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*Attorneys for Plaintiff and Proposed Class and California Sub-Class*

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

ANDY WU, on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

POST FOODS, LLC and POST HOLDINGS,  
INC.,

Defendants.

Case No.

**CLASS ACTION COMPLAINT  
FOR EQUITABLE RELIEF AND  
DAMAGES**

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiff Andy Wu ("Plaintiff"), individually and on behalf of all others similarly situated,  
2 by and through his undersigned counsel, hereby files this Class Action Complaint for Equitable  
3 Relief and Damages against Defendants Post Holdings, Inc. and its wholly owned subsidiary,  
4 Post Foods, LLC (collectively, "Post") and alleges the following based upon information, belief,  
5 and the investigation of his counsel:

6 1. Post aggressively advertises and promotes Post® Shredded Wheat products  
7 (collectively, "Shredded Wheat")<sup>1</sup> as "100% Natural Whole Grain Wheat" and a "Natural Source  
8 of Fiber." These claims are false, deceptive, and misleading. Shredded Wheat is not "100%  
9 Natural," but instead contains the artificial chemical glyphosate, a potent biocide that last year  
10 was declared a probable human carcinogen by the cancer research arm of the World Health  
11 Organization. Glyphosate makes its way into Shredded Wheat not simply because it is used as an  
12 agricultural weed killer, but because it is sprayed on the wheat as a drying agent (to increase crop  
13 yield and thereby to increase profit) shortly before harvest.

14 2. At this time, there is nothing unlawful about Shredded Wheat's growing and  
15 processing methods. What *is* unlawful, however, is Post's claim that Shredded Wheat is  
16 something that it is not — i.e., "100% Natural"— in order to capitalize on growing consumer  
17 demand for healthful, natural products.

18 3. Plaintiff brings this deceptive advertising case on behalf of a class of consumers  
19 who purchased Shredded Wheat in California, and seeks relief including refunds to purchasers  
20 for the falsely advertised products and a court-ordered corrective advertising campaign to inform  
21 the public of the true nature of Post's glyphosate-contaminated wheat.

## 22 INTRODUCTION

23  
24 4. This is a proposed Class Action Complaint against Post for injunctive relief and

---

25 <sup>1</sup> The products at issue are Post Shredded Wheat Original Big Biscuit cereal, Post  
26 Shredded Wheat Spoon Size Original cereal, and Post Shredded Wheat Spoon-Size Wheat 'n  
27 Bran cereal, (collectively, "Shredded Wheat"). Discovery may demonstrate that additional Post  
products are within the scope of this Complaint.

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27 Bran cereal, (collectively, "Shredded Wheat"). Discovery may demonstrate that additional Post  
products are within the scope of this Complaint.

1 economic damages based on misrepresentations and omissions committed by Post regarding  
2 Shredded Wheat, which Post falsely and deceptively labels and markets as “100% Natural Whole  
3 Grain Wheat” and a “Natural Source of Fiber.” *See* product labels attached as Exhibit 1.

4 5. In fact, Shredded Wheat contains glyphosate, a potent and *unnatural* biocide.

5 6. Aware of the health risks and environmental damage caused by chemical-laden  
6 foods, especially packaged foods, consumers increasingly demand foods that are natural and  
7 whole, and that omit chemicals.

8 7. Post knows that consumers seek out and wish to purchase whole, natural foods  
9 that do not contain chemicals, and that consumers will pay more for foods that they believe to be  
10 natural than they will pay for foods that they do not believe to be natural.

11 8. To capture this growing market, Post labels its Shredded Wheat products as  
12 “100% Natural Whole Grain Wheat” and a “Natural Source of Fiber.”

13 9. The only ingredient listed on Post’s “100% Natural Whole Grain Wheat”  
14 Shredded Wheat products is “Whole Grain Wheat.” *See* Ex. 1.

15 10. No reasonable consumer, seeing these representations, would expect Shredded  
16 Wheat to contain anything unnatural, or anything other than whole-grain wheat.

17 11. Shredded Wheat, despite its labels, does contain something other than whole-grain  
18 wheat, namely, glyphosate.

19 12. Glyphosate is not “Natural” or “100% Natural.” Glyphosate is a synthetic biocide  
20 that the World Health Organization has named a probable human carcinogen, with additional  
21 health dangers rapidly becoming known.

22 13. Glyphosate is “legal” in connection to food products, insofar as the law does not  
23 preclude the use of glyphosate in treating and harvesting crops. Post, however, did not and does  
24 not simply claim that its Shredded Wheat is “legal”; it claims that Shredded Wheat is “Natural”  
25 and contains “100% Natural Whole Grain Wheat” and nothing else. *See* Exhibit 1.

26 14. By deceiving consumers about the nature, quality, and/or ingredients of its  
27 Shredded Wheat, Post is able to sell a greater volume of Shredded Wheat, to charge higher prices

1 for Shredded Wheat, and to take away market share from competing products, thereby increasing  
2 its own sales and profits.

3 15. Consumers lack the scientific knowledge necessary to determine whether  
4 Shredded Wheat in fact contains only “100% Natural Whole Grain Wheat,” to know or to  
5 ascertain the true ingredients and quality of Shredded Wheat, or to assess the safety of ingesting  
6 glyphosate. Reasonable consumers must and do rely on Post to report honestly what Shredded  
7 Wheat contains, and whether the ingredients are in fact “Natural.”

8 16. Across all Shredded Wheat products, Post conceals the presence of glyphosate,  
9 fails to warn consumers of the presence of glyphosate, and fails to warn consumers about the  
10 harmful effects of ingesting glyphosate.

11 17. Should any consumer seek further information, Post’s own website declares that  
12 “eating Post Shredded Wheat cereal is a great way to boost your fiber intake without  
13 compromising on variety.” [http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-](http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health)  
14 [health](http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health) (last visited May 12, 2016).

15 18. Post intended for consumers to rely on its representations, and hundreds of  
16 thousands of reasonable consumers did in fact so rely. As a result of its false and misleading  
17 labeling, failure to warn, and omissions of fact, Post was able to sell Shredded Wheat to hundreds  
18 of thousands of consumers throughout the United States, including California, and to realize  
19 sizeable profits.

20 19. When a product purports to be “100% Natural,” consumers are willing to pay  
21 more for the product, and they also reasonably expect the product to be pesticide-free.

22 20. Post’s false and misleading representations, failure to warn, and omissions of fact  
23 violate the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the  
24 “CLRA”); the False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.* (the “FAL”); the  
25 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (the “UCL”); and common law.

26 21. Plaintiff is not seeking damages for any personal injuries in this Complaint;  
27 instead, this case is based on Post’s misrepresentations and omissions regarding the Shredded  
28

1 Wheat products purchased by Plaintiff and Class Members during any applicable limitations  
2 period.<sup>2</sup>

3 22. Accordingly, Plaintiff seeks relief equal to the aggregate retail purchase price paid  
4 by Plaintiff and Class Members during any applicable limitations period, because the products  
5 are worthless and useless due to Post's misrepresentations regarding the true nature, quality, and  
6 ingredients of Shredded Wheat and its failure to warn consumers of the presence of glyphosate  
7 and the harmful effects of ingesting glyphosate.

