preliminary approval. Class Counsel will also seek on behalf of the Class Representatives service awards of \$7,500 each for Debbie Krommenhock and Stephen Hadley. The Court will determine the amount of fees, expenses, and service awards that will be paid from the Settlement Fund.

After Class Counsel's motion for attorneys' fees, expenses, and service awards is filed on or before [Fee Motion Deadline], it will be posted on the Settlement Website, [www.AddedSugarClassAction.com](http://www.AddedSugarClassAction.com), and you will have an opportunity to review and comment on the motion via an Objection.

### **Appearing in the Lawsuit**

#### **21. Can I appear or speak in this lawsuit regarding the proposed Settlement?**

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this lawsuit regarding the proposed Settlement. This is called making an appearance. You can also have your own lawyer appear in court and speak for you, but you will have to pay for the lawyer yourself.

### **The Court's Final Approval Hearing**

#### **22. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing (sometimes called a "fairness hearing") on [DATE], at 2:00 p.m., which may be held telephonically or through Zoom videoconference. Prior to the hearing date, the Courtroom Deputy will publish a notice on the case docket explaining how the

hearing will be conducted, and providing access information for counsel and for members of the public and press. **PLEASE NOTE THAT the date of the final approval hearing date may change without further notice to the Class.** It is strongly advised to check the settlement website or the Court's PACER site to confirm that the date has not been changed.

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to award to Class Counsel and the Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement.

**23. Do I have to come to the hearing?**

No. Class Counsel will answer any questions that the Court may have, but you may come at your own expense. If you submit an Objection, you do not have to come to the Court to talk about it. As long as you filed or mailed your written objection to the proper addresses, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**24. May I speak at the hearing?**

Yes. You may appear and speak at the Final Approval Hearing. Although it is not required, if you intend to appear and speak, you are requested to file a "Notice of Intent to Appear" with the Court, no later than [Objection Deadline]. Persons who opt out, however, may not appear and be heard.

**If You Do Nothing**

**25. What happens if I do nothing at all?**

If you do nothing, you will not get a payment from the Settlement. Unless you exclude yourself, you will not be able to start a lawsuit, or be part of any other lawsuit against Defendant about the claims in this case, ever again.

**Final Settlement Approval**

**25. What is the effect of final settlement approval?**

If the Court grants final approval of the proposed Settlement, all members of the Class who have not excluded themselves will release and forever discharge any and claims that have been, might have been, are now, or could have been brought arising out of or relating to the facts alleged in the complaints filed in this Action, including the labeling, marketing, advertising, promotion, or distribution of the Class Products at any time during the Class Period.

**Getting More Information**

**26. How can I get more information?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, available at the Settlement Website, [www.AddedSugarClassAction.com](http://www.AddedSugarClassAction.com). If you have additional questions, you can visit the Settlement Website or contact the Class Administrator:

**By Mail:** [ADDRESS]



**By Email:** info@AddedSugarClassAction.com

**By Phone (Toll Free):** (844) 970-1302

Updates will be posted at the Settlement Website, as information about the Settlement process becomes available.

You are also welcome to contact Class Counsel with any questions:

**By Email:** [PostClassAction@jackfitzgeraldlaw.com](mailto:PostClassAction@jackfitzgeraldlaw.com)

**By Phone:** (619) 692-3840

For a more detailed statement of the matters involved in the litigation or the Settlement, you may review the various documents on the Settlement Website, and/or the other documents filed in this case by visiting, during business hours, the Clerk's Office at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, file: *Krommenhock et al. v. Post Foods, LLC*, No. 16-cv-04958-WHO), or by accessing the docket into this case through the Court's Public Access to Court Electronic Records (PACER) system at [www.pacer.gov](http://www.pacer.gov).

\* \* \*

**PLEASE DO NOT TELEPHONE OR ADDRESS ANY QUESTIONS ABOUT THE CASE OR SETTLEMENT TO THE CLERK OF THE COURT OR TO THE JUDGE. THEY ARE NOT PERMITTED TO ANSWER YOUR QUESTIONS. THE COURT EXPRESSES NO VIEW AS TO THE MERITS OF ANY CLAIMS OR DEFENSES ASSERTED BY ANY PARTY TO THE ACTION.**

