

**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

Product	Amount Per Box
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.

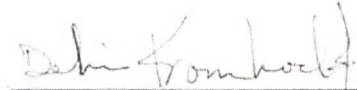
**12.13. Continuing Jurisdiction.** After entry of the Judgment, the Court shall have continuing jurisdiction over the Action solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under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

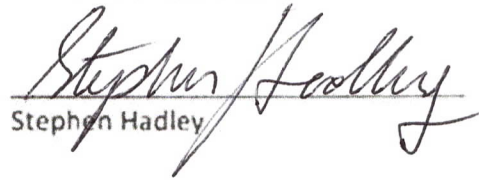
**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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**

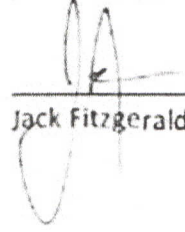
  
\_\_\_\_\_  
Debbie Krommenhock

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.