8 23. Plaintiff Wu brings this action to stop Post's deceptive and misleading practices.

9 **JURISDICTION AND VENUE**

10 24. This Court has original subject-matter jurisdiction over this proposed class action  
11 pursuant to 28 U.S.C. § 1332(d), which under the provisions of the Class Action Fairness Act  
12 explicitly provides for the original jurisdiction of the federal courts in any class action in which at  
13 least 100 members are in the proposed plaintiff class, any member of the plaintiff class is a  
14 citizen of a State different from any defendant, and the matter in controversy exceeds the sum of  
15 \$5,000,000.00, exclusive of interest and costs. Plaintiff Wu is a citizen of California and on  
16 information and belief, defendant Post is a citizen of Delaware and Missouri. On information and  
17 belief, the amount in controversy exceeds \$5,000,000.00.

18 25. This Court has personal jurisdiction over the parties in this case. Plaintiff Wu is a  
19 citizen of California and a resident of the City of San Jose, in the County of Santa Clara,  
20 California. Post purposefully avails itself of the laws of California to market Shredded Wheat to  
21 consumers nationwide, including consumers in California, and distributes Shredded Wheat to  
22 numerous retailers throughout the United States, including California.

23 26. Venue is proper in this District under 28 U.S.C. § 1391(b)(2). Substantial acts in  
24 furtherance of the alleged improper conduct, including the dissemination of false and misleading  
25

26  
27 <sup>2</sup> All potential claims for individual tort relief by Plaintiff and Putative Class Members are preserved and outside the  
28 scope of the relief sought in this litigation.



1 information regarding the nature, quality, and/or ingredients of Shredded Wheat, occurred within  
2 this District.

3 **PARTIES**

4 27. At all times mentioned herein, Defendant Post Foods, LLC was and is a Delaware  
5 corporation that maintains its principal place of business and headquarters in Parsippany, New  
6 Jersey. Post Foods, LLC is a division of Post Holdings, Inc., a consumer packaged goods holding  
7 company that is incorporated in Missouri and maintains its principal place of business and  
8 headquarters in St. Louis, Missouri. Post was, at all relevant times, engaged in commercial  
9 transactions, including internet sales, throughout the United States and the State of California,  
10 including this judicial District.

11 28. Post manufactures and/or causes the manufacture of cereal products, and markets  
12 and distributes the products in retail stores in California and throughout the United States.

13 29. At all times mentioned herein, Plaintiff Wu was and is an individual consumer  
14 over the age of 18, a citizen of the State of California, and a resident of the County of Santa  
15 Clara. From 2012 through 2014, Plaintiff Wu purchased Shredded Wheat at a Safeway store  
16 located at 555 E. Calaveras Blvd., Milpitas, California 95035.

17 30. In deciding to make these purchases, Plaintiff Wu saw, relied upon, and  
18 reasonably believed Post's representations that Shredded Wheat is natural and healthful, and  
19 comprises only "100% Natural Whole Grain Wheat." These representations were a significant  
20 reason for his purchases.

21 31. Plaintiff Wu was willing to pay more for Shredded Wheat because he expected it  
22 to be pesticide-free.

23 32. Had Plaintiff Wu known at the time that Shredded Wheat contains the unnatural  
24 biocide glyphosate, he would not have purchased or continued to purchase Shredded Wheat.

25 33. Had Plaintiff Wu been warned of the dangers of ingesting glyphosate, and of the  
26 presence of glyphosate in the Shredded Wheat, he would not have purchased or continued to  
27 purchase Shredded Wheat.



34. If Shredded Wheat were reformulated such that Post's representations were truthful, i.e., such that Shredded Wheat contained only "100% Natural Whole Grain Wheat" and no glyphosate, Plaintiff Wu would consider purchasing Shredded Wheat in the future.

### **SUBSTANTIVE ALLEGATIONS**

35. American consumers increasingly and consciously seek out natural and healthful food products. Once a small niche market, healthful, natural foods are now sold by conventional retailers, and their sales continue to soar. The trend toward natural and healthful food products includes, for many consumers, a preference for whole grains over processed or otherwise refined grains.

36. Consumers' value natural foods, including whole grains, for myriad health, environmental, and political reasons, including avoiding chemicals and additives, attaining health and wellness, helping the environment, and financially supporting companies that share these values.

#### **I. Post's "Natural" Brand Image**

37. Hoping to capture this growing market, Post markets Shredded Wheat as a natural and healthful choice containing only "100% Natural Whole Grain Wheat." Post does not disclose the presence in Shredded Wheat of anything other than "100% Natural Whole Grain Wheat."

38. Post cultivates its image as a healthful, wholesome, impurity-free brand—the kind of company whose label claims can be trusted.

39. As Post explains in its 2015 Annual Report:

[T]rends to natural products and quick service restaurant offerings are increasing areas of consumer focus. These trends include shifting to products that are organic or natural, as well as convenience offerings that provide greater portability. This changing behavior has prompted us to acquire diverse businesses to meet changing customer and consumer needs. We believe we have the necessary portfolio of products available to address these trends and to continue to focus on consumers' needs.

1 Post Holdings 2015 Annual Report at 25.

2 40. The back of Post's Shredded Wheat Original Big Biscuit label states that the  
3 product contains "[a]n ingredient list that is so good, we have nothing to hide," and is "made with  
4 nothing but goodness." The back of the Shredded Wheat Original Big Biscuit label restates the  
5 front-of-label claim that the product comprises "100% Whole Grain Wheat," adding, "We make  
6 it easy to understand what is in your food - it's just the natural goodness of whole grain wheat."  
7 The back of the label also states, "Our flavor comes from 100% whole grain wheat, nothing  
8 else," and enumerates various "health benefits" of the product's "whole grain wheat": "Heart  
9 Health"; "Digestive Health"; and "Reduced Cancer Risk." *See* Ex. 1.

10 41. Post presents itself as an expert source of information on whole grains, touting  
11 their nutritional and health benefits. Post's website directs consumers to "Get even more expert  
12 nutrition and health information by browsing the topics below," which include "Fiber & Whole  
13 Grains," "Diet & Exercise," and "Heart Health." [http://postfoods.com/our-brands/post-shredded-](http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health)  
14 [wheat/zero-in-on-health](http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health) (last visited May 12, 2016).

15 42. Post also promotes the health benefits of its products, stating, "Making 100%  
16 whole grain Post Shredded Wheat part of your regular diet, at breakfast or any other meal, is just  
17 one way to choose a healthier lifestyle." [http://postfoods.com/our-brands/post-shredded-](http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health)  
18 [wheat/zero-in-on-health](http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health) (last visited May 12, 2016).

19 43. Post specifically promotes the heart health benefits of Shredded Wheat: "Post  
20 Shredded Wheat cereals, made of 100% natural whole wheat, have always been a heart-healthy  
21 choice. They're loaded with whole grains (at least 16g whole grains per serving) and dietary  
22 fiber, are low in fat and saturated fat, have 0g trans-fat and are cholesterol-free."  
23 <http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health> (last visited May 12,  
24 2016).