**Appendix of Class Products**

<b>Product</b>	<b>Flavors / Variations</b>	<b>Box Sizes</b>
<i>Raisin Bran</i>	NA	20 oz. 25 oz.
<i>Bran Flakes</i>	NA	16 oz.
<i>Selects</i>	Blueberry Morning	13.5 oz.
<i>Great Grains</i>	Blueberry Morning	13.5 oz.
	Cranberry Almond Crunch	14 oz.
	Banana Nut Crunch	14.75 oz.
	Raisin Dates & Pecans	15.5 oz.
	Crunchy Pecans	15.9 oz.
	Blueberry Pomegranate	16 oz.
	Protein Blend: Honey, Oats & Seeds	17 oz.
	Protein Blend: Cinnamon Hazelnut	19 oz. 20.8 oz. 40.5 oz.
<i>Honey Bunches of Oats</i>		2.25 oz.
		4.3 oz.
		12.25 oz.
		12.5 oz.
	Honey Roasted Almonds	13 oz.
	Raisin Medley	14 oz.
	Pecan Bunches	14.5 oz.
	Cinnamon Bunches	14.75 oz.
	Vanilla Bunches	15 oz.
	Apples & Cinnamon Bunches	15.5 oz.
	Real Strawberries	16 oz.
	Real Peaches	16.5 oz.
	Fruit Blends Banana Blueberry	17 oz.
	Fruit Blends Peach Raspberry	18 oz.
	Tropical Blends Mango Coconut	19.5 oz.
	Whole Grain with Vanilla Bunches	20 oz.
	Whole Grain Honey Crunch	23 oz.
	Greek Honey Crunch	24.5 oz.
	Greek Mixed Berry	27 oz.
	Morning Energy Cinnamon Crunch	28 oz.
Morning Energy Chocolatey Almond Crunch	30.5 oz. 35.5 oz. 36 oz. 39 oz. 40 oz. 48 oz.	

<b>Product</b>	<b>Flavors / Variations</b>	<b>Box Sizes</b>
<i>Honey Bunches of Oats Granola</i>	Honey Roasted Raspberry Cinnamon Protein Dark Chocolate	10 oz. 11 oz. 20 oz.
<i>Shredded Wheat</i>	Honey Nut Crunch!	18.25 oz. 19 oz. 20 oz.
<i>Alpha-Bits</i>	NA	1 oz. 11.5 oz. 12 oz. 18 oz.
<i>Golden Crisp</i>	NA	14.75 oz. 17 oz. 23 oz. 29.5 oz. 30 oz. 39.5 oz.
<i>Honeycomb</i>	NA	12.5 oz. 16 oz. 25 oz.33 oz. 35 oz. 35.5 oz.
<i>Waffle Crisp</i>	NA	11.5 oz.

# **Exhibit 2**

Legal Notice

## **If you Purchased Certain Post Cereals Since August 29, 2012 you could receive a cash payment as part of a class action settlement.**

**What is the lawsuit about?** The lawsuit contends that Post Foods, LLC (“Post”) made certain statements on the labels of various sizes and varieties of Honey Bunches of Oats, Great Grains, Raisin Bran, Bran Flakes, Honey Bunches of Oats Granola, Selects, Honeycomb, Shredded Wheat, Alpha-Bits, Waffle Crisp, and Golden Crisp cereals (the “Post Cereals”) that are misleading because the statements suggested the cereals are healthy, when Plaintiffs allege they are unhealthy because of their added sugar. Post maintains that the statements on its cereals are true and that the Post Cereals are nutrient-dense, healthy foods. The Court has not determined whether Plaintiffs or Post are correct.

**Who is included?** You are a Class Member if you bought one of the Post Cereals for household use, and not for resale or distribution, between August 29, 2012 and November 2, 2020. For a complete list of the Post Cereals in the class, please visit the Settlement Website, [www.AddedSugarClassAction.com](http://www.AddedSugarClassAction.com), or call (844) 970-1302.

**What does the settlement provide?** Post has agreed to establish a \$15,000,000 “Settlement Fund” to pay all settlement expenses, including the costs of class notice and administration, attorneys’ fees and costs, service awards for the Plaintiffs, and cash refunds for Class Members who make claims. Your legal rights will be affected if you are a Class Member and do not exclude yourself.

### **What are your options?**

**Submit A Claim:** To receive Settlement benefits, you must complete and submit a Claim Form. Claim Forms are available at the Settlement Website and can be submitted electronically or mailed to the Class Administrator. A Claim Form must be **submitted online or postmarked by Month DD, 2021.**

**Opt-Out or Object:** If you opt-out, you will retain your rights to sue Post separately, however, you will not be eligible to receive any benefits. You must submit an Opt-Out Form, available at the Settlement Website. Opt-Out Forms must be **postmarked on or before Month DD, 2021.** Detailed instructions are available on the Settlement Website.

