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**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. 3:16-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 appears to be fair, reasonable, adequate,
17 and within the range of possible approval considering the possible damages at issue and defenses to
18 overcome. The Court also finds that the Settlement Agreement: (a) is the result of serious, informed, non-
19 collusive, arms-length negotiations, involving experienced counsel familiar with the legal and factual issues
20 of this case and made with the assistance and mediation services of Hon. Edward A. Infante (Ret.), Hon.
21 James F. Holderman (Ret.), and Chief Magistrate Judge Joseph C. Spero; and (b) appears to meet all
22 applicable requirements of law, including Federal Rule of Civil Procedure 23, and the Class Action Fairness
23 Act (“CAFA”), 28 U.S.C. § 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.
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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 which are sixty-three (63) calendar days after the Settlement Notice Date. Settlement
19 Class Members may not both object to and exclude themselves from the Settlement. If a Settlement Class
20 Member submits both a Request for Exclusion and an Objection, the Request for Exclusion will be
21 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. The Request for
25 Exclusion must (i) be in writing and mailed; (ii) contain the name of this Action, *Krommenhock v. Post*
26 *Foods, LLC*, No. 5:16-cv-04958-WHO, (iii) contain the full name and address of the Settlement Class
27 Member; (iv) state that the Settlement Class Member wishes to be excluded by the Settlement; and (v) be
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1 signed individually by the Settlement Class Member or his or her attorney. No Request for Exclusion may
2 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 the required date 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 may seek leave from the Court to obtain document
18 discovery from and take depositions of any objecting Settlement Class Member on topics relevant to the
19 Objection.

20 16. If a Settlement Class Member does not submit a written Objection to the Settlement or to
21 Class Counsel's application for attorneys' fees and costs or the Service Awards in accordance with the
22 deadline and procedure set forth in the Notice and this Order, but the Settlement Class Member wishes to
23 be appear and be heard at the Final Approval Hearing, the Settlement Class Member may do so given leave
24 of Court.

25 17. Objecting Settlement Class Members may appear at the Final Approval Hearing and be
26 heard. If an objecting Class Member wants to appear at the Final Approval Hearing, a notice of intention to
27 appear should be filed with the Court.

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, which is
6 sixty-three (63) calendar days after the Settlement Notice Date. Settlement Class Members who do not
7 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

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20 21. Final Approval Hearing. A Final Approval Hearing is scheduled for Wednesday June 23,
21 2021, at 2:00 p.m., for the Court to determine whether the proposed settlement of the Action on the terms
22 and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Settlement
23 Class and should be finally approved by the Court; whether a Judgment should be entered; and to determine
24 any amount of fees, costs, and expenses that should be awarded to Class Counsel and the amount of any
25 service awards to Plaintiffs. The Court reserves the right to adjourn the date of the Final Approval Hearing
26 without 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
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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.

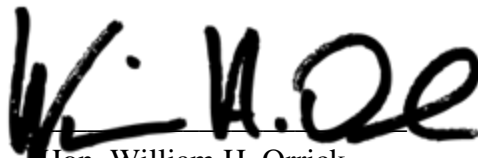
6 23. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement
7 and all proceedings in connection with the Settlement will be without prejudice to the right of Defendant or
8 the Class Representatives to assert any right or position that could have been asserted if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

13 24. No Admission of Liability. By entering this Order, the Court does not make any
14 determination as to the merits of this case. Preliminary approval of the Settlement Agreement is not a finding
15 or admission of liability by Defendant. Furthermore, the Agreement and any and all negotiations,
16 documents, and discussions associated with it will not be deemed or construed to be an admission or
17 evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of
18 any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to the
19 Agreement will not be discoverable or used, directly or indirectly, in any way, whether in this Action or in
20 any other action or proceeding, except for purposes of demonstrating, describing, implementing, or
21 enforcing the terms and conditions of the Agreement, this Order, the Final Approval Order, and the
22 Judgment.

1 25. Retention of Jurisdiction. The Court retains jurisdiction over the Action to consider all further
2 matters arising out of or connected with the Settlement Agreement and the settlement described therein.

3 **IT IS SO ORDERED.**

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5 Dated: February 24, 2021

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7 Hon. William H. Orrick
8 United States District Judge
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