25 44. Post also states, on the front label of its Shredded Wheat Original Big Biscuit  
26 product: "9 out of 10 doctors recommend Post Shredded Wheat to help reduce the risk of heart  
27

disease.”

45. According to Post, Shredded Wheat “has always been a heart-healthy choice.” *Id.* (last visited May 12, 2016).

46. Nowhere on its website does Post mention the presence of glyphosate in Shredded Wheat.

47. Nowhere on its website does Post warn of the health risks of ingesting glyphosate.

48. Nowhere on its website does Post explain the environmental risks presented by glyphosate.

## **II. Shredded Wheat: Presented as “100% Natural”**

49. Post prominently labels its Shredded Wheat Original Big Biscuit product as “100% Natural Whole Grain Wheat.” This representation appears on the front label of the product. Should any consumer seek additional information from the side of the box, Post lists the product’s ingredients as “whole grain wheat,” and *only* “whole grain wheat.”

50. Upon information and belief, Post has profited enormously from its fraudulently marketed products and its carefully orchestrated label and image.

51. Representing that a product is “Natural,” “100% Natural,” or “100% Natural Whole Grain Wheat” is a statement of fact.

52. Failing to disclose that a product contains glyphosate and failing to warn of the dangers of ingesting glyphosate are omissions of relevant fact.

53. Consumers reasonably believe that a product labeled “Natural” or “100% Natural” does not contain synthetic ingredients.

54. Consumers reasonably believe that a product labeled “Natural” or “100% Natural” does not contain pesticides.

55. In 2014, the Consumer Reports® National Research Center conducted a nationally representative phone survey to assess consumer opinion regarding food labeling. *See* <http://www.greenerchoices.org/pdf/consumerreportsfoodlabelingsurveyjune2014.pdf> (last visited May 12, 2016).

56. Sixty-six percent of all respondents in the Consumer Reports survey said that a “natural” label on packaged and processed foods means that “no toxic pesticides were used.” *See Id.*

57. Consumers reasonably believe that a product labeled “100% Natural Whole Grain Wheat,” especially a product whose only ingredient is listed as “whole grain wheat,” does not contain anything other than natural wheat.

58. Post knows and intends that when consumers see the product labels promising the product is “Natural,” “100% Natural,” or “100% Natural Whole Grain Wheat,” consumers will understand that to mean that, at the very least, the product does not contain synthetic ingredients or harmful chemicals.

59. Consumers reasonably expect that if a product contains a harmful substance, the presence of that substance will be disclosed, and they will be warned of the dangers associated with the substance.

### III. Glyphosate: The Unnatural Hidden Substance

60. Post’s representations that Shredded Wheat is “Natural,” “100% Natural,” or “100% Natural Whole Grain Wheat” are false. In fact, testing reveals that Shredded Wheat contains glyphosate.

61. Shredded Wheat thus is not “Natural” or “100% Natural,” and does not contain only “100% Natural Whole Grain Wheat,” and labeling it as such is misleading and deceptive.

62. Because glyphosate is a probable human carcinogen, Shredded Wheat is not healthful. Moreover, the presence of glyphosate in Shredded Wheat reduces the level of beta glucan, a soluble fiber linked to improvements in cholesterol levels and cardiovascular health. Under U.S. Food and Drug Administration regulations, the permissibility of a manufacturer’s “heart healthy” claims depends, in part, on the level of soluble fibers such as beta glucan in a product.<sup>3</sup>

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<sup>3</sup> *See* <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm0>

63. Post has a duty to disclose the presence of glyphosate and to warn of the dangers associated with glyphosate.

64. On information and belief, glyphosate is, by volume, the world's most widely produced herbicide.

65. Glyphosate was invented by the agrochemical and agricultural biotechnology corporation Monsanto, which began marketing the herbicide in 1974 under the trade name Roundup, after DDT was banned.<sup>4</sup>

66. By the late 1990s, use of Roundup had surged as a result of Monsanto's strategy of genetically engineering seeds to grow food crops that could tolerate high doses of the herbicide. The introduction of these genetically engineered seeds enabled farmers more easily to control weeds on their crops.<sup>5</sup>

67. Monsanto also encouraged farmers to use Roundup as a desiccant to dry out their crops in order to harvest them faster. Today, glyphosate is routinely sprayed directly on a host of non-genetically modified crops, including wheat.<sup>6</sup> On information and belief, this use of glyphosate is not for any health or environmental purpose, and stems solely from a desire to increase profit margins through higher crop yield.

68. In 2015, the International Agency for Research on Cancer (IARC), a research arm of the World Health Organization, declared glyphosate a category 2A "probable" human carcinogen. A summary of the study underlying this declaration was published in *The Lancet Oncology*, Vol. 16, No. 5 (May 2015).<sup>7</sup> The IARC study noted such carcinogenic risk factors as

64919.htm (last visited May 12, 2016).

<sup>4</sup> See <https://www.organicconsumers.org/news/monsantos-roundup-enough-make-you-sick> (last visited May 19, 2016).

<sup>5</sup> See *Id.*

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

<sup>7</sup> Available at <http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045%2815%2970134-8/abstract> (last visited May 12, 2016).

1 DNA damage to human cells resulting from exposure to glyphosate. Glyphosate has been  
 2 previously found to be a suspected human endocrine disruptor, with estrogenic effects even at  
 3 extremely low concentrations.<sup>8</sup>

4 69. In November 2015, the European Food Safety Agency published conclusions  
 5 suggesting that the combined use of glyphosate with other chemicals posed greater potential  
 6 health risks than when glyphosate is used alone. In light of those conclusions, in April 2016,  
 7 following a review of products containing glyphosate and tallowamine, France's health and  
 8 safety agency announced its intention to ban weed-killers that combine the two chemicals.<sup>9</sup>

9 70. Glyphosate, as a biocide, functions by disrupting the shikimate pathway, the  
 10 metabolic mechanism by which aromatic amino acids are synthesized.<sup>10</sup> Humans do not have a  
 11 shikimate pathway. The shikimate pathway is present, however, in bacteria, *including* bacteria  
 12 that inhabit the human gut and are essential to proper immune functioning. Glyphosate thus is  
 13 suspected to disrupt human immune function as well.

14 71. Studies examining low doses of glyphosate-based herbicides at levels that are  
 15 generally considered "safe" for humans show that these compounds can nevertheless cause liver  
 16 and kidney damage.<sup>11</sup>

17  
 18 <sup>8</sup> See Thongprakaisang, S. *et al.*, "Glyphosate induces human breast cancer cells growth via estrogen  
 19 receptors," 59 *Food & Chem. Toxicol.* 129 (June 2013), *abstract available at*  
 20 <http://www.ncbi.nlm.nih.gov/pubmed/23756170> (last visited May 12, 2016); *see also, e.g.*, Gasnier, C. *et al.*,  
 "Glyphosate-based herbicides are toxic and endocrine disruptors in human cell lines," 262(3) *Toxicology* 184 (Aug.  
 21 21, 2009), *abstract available at* <http://www.ncbi.nlm.nih.gov/pubmed/19539684> (last visited May 12, 2016).