You may also object to any part of this Settlement. Details about how to object are available at the Settlement Website. Objections must be filed with or mailed to the Court **on or before Month DD, 2021.**

**Do Nothing:** If you do nothing, you will not be eligible to receive any benefits and will be bound by the terms of the Settlement Agreement and Final Judgment.

**Has the Court approved the Settlement?** No. The Court has set a hearing for **Month DD, 2021** to determine whether to approve the Settlement and what attorneys’ fees, expenses, and incentive payments to award. Class Counsel will file a motion seeking an award of up to one-third of the Settlement Fund in fees, and reimbursement of case expenses totaling up to \$986,400, plus any expenses incurred after preliminary approval. Class Counsel will also seek on behalf of the Class Representatives service awards of \$7,500 each for Debbie Krommenhock and Stephen Hadley. The Court will determine the amount of fees, expenses, and service awards that will be paid from the Settlement Fund.

After Class Counsel's motion for attorneys' fees, expenses, and service awards is filed on or before Month DD, 2021, it will be posted on the Settlement Website and you will have an opportunity to review and comment on the motion via an Objection.

You do not need to appear at the hearing but you may come at your own expense. The Court has appointed The Law Office of Jack Fitzgerald, PC, and Jackson & Foster LLP as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

This is only a summary of the key Settlement terms. A full copy of the Settlement Agreement is available at the Settlement Website or by calling 1-(844) 970-1302.

[www.AddedSugarClassAction.com](http://www.AddedSugarClassAction.com)

(844) 970-1302

# Exhibit 3

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DEBBIE KROMMENHOCK and STEPHEN  
HADLEY, on behalf of themselves, all others  
similarly situated, and the general public,

Plaintiffs,

v.

POST FOODS, LLC,

Defendant.

Case No. 5:16-cv-04958-WHO

**[PROPOSED] ORDER GRANTING  
PLAINTIFF’S MOTION FOR FINAL  
APPROVAL OF CLASS SETTLEMENT  
AND FINAL ORDER OF DISMISSAL**

Judge: Hon. William H. Orrick



1 The Court having held a Final Approval Hearing on \_\_\_\_\_, 2021, notice of the Final Approval  
2 Hearing having been duly given in accordance with this Court’s Order Granting Preliminary Approval of  
3 the Class Action Settlement, and having considered all matters submitted to it at the Final Approval Hearing  
4 and otherwise, and good cause appearing therefore,

5 **THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:**

6 1. Incorporation of Other Documents. The Settlement Agreement dated January \_\_, 2021,  
7 including its exhibits, and the definitions of words and terms contained therein are incorporated by reference  
8 in this Order. The terms of this Court’s Preliminary Approval Order are also incorporated by reference in  
9 this Order.

10 2. Jurisdiction. This Court has jurisdiction over the subject matter of this Action and over the  
11 Parties, including all members of the following Settlement Class certified for settlement purposes in this  
12 Court’s Preliminary Approval Order: All persons in the United States who, between August 29, 2012 and  
13 November 2, 2020 (the “Class Period”), purchased in the United States, for household use and not for resale  
14 or distribution, any of the Class Products identified in Appendix 1 to the Settlement Agreement. Excluded  
15 from the Settlement Class are all persons who validly excluded themselves from the Settlement Class  
16 according to the terms of this Court’s Preliminary Approval Order.

17 3. Class Certification. For purposes of settlement only, the Settlement Class, as defined in the  
18 Settlement Agreement and above, meets the requirements of Federal Rule of Civil Procedure Rule 23(a)  
19 and 23(b). Accordingly, for purposes of settlement, the Court finally certifies the Settlement Class.

20 4. Adequate Representation. The Class Representatives and Class Counsel have adequately  
21 represented the Settlement Class in accordance with Federal Rule of Civil Procedure 23(e)(2)(A).

22 5. Arms-Length Negotiations. The Settlement Agreement is the product of arms-length  
23 settlement negotiations between the Plaintiffs and Class Counsel, on the one hand, and Defendant and its  
24 counsel, on the other, in accordance with Federal Rule of Civil Procedure 23(e)(2)(B).

25 6. Class Notice. The Class Notice and claims submission procedures set forth in Sections 4 and  
26 6 of the Settlement Agreement and the Notice Plan filed on January 18, 2021 fully satisfy Rule 23 of the  
27 Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under  
28 the circumstances, provided individual notice to all Settlement Class Members who could be identified

1 through reasonable effort, and support the Court’s exercise of jurisdiction over the Settlement Classes as  
2 contemplated in the Settlement Agreement and this Order. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

3 7. CAFA Notice. The notice provided by the Class Administrator to the appropriate State and  
4 federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

5 8. Settlement Class Response. A total of [number] Settlement Class Members submitted timely  
6 and proper Requests for Exclusion, as reported in the declaration of the Class Administrator submitted to  
7 this Court. The Court hereby orders that each of the individuals listed by the Class Administrator as having  
8 submitted a valid Request for Exclusion is excluded from the Settlement Class. Those individuals will not  
9 be bound by the Settlement Agreement, and neither will they be entitled to any of its benefits.

10 9. Objections. A total of [number] Settlement Class Members submitted timely and proper  
11 Objections to the Settlement Agreement. Having considered those Objections and the Parties’ responses to  
12 them, the Court finds that none of the Objections is well founded. Plaintiffs faced serious risks both on the  
13 merits of their claims and on the ability to maintain certification as a litigation class in this matter. The relief  
14 provided to the Settlement Classes pursuant to the Settlement Agreement is adequate, given the costs, risks,  
15 and delay of trial and appeal, and taking into consideration the attorney’s fees this Court has awarded. *See*  
16 Fed. R. Civ. P. 23(e)(2)(C)(i), (iii). The Settlement also treats class members equitably relative to each other.  
17 *See* Fed. R. Civ. P. 23(e)(2)(D).

18 10. Final Settlement Approval. The Court hereby finally approves the Settlement Agreement,  
19 the exhibits, and the Settlement contemplated thereby (“Settlement”), and finds that the terms constitute, in  
20 all respects, a fair, reasonable, and adequate settlement as to all Settlement Class Members in accordance  
21 with Rule 23 of the Federal Rules of Civil Procedure, and directs its consummation pursuant to its terms  
22 and conditions.

23 11. Attorneys’ Fees and Costs; Service Awards. The Court approves Class Counsel’s application  
24 for \$ [redacted] in attorneys’ fees and costs, and for service awards to each Settlement Class  
25 representative in the amount \$ [redacted]. The Settlement Agreement provides for Class Counsel’s  
26 Fee Award to be paid before the time to appeal this Order has expired. If the Fee Award is voided or reduced  
27 on appeal, either directly or as a result of the final approval of the Settlement as a whole being vacated,  
28 overturned, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days

1 repay either to the Settlement Fund or to Post the affected amount of the attorneys' fees and costs paid to  
2 Class Counsel, in an amount proportionate to the distribution among Class Counsel's firms, in accordance  
3 with the directions in the Settlement Agreement. By receiving any payments pursuant to the Settlement  
4 Agreement, The Law Office of Jack Fitzgerald, PC and Jackson & Foster, LLC and their shareholders,  
5 members, and/or partners submit to the jurisdiction of this Court for the enforcement of the reimbursement  
6 obligation set forth herein and in the Settlement Agreement. If Class Counsel fails to timely repay the  
7 attorneys' fees and costs that are owed under this provision, the Court shall be entitled, upon application of  
8 Post, and notice to Class Counsel, to summarily issue orders, including but not limited to judgments and  
9 attachment orders against each of Class Counsel.

10           12. Dismissal. The Court hereby DISMISSES WITH PREJUDICE, without costs to any party,  
11 except as expressly provided for in the Settlement Agreement, the Action, as defined in the Settlement  
12 Agreement.

13           13. Release. Upon the Effective Date as defined in the Settlement Agreement, the Plaintiffs and  
14 each and every one of the Settlement Class Members unconditionally, fully, and finally releases and forever  
15 discharges the Released Parties from the Released Claims. In addition, any rights of the Class  
16 Representatives and each and every one of the Settlement Class Members to the protection afforded under  
17 Section 1542 of the California Civil Code and any other similar, comparable, or equivalent laws, are  
18 terminated.