22 <sup>9</sup> See "France to Ban Some Glyphosate Weedkillers Amid Health Concerns," Reuters, Apr. 8, 2016,  
 23 available at <http://www.reuters.com/article/us-france-glyphosate-idUSKCN0X512S> (last visited May 19, 2016).

24 <sup>10</sup> See, e.g., Heike, H. & N. Amrhein, "The Site of the Inhibition of the Shikimate Pathway by Glyphosate,"  
 25 *Plant Physiol.* 66:823 (1980), *available at* <http://www.plantphysiol.org/content/66/5/823.full.pdf> (last visited May  
 26 12, 2016); *see also* <http://www.glyphosate.eu/glyphosate-mechanism-action> (last visited May 12, 2016).

27 <sup>11</sup> Myers, J. *et al.*, "Concerns over use of glyphosate-based herbicides and risks associated with exposures: a  
 28 consensus statement."; *See also* Benedetti A.L., "The effects of sub-chronic exposure of Wistar rats to the herbicide  
 Glyphosate-Biocarb," *Toxicol. Lett.* 2004;153(2):227-232, *available at* <http://www.ncbi.nlm.nih.gov/pubmed/15451553>  
 (last visited May 12, 2016); Larsen K. *et al.*, "Effects of Sublethal Exposure to a Glyphosate-Based Herbicide  
 Formulation on Metabolic Activities of Different Xenobiotic-Metabolizing Enzymes in Rats," *Int. J. Toxicol.* 2014,  
 available at <http://www.ncbi.nlm.nih.gov/pubmed/24985121> (last visited May 12, 2016); Mesnage R. *et al.*,  
 "Transcriptome profile analysis reflects rat liver and kidney damage following chronic ultra-low dose Roundup  
 exposure," *Environ. Health* 2015;14:70, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4549093/> (last

72. Glyphosate is derived from the amino acid glycine. To create glyphosate, one of the hydrogen atoms in glycine is artificially replaced with a phosphonomethyl group.

73. Glyphosate is not "Natural."

74. Glyphosate is neither "100% Natural" nor present in "100% Natural Whole Grain Wheat."

75. On information and belief, glyphosate as a desiccant is used to increase wheat harvest for commercial purposes; is not necessary to successful planting, growing, or harvesting of wheat; is not a "natural" method of growing or harvesting wheat; is applied to wheat as a drying agent shortly before harvest; and is applied for commercial purposes only.

76. Glyphosate is a dangerous substance, the presence and health effects of which should be disclosed.

#### **IV. Post's Misleading Labeling and Omissions**

77. Post's conduct in labeling Shredded Wheat "Natural," "100% Natural," and "100% Natural Whole Grain Wheat" deceived and/or was likely to deceive the public. Consumers were deceived into believing that the listed ingredients were all the ingredients, and that the product was "Natural" and "100% Natural," and that nothing in Shredded Wheat was not "Natural." Instead, Shredded Wheat contains glyphosate, an *unnatural* biocide and probable human carcinogen, with myriad other potential health effects.

78. Consumers cannot discover the true nature of Shredded Wheat from reading the label. Consumers cannot discover the true nature of Shredded Wheat even by visiting Post's website, which makes no mention of glyphosate. Discovery of the true nature of the ingredients requires knowledge of chemistry and access to laboratory testing that is not available to the average reasonable consumer.

79. Post deceptively and misleadingly conceals material facts about Shredded Wheat, namely, that Shredded Wheat is not "Natural" or "100% Natural Whole Grain Wheat," and that

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visited May 12, 2016).



Shredded Wheat is not what a reasonable consumer would consider “Natural” or “100% Natural Whole Grain Wheat,” because in fact it contains glyphosate.

80. Post fails to warn consumers of the dangers of consuming glyphosate.

81. Plaintiff and the members of the Class are not at fault for failing to discover Post’s wrongs earlier, and had no actual or presumptive knowledge of facts sufficient to put them on inquiry notice.

82. The production process Post uses for Shredded Wheat is known only to Post and its suppliers. Post has not disclosed such information to Plaintiff or the Class members. Quantitative testing reveals the presence of glyphosate in Shredded Wheat, but only Post knows the methods by which its wheat is grown, harvested, and processed, or what would account for the presence of glyphosate in Shredded Wheat. Post’s concealment tolls the applicable statute of limitations.

83. To this day, Post continues to conceal and suppress the true nature, identity, source, and method of production of Shredded Wheat.

**V. Post’s Knowledge That Its Representations Were False**

84. Post holds itself out to the public as a trusted expert in the growing, harvesting, and processing of wheat.

85. Post knew what representations it made on the labels of Shredded Wheat. It also knew how the wheat was grown, harvested, and processed, and that it was likely to contain glyphosate, an unnatural and dangerous herbicide.

86. Post thus knew all the facts demonstrating that Shredded Wheat was mislabeled and falsely advertised, and that it had a duty to disclose the presence of glyphosate and to warn consumers about the dangers associated with glyphosate.

**VI. Post’s Intention for Consumers to Rely on Its Misrepresentations**

87. Post made the false, deceptive, and misleading representations and omissions intending for Plaintiff and the Class members to rely upon these representations and omissions in purchasing Shredded Wheat.

1           88. In making the false, misleading, and deceptive representations and omissions at  
2 issue, Post knew and intended that consumers would purchase the Shredded Wheat when  
3 consumers would otherwise purchase a competing product.

4           89. Consumers are willing to pay more for a product that purports to be “100%  
5 Natural,” and they expect that product to be pesticide-free.

6           90. In making the false, misleading, and deceptive representations and omissions at  
7 issue, Post also knew and intended that consumers would pay more for “Natural” or “100%  
8 Natural” wheat that is free of unnatural agents than they would pay for wheat that is not  
9 “Natural” or “100% Natural,” furthering Post’s private interest of increasing sales of its products  
10 and decreasing the sales of the all-natural and/or glyphosate-free products that are truthfully  
11 marketed by its competitors.

12           91. Post knows that consumers prefer “Natural” and “100% Natural” foods, and foods  
13 that do not contain dangerous or potentially dangerous chemicals. Post knows that consumers  
14 will pay more for “Natural” or “100% Natural” foods, or would not purchase the foods at all  
15 unless they were “Natural” and/or “100% Natural” and/or free from unnatural and potentially  
16 dangerous chemicals.

17           92. Independent surveys confirm that consumers will purchase more “Natural”  
18 products than conventional products, and will pay more for “Natural” products.

19 **VII. Consumers’ Reasonable Reliance on Post’s Misrepresentations**

20           93. Consumers frequently rely on label representations and information in making  
21 purchase decisions, especially in purchasing food.

22           94. When Plaintiff Wu and the Class members purchased Shredded Wheat, they saw  
23 the false, misleading, and deceptive representations detailed above, and did not receive disclosure  
24 of the presence of glyphosate or any warning of the dangers associated with glyphosate, as  
25 detailed above.

26           95. These misrepresentations and omissions were uniform and were communicated to  
27 Plaintiff Wu and every other member of the Class at every point of purchase and consumption.

1           96. Plaintiff Wu and the Class members were among the intended recipients of Post's  
2 deceptive representations and omissions.

3           97. Plaintiff Wu and the Class members reasonably relied to their detriment on Post's  
4 misleading representations and omissions.