19           14. Injunction Against Released Claims. Each and every Settlement Class Member, and any  
20 person actually or purportedly acting on behalf of any Settlement Class Member(s), is hereby permanently  
21 barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, or  
22 enforcing any Released Claims (including, without limitation, in any individual, class or putative class,  
23 representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral,  
24 or other forum, against the Released Parties. This permanent bar and injunction is necessary to protect and  
25 effectuate the Settlement Agreement, this Final Order of Dismissal, and this Court's authority to effectuate  
26 the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

27           15. No Admission of Liability. The Settlement Agreement and any and all negotiations,  
28 documents, and discussions associated with it will not be deemed or construed to be an admission or

1 evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of  
2 any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to the  
3 Agreement will not be discoverable or admissible, directly or indirectly, in any way, whether in this Action  
4 or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or  
5 enforcing the terms and conditions of the Agreement, the Preliminary Approval Order, or this Order.

6 16. Findings for Purposes of Settlement Only. The findings and rulings in this Order are made  
7 for the purposes of settlement only and may not be cited or otherwise used to support the certification of  
8 any contested class or subclass in any other action.

9 17. Effect of Termination or Reversal. If for any reason the Settlement terminates or Final  
10 Approval is reversed or vacated, the Settlement and all proceedings in connection with the Settlement will  
11 be without prejudice to the right of Defendant or the Class Representatives to assert any right or position  
12 that could have been asserted if the Agreement had never been reached or proposed to the Court, except  
13 insofar as the Agreement expressly provides to the contrary. In such an event, the certification of the  
14 Settlement Classes will be deemed vacated. The certification of the Settlement Classes for settlement  
15 purposes will not be considered as a factor in connection with any subsequent class certification issues.

16 18. Settlement as Defense. In the event that any provision of the Settlement or this Final Order  
17 of Dismissal is asserted by Defendant as a defense in whole or in part to any claim, or otherwise asserted  
18 (including, without limitation, as a basis for a stay) in any other suit, action, or proceeding brought by a  
19 Settlement Class Member or any person actually or purportedly acting on behalf of any Settlement Class  
20 Member(s), that suit, action or other proceeding shall be immediately stayed and enjoined until this Court  
21 or the court or tribunal in which the claim is pending has determined any issues related to such defense or  
22 assertion. Solely for purposes of such suit, action, or other proceeding, to the fullest extent they may  
23 effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of  
24 motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the  
25 Court, or that the Court is, in any way, an improper venue or an inconvenient forum. These provisions are  
26 necessary to protect the Settlement Agreement, this Order and this Court's authority to effectuate the  
27 Settlement, and are ordered in aid of this Court's jurisdiction and to protect its judgment.

1           19. Injunctive Relief. By attaching the Settlement Agreement as an exhibit and incorporating its  
2 terms herein, the Court determines that this Final Order complies in all respects with Federal Rule of Civil  
3 Procedure 65(d)(1).

4           20. Retention of Jurisdiction. Without affecting the finality of the Judgment, the Court reserves  
5 jurisdiction over the implementation, administration, and enforcement of the Judgment and the Agreement  
6 and all matters ancillary to the same.

7           21. Post-Distribution Accounting. Within 21 days after the distribution of the settlement funds  
8 and payment of attorneys' fees, the parties should file a Post-Distribution Accounting in accordance with  
9 the Northern District of California's Procedural Guidance for Class Action Settlements.

10           22. Entry of Judgment. The Clerk of the Court is directed to enter Judgment.

11  
12 **IT IS SO ORDERED.**

13  
14 Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
15 Hon. William H. Orrick  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit 4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DEBBIE KROMMENHOCK and STEPHEN  
HADLEY, on behalf of themselves, all others  
similarly situated, and the general public,

Plaintiffs,

v.

POST FOODS, LLC,

Defendant.

Case No. 5:16-cv-04958-WHO

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT**

Judge: Hon. William H. Orrick

1 WHEREAS, the above-entitled action is pending before this Court (the “Action”);

2 WHEREAS, Plaintiffs Debbie Krommenhock and Stephen Hadley have moved, pursuant to Federal  
3 Rule of Civil Procedure 23(e), for an order approving the Settlement of this Action in accordance with the  
4 Class Action Settlement Agreement (“Settlement Agreement”) attached as Exhibit A to the Declaration of  
5 Jack Fitzgerald in Support of Plaintiffs’ Motion for Preliminary Approval of Class Settlement (the  
6 “Motion”), which Settlement Agreement sets forth the terms and conditions for a proposed classwide  
7 settlement of the Action;

8 WHEREAS, the Court, has read and considered the Settlement Agreement, Plaintiffs’ Motion, and  
9 the arguments of counsel;

10 **NOW, THEREFORE, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:**

11 1. Settlement Terms. All capitalized terms herein have the same meanings ascribed to them in  
12 the Settlement Agreement.

13 2. Jurisdiction. The Court has jurisdiction over the subject matter of the action and over all  
14 parties to the action, including all members of the Settlement Class.

15 3. Preliminary Approval of Proposed Settlement Agreement. The Court finds that, subject to  
16 the Final Approval hearing, the proposed Settlement Agreement is fair, reasonable, adequate, and within the  
17 range of possible approval considering the possible damages at issue and defenses to overcome. The Court  
18 also finds that the Settlement Agreement: (a) is the result of serious, informed, non-collusive, arms-length  
19 negotiations, involving experienced counsel familiar with the legal and factual issues of this case and made  
20 with the assistance and mediation services of Hon. Edward A. Infante (Ret.), Hon. James F. Holderman  
21 (Ret.), and Chief Magistrate Judge Joseph C. Spero; and (b) meets all applicable requirements of law,  
22 including Federal Rule of Civil Procedure 23, and the Class Action Fairness Act (“CAFA”), 28 U.S.C. §  
23 1715. Therefore, the Court grants preliminary approval of the Settlement.

24 4. Class Certification for Settlement Purposes Only. The Court conditionally certifies, for  
25 settlement purposes only, a Class defined as all persons in the United States who, between August 29, 2012  
26 and November 2, 2020 (the “Class Period”), purchased in the United States, for household use and not for  
27 resale or distribution, any of the Class Products identified in Appendix 1 to the Settlement Agreement.  
28



1           5.       The Court finds, for settlement purposes only, that class certification under Federal Rule of  
2 Civil Procedure 23(b)(3) is appropriate in the settlement context because (a) the Settlement Class Members  
3 are so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of  
4 law and fact common to the Settlement Class which predominate over any individual questions; (c) the  
5 claims of the Plaintiffs and proposed Class Representatives are typical of the claims of the Settlement Class;  
6 (d) the Plaintiffs and proposed Class Representatives and their counsel will fairly and adequately represent  
7 and protect the interests of the Settlement Class Members; (e) questions of law or fact common to the  
8 Settlement Class Members predominate over any questions affecting only individual Settlement Class  
9 Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication  
10 of the controversy.

11           6.       Class Representatives. The Court appoints Plaintiffs Debbie Krommenhock and Stephen  
12 Hadley as Class Representatives.

13           7.       Class Counsel. The Court appoints The Law Office of Jack Fitzgerald, PC and Jackson and  
14 Foster, LLC as Class Counsel.

15           8.       Settlement Class Administrator. The Court hereby approves Postlethwaite & Netterville  
16 (“P&N”) to act as Class Administrator. P&N shall be required to perform all the duties of the Class  
17 Administrator as set forth in the Agreement and this Order.

18           9.       Qualified Settlement Fund. P&N is authorized to establish the Settlement Fund under 26  
19 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Settlement Fund pursuant to 26 C.F.R.  
20 § 1.468B-2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations  
21 promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Class  
22 Administrator operating as administrator of the Settlement Fund shall be construed as costs of Claims  
23 Administration and shall be borne solely by the Settlement Fund. Interest on the Settlement Fund shall inure  
24 to the benefit of the Class.

25           10.      Class Notice. The Court approves the form and content of the Class Notice in the long form  
26 attached to the Settlement Agreement as Exhibit 1, the short form attached to the Settlement Agreement as  
27 Exhibit 2, and the other forms of notice submitted with Plaintiffs’ Motion for Preliminary Approval. The  
28 Court finds that dissemination of the Class Notice as proposed in the Settlement Agreement and in P&N’s

1 Notice Plan as set forth in the January 18, 2021 Declaration of Brandon Schwartz meets the requirements  
2 of Federal Rule of Civil Procedure 23(c)(2), and due process, and further constitutes the best notice  
3 practicable under the circumstances. Accordingly, the Court hereby approves the Notice Plan.