5           98. Post's false, misleading, and deceptive misrepresentations and omissions deceived  
6 and misled, and are likely to continue to deceive and mislead, Plaintiff Wu, the Class members,  
7 reasonable consumers, and the general public.

8           99. Post's misleading affirmative statements further obscured what it failed to  
9 disclose, and the warnings it failed to give. Thus, reliance upon Post's misleading and deceptive  
10 representations and omissions may be presumed.

11           100. Post made the deceptive representations and omissions with the intent to induce  
12 Plaintiff Wu and the Class members to purchase Shredded Wheat. Plaintiff Wu's and the Class  
13 members' reliance upon such representations and omissions may be presumed.

14           101. Post's deceptive representations and omissions are material in that a reasonable  
15 person would attach importance to such information and would be induced to act upon such  
16 information in making purchase decisions. Thus, Plaintiff Wu's and the Class members' reliance  
17 upon such representations and omissions may be presumed as a matter of law; the representations  
18 and omissions were material; and a nexus exists between Post's conduct, on the one hand, and  
19 Plaintiff Wu's and the Class members' decisions to purchase Shredded Wheat at a certain price,  
20 on the other hand.

21 **VIII. Post's Conduct and Plaintiff's and the Class Members' Injury**

22           102. As an immediate, direct, and proximate result of Post's false, misleading, and  
23 deceptive representations and omissions, Post injured Plaintiff Wu and the Class members in that  
24 they:

- 25           a. paid a sum of money for a product that was falsely represented;  
26           b. paid a sum of money for a product containing glyphosate, of which they received  
27 no warning;

- c. paid more for a product that was falsely represented than they would have paid had the product not been falsely represented;
- d. were deprived the benefit of the bargain because the Shredded Wheat they purchased was different from what Post warranted;
- e. were deprived the benefit of the bargain because the Shredded Wheat they purchased had less value than what was represented;
- f. did not receive a product that measured up to their expectations as created by Post;
- g. ingested (and/or caused their children to ingest) a substance that was other than what was represented;
- h. ingested (and/or caused their children to ingest) a substance they did not expect or consent to;
- i. ingested (and/or caused their children to ingest) a product that included an unnatural substance;
- j. without their knowing consent, ingested (and/or caused their children to ingest) a biocide that is harmful to their health and/or their children's health;
- k. without their knowing consent, ingested (and/or caused their children to ingest) a substance that is, contains, or is produced with a known or suspected toxin, carcinogen, or hazardous substance;
- l. without their knowing consent, ingested (and/or caused their children to ingest) a substance that poses health or environmental risks;
- m. without their knowing consent, ingested (and/or caused their children to ingest) a substance that is otherwise harmful to the environment and/or the farmers and other workers who utilize or process such substance;
- n. ingested (and/or caused their children to ingest) a substance that was of a lower quality than what Post promised;
- o. were denied the benefit of knowing what they ingested (and/or caused their children to ingest);

- p. were caused unwittingly to support an industry that contributes to environmental, ecological, and health damage;
- q. were denied the benefit of supporting an industry that sells natural products and contributes to environmental sustainability; and/or
- r. Were denied the benefit of the beneficial properties of the “Natural” products promised.

103. Had Post not made the false, misleading, and deceptive representations and omissions, and had Post not failed to warn of the presence of glyphosate and dangers associated with glyphosate, Plaintiff Wu and the Class members would not have been injured as listed above. Accordingly, Plaintiff Wu and the Class members have suffered “injury in fact” as a result of Post’s wrongful conduct.

104. Plaintiff Wu and the Class members all paid money for Shredded Wheat, but did not obtain the full value of the advertised products due to Post’s misrepresentations and omissions. Plaintiff Wu and the Class members purchased, purchased more of, or paid more for, Shredded Wheat than they would have had they known the truth about Shredded Wheat. Accordingly, Plaintiff Wu and the Class members have suffered “injury in fact” and lost money or property as a result of Post’s wrongful conduct.

#### **IX. Post’s Benefit from Its Misleading Representations and Omissions**

105. Post labels and advertises its Shredded Wheat products in large, bold font as “100% Natural Whole Grain Wheat” and has profited handsomely as a result.

106. For the fiscal year ending September 30, 2015, Post reported net sales of \$1,260,800,000 and profits of \$205,500,000 in its Post Consumer Brands segment, which includes branded ready-to-eat cereal products such as Shredded Wheat.

107. As the intended, direct, and proximate result of Post’s false, misleading, and deceptive representations and omissions, Post has been unjustly enriched through more sales of Shredded Wheat and higher profits at the expense of Plaintiff Wu and the Class members. As a direct and proximate result of its deception, Post also unfairly obtained other benefits, including

1 the higher value associated with a “natural” brand, redirecting sales to it and away from its  
2 competitors, and increased sales of its other products.

3 108. Plaintiff, and all other similarly situated consumers, did not bargain for Products  
4 that contain unnatural ingredients in exchange for their payment of the purchase price.

5 109. Post has profited by failing to warn consumers of the presence of glyphosate in  
6 Shredded Wheat and of the health effects of consuming glyphosate.

7 110. Upon information and belief, Post has failed to remedy the problem with Shredded  
8 Wheat, thus causing future harm to consumers. Plaintiff, Class Members, and future purchasers  
9 in the consuming public are at risk of real, immediate, and continuing harm if Shredded Wheat  
10 continues to be sold as is, and without adequate warning of the presence of glyphosate and of the  
11 health effects of ingesting glyphosate.

12 111. Plaintiff would continue to purchase Shredded Wheat again in the future if it were  
13 reformulated so that the label representations were truthful.

14 112. Post has failed to provide adequate relief to Plaintiff or Class Members as of the  
15 date of filing this Complaint.

16 113. Plaintiff contends that Shredded Wheat was sold pursuant to unfair and  
17 unconscionable trade practices because the sale of Shredded Wheat offends public policy and is  
18 immoral, unethical, oppressive, unscrupulous, and caused substantial economic injuries to  
19 Plaintiff and Class Members.

20 114. Reasonable consumers do not expect products advertised as “Natural,” “100%  
21 Natural,” and “100% Natural Whole Grain Wheat” to contain unnatural ingredients such as  
22 glyphosate. Post’s statements and other representations convey a series of express and implied  
23 claims and/or omissions which Post knows are material to the reasonable consumer in making a  
24 purchasing decision, and which Post intended for consumers to rely upon when choosing to  
25 purchase Shredded Wheat.

26 115. Post misrepresented the nature, quality, and/or ingredients of Shredded Wheat,  
27 and/or failed to adequately disclose the health risks of ingesting the glyphosate contained in  
28

1 Shredded Wheat, which was and is false, misleading, and/or likely to deceive reasonable  
2 consumers. Reasonable consumers expect the presence of such ingredients to be disclosed so that  
3 they can make informed purchasing decisions.

4 116. Therefore, Shredded Wheat is valueless, and not worth the purchase price that  
5 Plaintiff and Class Members paid for it, and/or is not what Plaintiff and Class Members  
6 reasonably intended to receive.

7 117. Accordingly, Plaintiff seeks, individually and on behalf of similarly situated  
8 purchasers of Shredded Wheat, injunctive relief, and actual economic damages equaling the  
9 aggregate purchase price paid for Shredded Wheat by Plaintiff and Class Members during the  
10 applicable limitations period.

11 118. Plaintiff also seeks declaratory relief in the form of an order declaring Post's  
12 conduct to be unlawful, as well as injunctive and equitable relief putting an end to Post's  
13 misleading and unfair business practices, including clear and full disclosure of the presence of  
14 glyphosate in Shredded Wheat and of the health effects of ingesting glyphosate and/or a  
15 reformulation of Shredded Wheat so that it no longer contains glyphosate.

#### 16 CLASS ALLEGATIONS

17  
18 119. Plaintiff Wu re-alleges and incorporates by reference the allegations set forth in  
19 each of the preceding paragraphs of this Complaint.

20 120. This action is maintainable as a class action under Rules 23(b)(2) and (3) of the  
21 Federal Rules of Civil Procedure.

22 121. The class definition(s) may depend on the information obtained throughout  
23 discovery. Notwithstanding, at this time, Plaintiff Wu brings this action and seeks certification of  
24 the claims and certain issues in this action on behalf of himself and all other similarly situated  
25 individuals (the "Class"), defined as follows:

26 All persons who purchased Shredded Wheat (as defined herein) from a retail  
27 location within the United States from the beginning of any applicable limitations  
28 period through the date of class certification (the "National Class Period").



122. Additionally, Plaintiff Wu brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all other similarly situated California residents (the "California Sub-Class"), defined as follows:

All persons who purchased Shredded Wheat (as defined herein) from a retail location within the State of California from the beginning of any applicable limitations period through the date of class certification (the "California Class Period").

123. Excluded from the Class and the California Sub-Class are (1) Post, any entity or division in which Post has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is assigned and the judge's staff.

124. Plaintiff brings the Class and the California Sub-Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3).

125. Plaintiff reserves the right to amend the Class and California Sub-Class definitions if further information and discovery indicate that the Class and California Sub-Class definitions should be narrowed, expanded, or otherwise modified.

126. All members of the Class and California Sub-Class were and are similarly affected by the deceptive advertising of Shredded Wheat, and the relief sought herein is for the benefit of Plaintiff and members of the Class and California Sub-Class.

**I. Numerosity**

127. At this time, Plaintiff does not know the exact number of the Class and California Sub-Class members. Based on the annual sales and popularity of Shredded Wheat, it is readily apparent that the number of consumers in the Class and California Sub-Class is so large as to make joinder impracticable, if not impossible. Class and California Sub-Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

**II. Predominance of Common Questions of Law and Fact**

128. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class and California Sub-Class that predominate over questions that may affect individual Class and California Sub-Class members include:

- (a) Whether Post's practices and representations related to the marketing, labeling and sales of Shredded Wheat were unfair, deceptive, fraudulent, and/or unlawful in any respect, thereby violating California law;
- (b) whether Post had a duty to disclose the presence of glyphosate in Shredded Wheat;
- (c) whether Post had a duty to warn about the dangers associated with glyphosate;
- (d) Whether Post failed to warn Plaintiff and Class and California Sub-Class Members of the presence of glyphosate in Shredded Wheat and/or of the health effects of ingesting glyphosate in violation of California law with its practices and representations related to the marketing, labeling, and sale of Shredded Wheat;
- (e) whether Post breached a warranty created through the labeling and marketing of Shredded Wheat;
- (f) Whether Post's conduct as set forth above economically injured Plaintiff and Class and California Sub-Class Members; and
- (g) Whether Plaintiff and Class and California Sub-Class Members are entitled to injunctive relief.

**III. Typicality**

129. Plaintiff Wu's claims are typical of those of the Class and California Sub-Class, as the claims arise from the same course of conduct by Post, and the relief sought within the Class and Sub-Class is common to the Class and Sub-Class members. Plaintiff, like all members of the Class and California Sub-Class, relied on Post's false and misleading representations and purchased Shredded Wheat, or paid more for Shredded Wheat than Plaintiff would have paid if

the products had been properly labeled and sustained injury from Post's wrongful conduct. Further, there are no defenses available to Post that are unique to Plaintiff.

**IV. Adequacy**

130. Plaintiff Wu will fairly and adequately protect the interests of the Class and California Sub-Class. Plaintiff is an adequate representative of the Class and California Sub-Class because his interests do not conflict with the interests of the Class and California Sub-Class members he seeks to represent, and he has retained counsel competent and experienced in both consumer protection and class action litigation. Plaintiff and Plaintiff's counsel will fairly and adequately protect the interests of the members of the Class and California Sub-Class. Undersigned counsel has represented consumers in a wide variety of actions where they have sought to protect consumers from fraudulent and deceptive practices.

**V. Predominance and Superiority of Class Action**

131. The prerequisites to maintaining a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) are met because questions of law and fact common to each Class Member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

132. Individual joinder of the Class and California Sub-Class Members is not practicable, and questions of law and fact common to the Class and California Sub-Class predominate over any questions affecting only individual Class and California Sub-Class Members. Each Class and California Sub-Class Member has been damaged and is entitled to recovery as a result of the violations alleged herein.

133. Moreover, because the damages suffered by individual members of the may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual Class and California Sub-Class Members to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

134. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

## **VI. Declaratory and Injunctive Relief**

Certification also is appropriate under Rule 23(b)(2) because Post acted, or refused to act, on grounds generally applicable to the Class and California Sub-Class, thereby making appropriate the injunctive relief sought on behalf of the Class. Further, given the large number of consumers of Shredded Wheat, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

## **CAUSES OF ACTION**

### **COUNT I**

#### **(Unfair and Deceptive Acts and Practices) On Behalf of the Sub-Class**

135. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, as if fully set forth herein verbatim.

136. This cause of action is brought pursuant to California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the "CLRA").

137. Plaintiff and the Class and California Sub-Class Members are "consumers," as the term is defined by California Civil Code § 1761(d), because they bought the falsely labeled Products for personal, family, or household purposes. Post is a "person" under Cal. Civ. Code § 1761(c).

138. The Products are "goods" under Cal. Civ. Code § 1761(a).

139. Plaintiff, Class Members, California Sub-Class Members, and Post have engaged in "transactions," as that term is defined by California Civil Code §1761(e).

140. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purposes of the CLRA, and the conduct was undertaken by Post in transactions intended to result in, and which did result in, the sale of goods

1 to consumers.

2 141. Post's false and fraudulent representations and omissions have violated, and  
3 continue to violate the CLRA because they extend to transactions that are intended to result, or  
4 have resulted, in the sale of goods to consumers, including Plaintiff and Class and California  
5 Sub-Class Members. Specifically, Post has misrepresented the true nature, quality, and  
6 ingredients of Shredded Wheat and failed to adequately warn of and disclose the presence of  
7 glyphosate in Shredded Wheat and/or the health effects of ingesting glyphosate, thereby  
8 disseminating representations or omissions that are false, deceptive, and likely to mislead a  
9 reasonable consumer, such as Plaintiff and Class and California Sub-Class Members.