4 11. The Court recognizes that Defendant Post Foods, LLC (“Post”) has collected approximately  
5 68,400 individual customer email addresses that that likely include some Settlement Class Members. The  
6 Court further recognizes that Post’s privacy policy generally prohibits it from sharing personal information,  
7 such as these names and emails, to unrelated third parties, but allows for disclosure “required by law” or “in  
8 response to a lawful request by public authorities.” In order to achieve “the best notice that is practicable  
9 under the circumstances, including individual notice to all members who can be identified with reasonable  
10 effort,” Fed. R. Civ. P. 23(c)(2), the Court orders that: (i) Post produce the approximately 68,400 individual  
11 customer names and email addresses that it has collected to P&N; (ii) P&N use the individual customer  
12 names and email addresses solely for the purpose of disseminating Class Notice in this case and no other  
13 purpose; and (iii) P&N maintain the confidentiality of the individual customer names and email addresses  
14 and not disclose them to any person outside of P&N except as necessary to disseminate Class Notice in this  
15 case.

16 12. Objection and Exclusion Deadline. Settlement Class Members who wish either to object to  
17 the Settlement or to exclude themselves from the Settlement must do so by the Objection Deadline and  
18 Exclusion Deadline of \_\_\_\_\_, 2021 both of which are sixty-three (63) calendar days after the  
19 Settlement Notice Date. Settlement Class Members may not both object to and exclude themselves from the  
20 Settlement. If a Settlement Class Member submits both a Request for Exclusion and an Objection, the  
21 Request for Exclusion will be controlling.

22 13. Exclusion from the Settlement Class. To submit a Request for Exclusion, Settlement Class  
23 Members must follow the directions in the Notice and send a compliant request to the Class Administrator  
24 at the address designated in the Class Notice, postmarked by the Exclusion Deadline. To be valid, the  
25 Request for Exclusion must (i) be in writing and mailed; (ii) contain the name of this Action, *Krommenhock*  
26 *v. Post Foods, LLC*, No. 5:16-cv-04958-WHO, (iii) contain the full name and address of the Settlement  
27 Class Member; (iv) state that the Settlement Class Member wishes to be excluded by the Settlement; and  
28

1 (v) be signed individually by the Settlement Class Member or his or her attorney. No Request for Exclusion  
2 may be made on behalf of a group of Settlement Class Members.

3 14. All Settlement Class Members who submit a timely, valid Request from Exclusion will be  
4 excluded from the Class and will not be bound by the terms of the Settlement Agreement and any  
5 determinations and judgments concerning it. All Settlement Class Members who do not submit a valid  
6 Request for Exclusion by \_\_\_\_\_, 2021 in accordance with the terms set forth in the Agreement, will be  
7 bound by all determinations and judgments concerning the Agreement.

8 15. Objections to the Settlement. To object to the Settlement, Settlement Class Members are  
9 encouraged to follow the directions in the Notice and file or mail to the Court a written Objection by the  
10 Objection Deadline. In the written Objection, the Settlement Class Member should include (i) a caption or  
11 title that clearly identifies the Action and that the document is an objection, (ii) the Settlement Class  
12 Member's name, current address, and telephone number, or—if objecting through counsel—his or her  
13 lawyer's name, address, and telephone number, (iii) the Class Product(s) the Settlement Class Member  
14 bought during the Class Period, (iv) a clear and concise statement of the Class Member's objection, as well  
15 as any facts and law supporting the objection, (v) if the Class Member (or his or her lawyer) wishes to appear  
16 and speak at the Final Approval Hearing, a statement to that effect, (v) the objector's signature, and (vi) the  
17 signature of the objector's counsel, if any. The Parties will have the right to obtain document discovery from  
18 and take depositions of any objecting Settlement Class Member on topics relevant to the Objection.

19 16. If a Settlement Class Member does not submit a written Objection to the Settlement or to  
20 Class Counsel's application for attorneys' fees and costs or the Service Awards in accordance with the  
21 deadline and procedure set forth in the Notice and this Order, but the Settlement Class Member wishes to  
22 be appear and be heard at the Final Approval Hearing, the Settlement Class Member may do so provided  
23 the Objector satisfies the requirements of Federal Rule of Civil Procedure 23(e)(5)(A) at the Final Approval  
24 Hearing.

25 17. Objecting Settlement Class Members may appear at the Final Approval Hearing and be  
26 heard. If an objecting Class Member chooses to appear at the Final Approval Hearing, a notice of intention  
27 to appear should be filed with the Court or postmarked no later than the Objection Deadline.  
28

1 18. All members of the Settlement Class, except those who submit timely Requests for  
2 Exclusion, will be bound by all determinations and judgments in this Action, whether favorable or  
3 unfavorable to the Settlement Class.