10 142. Post misrepresented and/or omitted facts about the presence of glyphosate in  
11 Shredded Wheat and the health effects of ingesting glyphosate, which were and are material to  
12 Plaintiff's and Class and California Sub-Class Members' decisions to purchase Shredded Wheat.

13 143. Post's conduct violates Cal. Civ. Code § 1770(a)(5), which prohibits  
14 "[r]epresenting that goods . . . have . . . characteristics [or] benefits . . . which they do not have,"  
15 and Cal. Civ. Code § 1770(a)(7), which prohibits: "[r]epresenting that goods . . . are of a  
16 particular standard, quality, or grade . . . if they are of another," causing injury to Plaintiff and  
17 Class and California Sub-Class Members.

18 144. As a result of engaging in such conduct, Post has violated California Civil Code §  
19 1770(a)(5), (a)(7), and (a)(9).

20 145. Plaintiff served Post with notice of its CLRA violations by certified mail, return  
21 receipt requested, on June 22, 2016. After the requisite thirty days, if Post has still failed to  
22 provide relief for its CLRA violations, Plaintiff will amend to seek damages.

23 146. Plaintiff and Class and California Sub-Class Members seek preliminary injunctive  
24 relief, and permanent injunctive relief against Post's unfair and deceptive acts and conduct.

25 147. Pursuant to California Civil Code § 1780(a)(2) and (a)(5), Plaintiff seeks an order  
26 of this Court that includes, but is not limited to, an order enjoining Post from continuing to  
27 engage in unlawful, unfair, or fraudulent business practices or any other act prohibited by law.

148. Plaintiff and Class and California Sub-Class Members may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

149. The unfair and deceptive acts and practices of Post, as described above, present a serious threat to Plaintiff and the other members of the Class and California Sub-Class.

150. THEREFORE, Plaintiff prays for relief as set forth below.

**COUNT II**

**(Violations of California's False Advertising Law)  
On Behalf of the Sub-Class**

151. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, as if fully set forth herein verbatim.

152. This cause of action is brought pursuant to California's False Advertising Law (the "FAL"), Cal. Bus. & Prof. Code § 17500 *et seq.*

153. Such acts of Post, as described above, and each of them constitute unlawful, deceptive, and fraudulent business acts and practices.

154. At all material times, Post engaged in a scheme of offering Shredded Wheat for sale to Plaintiff and the other members of the Class and California Sub-Class by way of distributing to the public, *inter alia*, commercial marketing and advertising, the World Wide Web (Internet), the Product packaging and labeling, and other promotional materials and offered for sale Shredded Wheat on a nationwide basis, including in California.

155. The misrepresentations and non-disclosures by Post of the material facts detailed above constitute false and misleading advertising, and therefore constitute a violation of Cal. Bus. & Prof. Code § 17500, *et seq.*

156. Said advertisements and inducements were made nationwide, including within the State of California, and come within the definition of advertising contained in the FAL in that such promotional materials were intended as inducements to purchase Post's Shredded Wheat and are statements disseminated by Post to Plaintiff and Class and California Sub-Class

Members. Post knew, or in the exercise of reasonable care should have known, that these representations were misleading and deceptive.

157. Consumers, including Plaintiff and Class and California Sub-Class Members, necessarily and reasonably relied on these materials concerning Post's Shredded Wheat. Consumers, including Plaintiff and the Class and California Sub-Class members, were among the intended targets of such representations.

158. The above acts of Post did and were likely to deceive reasonable consumers, including Plaintiff and the other members of the Class and California Sub-Class, by obfuscating the nature, quality, and/or ingredients of Shredded Wheat, in violation of the "misleading" prong of the FAL.

159. The business practices alleged above are unlawful under the CLRA, which forbids misleading and deceptive advertising.

160. Plaintiff and the other members of the Class and California Sub-Class have suffered injury in fact and have lost money or property as a result of Post's violations of the FAL.

161. As a result, Post has been unjustly enriched at the expense of Plaintiff and the other members of the Class and California Sub-Class. Plaintiff and the Class and California Sub-Class, pursuant to California Business and Professions Code § 17535, are entitled to an order of this Court enjoining such future conduct on the part of Post, and such other orders and judgments which may be necessary to disgorge Post's ill-gotten gains and restore to any person in interest any money paid for its falsely labeled Shredded Wheat as a result of the wrongful conduct of Post.

162. THEREFORE, Plaintiff prays for relief as set forth below.

**COUNT III**

**(Violation of California's Unfair Competition Law)  
On Behalf of the Sub-Class**

163. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, as if fully set forth herein verbatim.



1           164. This cause of action is brought pursuant to California's Unfair Competition Law  
2 (the "UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*

3           165. By committing the acts and practices alleged herein, Post has engaged in  
4 deceptive, unfair, and unlawful business practices in violation of the UCL.

5           166. Plaintiff has standing to pursue this claim as she has suffered injury in fact and has  
6 lost money or property as a result of Post's actions as set forth above. Class and California Sub-  
7 Class Members also have suffered injury in fact and have lost money or property as a result of  
8 Post's actions as set forth above.

9           167. The violation of any law constitutes an "unlawful" business practice under Cal.  
10 Bus. & Prof. Code § 17200.

11           168. Each of Post's false representations alleged herein violates 21 U.S.C. § 331; Cal.  
12 Civ. Code § 1709; Cal. Civ. Code § 1750 *et seq.*; Cal. Com. Code § 2313; and Cal. Bus. & Prof.  
13 Code § 17500 *et seq.*

14           169. Post has violated the UCL's proscription against engaging in unlawful conduct as  
15 a result of its violations of (i) the CLRA, as alleged above, and (ii) the FAL, as alleged above.

16           170. In addition, Post has violated the UCL's proscription against engaging in unlawful  
17 conduct as a result of its violations of the Sherman Law, Cal. Health & Safety Code § 109875 *et*  
18 *seq.*, which forbids misbranding of any food, *Id.* at § 110398, such as by false or misleading  
19 labeling, *Id.* at § 111730.

20           171. The Sherman Law defines a "person" as "any individual, firm, partnership, trust,  
21 corporation, limited liability company, company, estate, public or private institution, association,  
22 organization, group, city, county, city and county, political subdivision of this state, other  
23 governmental agency within the state, and any representative, agent, or agency of any of the  
24 foregoing." Cal. Health & Safety Code § 109995. Post is a "person" within the meaning of the  
25 Sherman Law.

26           172. As more fully described herein, Post's misleading marketing, advertising,  
27 packaging, and labeling of Shredded Wheat is likely to deceive a reasonable consumer. Indeed,  
28

1 Plaintiff and the other Class and California Sub-Class members were unquestionably deceived  
2 regarding the characteristics of Post's Shredded Wheat, as Post's marketing, advertising,  
3 packaging, and labeling of Shredded Wheat misrepresents and/or omits the true nature, quality,  
4 and/or ingredients of Shredded Wheat.

5 173. There is no benefit to consumers or competition from deceptively marketing and  
6 labeling products. Indeed, the harm to consumers and competition is substantial. Plaintiff and the  
7 other members of the Class and California Sub-Class who purchased the Products suffered a  
8 substantial injury as alleged herein.