4 19. Submission of Claims. To receive a cash award, Settlement Class Members must follow the  
5 directions in the Notice and file a claim with the Class Administrator by the Claims Deadline of \_\_\_\_\_,  
6 2021, which is sixty-three (63) calendar days after the Settlement Notice Date. Settlement Class Members  
7 who do not submit a claim will not receive a cash award but will be bound by the Settlement.

8 20. Schedule of Future Events. The Court adopts the schedule proposed by Plaintiff, as follows  
9 (with Day “1” the date of this Order):

Event	Day	Approximate Weeks After Preliminary Approval
Date of Preliminary Approval Order	1	-
Deadline to commence 63-day notice period	21	3 weeks
Deadline for Plaintiffs to file Motion for Attorneys’ Fees, Costs, and Incentive Awards	49	7 weeks
Notice completion date, and deadline to make a claim, opt out, and object	84	12 weeks
Deadline for Plaintiffs to file Motion for Final Approval	102	15 weeks
Final Approval Hearing	116	17 weeks

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20 21. Final Approval Hearing. A Final Approval Hearing is scheduled for \_\_\_\_\_, 2021, at 2:00  
21 p.m., for the Court to determine whether the proposed settlement of the Action on the terms and conditions  
22 provided for in the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class and  
23 should be finally approved by the Court; whether a Judgment should be entered; and to determine any  
24 amount of fees, costs, and expenses that should be awarded to Class Counsel and the amount of any service  
25 awards to Plaintiffs. The Court reserves the right to adjourn the date of the Final Approval Hearing without  
26 further notice to the members of the Settlement Class, and retains jurisdiction to consider all further  
27 applications arising out of or connected with the proposed Settlement. The Court may approve the  
28

1 Settlement, with such modifications as may be agreed to by the settling Parties, if appropriate, without  
2 further notice to the Settlement Class.

3 22. Stay of Proceedings. All proceedings in this action are stayed until further order of this Court,  
4 except as may be necessary to implement the Settlement or comply with the terms of the Settlement  
5 Agreement.

6 23. Pending the final determination of whether the Settlement should be approved, the  
7 Settlement Class Representatives and all Settlement Class Members are hereby stayed and enjoined from  
8 commencing, pursuing, maintaining, enforcing, or prosecuting, either directly or indirectly, any Released  
9 Claims in any judicial, administrative, arbitral, or other forum, against any of the Released Parties. Such  
10 injunction will remain in force until Final Approval or until such time as the Parties notify the Court that  
11 the Settlement has been terminated. Nothing herein will prevent any Settlement Class Member, or any  
12 person actually or purportedly acting on behalf of any Settlement Class Member(s), from taking any actions  
13 to stay or dismiss any Released Claim(s). This injunction is necessary to protect and effectuate the  
14 Agreement, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate the  
15 Agreement and to enter Judgment when appropriate, and is ordered in aid of this Court's jurisdiction and to  
16 protect its judgments. This injunction does not apply to any person who files a Request for Exclusion.

17 24. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement  
18 and all proceedings in connection with the Settlement will be without prejudice to the right of Defendant or  
19 the Class Representatives to assert any right or position that could have been asserted if the Agreement had  
20 never been reached or proposed to the Court, except insofar as the Agreement expressly provides to the  
21 contrary. In such an event, the certification of the Settlement Classes will be deemed vacated. The  
22 certification of the Settlement Classes for settlement purposes will not be considered as a factor in  
23 connection with any subsequent class certification issues.

24 25. No Admission of Liability. By entering this Order, the Court does not make any  
25 determination as to the merits of this case. Preliminary approval of the Settlement Agreement is not a finding  
26 or admission of liability by Defendant. Furthermore, the Agreement and any and all negotiations,  
27 documents, and discussions associated with it will not be deemed or construed to be an admission or  
28 evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of

1 any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to the  
2 Agreement will not be discoverable or used, directly or indirectly, in any way, whether in this Action or in  
3 any other action or proceeding, except for purposes of demonstrating, describing, implementing, or  
4 enforcing the terms and conditions of the Agreement, this Order, the Final Approval Order, and the  
5 Judgment.

6 26. Retention of Jurisdiction. The Court retains jurisdiction over the Action to consider all further  
7 matters arising out of or connected with the Settlement Agreement and the settlement described therein.  
8

9 **IT IS SO ORDERED.**

10  
11 Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
12 Hon. William H. Orrick  
13 United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28