9 174. Plaintiff and the other members of the Class and California Sub-Class who  
10 purchased Shredded Wheat had no way of reasonably knowing that the Products they purchased  
11 were not as marketed, advertised, packaged, and labeled. Thus, they could not have reasonably  
12 avoided the injury each of them suffered.

13 175. Post's acts and omissions alleged above constitute unfair business practices under  
14 Cal. Bus. & Prof. Code § 17200 because the gravity of the consequences of Post's conduct as  
15 described above outweighs any justification, motive, or reason therefor, particularly considering  
16 the available legal alternatives which exist in the marketplace, and such conduct is immoral,  
17 unethical, unscrupulous, offends established public policy, or is substantially injurious to Plaintiff  
18 and the other members of the Class and California Sub-Class. Post's false and misleading  
19 representations and omissions also violate legislatively declared policy as they have violated  
20 numerous state and federal laws. Moreover, the gravity of the harm to Plaintiff and Class and  
21 California Sub-Class members resulting from Post's conduct outweighs Post's legitimate reasons,  
22 justifications, and/or motives for engaging in such deceptive acts and practices, if any.

23 176. Each false and misleading representation and omission constitutes fraudulent  
24 business practices under Cal. Bus. & Prof. Code § 17200 because the representations and  
25 omissions were false. Post's representations and deceptive concealment were fraudulent under  
26 the statute because they were misleading and were likely to and did deceive the reasonable  
27 consumer, including Plaintiff and the Class and California Sub-Class Members.

177. Post's violations continue to this day.

178. Pursuant to California Business and Professions Code § 17203, Plaintiff and the other members of the Class and California Sub-Class seek an order of this Court that includes, but is not limited to, an order enjoining such future conduct on the part of Post and such other orders and judgments which may be necessary to disgorge Post's ill-gotten gains and to restore to any person in interest any money paid for Post's falsely labeled Shredded Wheat as a result of the wrongful conduct of Post.

179. THEREFORE, Plaintiff prays for relief as set forth below.

**COUNT IV**

**(Based on Breach of Express Warranty)  
On Behalf of the Class and Sub-Class**

180. Post provided Plaintiff Wu and other members of the Class and California Sub-Class with written express warranties including, but not limited to, warranties that Shredded Wheat is "Natural," "100% Natural," and "100% Natural Whole Grain Wheat."

181. These affirmations of fact or promises by Post relate to the goods and became part of the basis of the bargain.

182. Plaintiff Wu and members of the Class and California Sub-Class purchased Shredded Wheat believing it to conform to the express warranties.

183. Post breached these warranties. This breach resulted in damages to Plaintiff Wu and other members of the Class and California Sub-Class, who bought Shredded Wheat but did not receive the goods as warranted.

184. As a proximate result of the breach of warranties by Post, Plaintiff Wu and the other members of the Class and California Sub-Class did not receive goods as warranted. Plaintiff Wu and the members of the Class and California Sub-Class therefore have been injured and have suffered damages in an amount to be proven at trial. Among other things, Plaintiff and members of the Class and California Sub-Class did not receive the benefit of the bargain and have suffered other injuries as detailed above. Moreover, had Plaintiff Wu and the Class and

California Sub-Class members known the true facts, they would not have purchased Shredded Wheat, or would have purchased Shredded Wheat on different terms.

185. THEREFORE, Plaintiff prays for relief as set forth below.

**COUNT V**

**(Unjust Enrichment)  
On Behalf of the Class and Sub-Class**

186. As a result of Post's deceptive, fraudulent, and misleading labeling, advertising, marketing, and sales of Shredded Wheat, Post was enriched at the expense of Plaintiff Wu and the other members of the Class and California Sub-Class through the payment of the purchase price, or for the payment of a price higher than otherwise would have been paid, for Shredded Wheat.

187. As a result of Post's failure to warn about the presence of glyphosate and about the dangers associated with glyphosate, Post was enriched at the expense of Plaintiff Wu and the other members of the Class and California Sub-Class through the payment of the purchase price, or for the payment of a price higher than otherwise would have been paid, for Shredded Wheat.

188. Under the circumstances, it would be against equity and good conscience to permit Post to retain the ill-gotten benefits that it received from Plaintiff Wu and the other members of the Class and California Sub-Class, in light of the fact that the Shredded Wheat purchased by Plaintiff Wu and the other members of the Class and California Sub-Class were not what Post purported them to be. Thus, it would be unjust or inequitable for Post to retain the benefit without restitution to Plaintiff Wu and the other members of the Class and California Sub-Class for the monies paid to Post for Shredded Wheat.

189. THEREFORE, Plaintiff Wu prays for relief as set forth below.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Wu demands judgment on behalf of himself and the proposed Class and California Sub-Class providing such relief as follows:

A. An order certifying that this action is properly brought and may be maintained as a class action, that Plaintiff be appointed the class representative, and that Plaintiff's counsel be appointed counsel for the Class and California Sub-Class;

B. An order declaring Post's conduct to be in violation of applicable law and enjoining Post from pursuing the unlawful acts and practices alleged herein by adequately disclosing the presence of glyphosate in the Products and of the health effects of ingesting glyphosate;

C. An order requiring Post to engage in a corrective advertising campaign to inform the public concerning the true nature of Shredded Wheat, including a recall of the products;

D. Restitution, disgorgement, refund, and/or other monetary damages, together with costs, disbursements, including reasonable attorneys' fees pursuant to the applicable statutes and prejudgment interest at the maximum rate allowable by law;

E. Restitution to the Class and California Sub-Class pursuant to California Business and Professions Code §§ 17203 and 17535;

F. Disgorgement to the Class and California Sub-Class pursuant to California Business and Professions Code §§ 17203 and 17535;

G. Damages, together with costs and disbursements, including reasonable attorneys' fees, pursuant to the applicable statutes. Plaintiff does not seek, in this Complaint, damages under the CLRA;

H. Monetary damages, including but not limited to any compensatory, incidental, or consequential damages in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law with respect to the claims alleged;

1. Statutory damages in the maximum amount provided by law;

J. Punitive damages in accordance with proof and in an amount consistent with applicable precedent;

K. An award to Plaintiff and Class and California Sub-Class Members of reasonable attorneys' fees and costs; and

1 L. For such other and further relief as may be deemed just, necessary, or proper.

2 **JURY DEMAND**

3 Plaintiff hereby demands a jury trial on all issues so triable.

4 RESPECTFULLY SUBMITTED AND DATED this 22<sup>nd</sup> day of June, 2016.

5  
6 /s/ Michael F. Ram

7 Michael F. Ram

8 RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP

9 *Attorneys for Plaintiff and Proposed Class and*  
10 *California Sub-Class*

# EXHIBIT A





## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Andy Wu

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael F. Ram, SBN #104805 / RAM, OLSON, et. al.  
101 Montgomery Street, Suite 1800, San Francisco, California 94104

## DEFENDANTS

POST FOODS, LLC and POST HOLDINGS, INC.,

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                            |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>SOCIAL SECURITY</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

## VI. CAUSE OF ACTION

Brief description of cause:

CLASS ACTION COMPLAINT

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/22/2016

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE