

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

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

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

Plaintiffs,

v.

POST FOODS, LLC,

Defendant.

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

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

Judge: Hon. William H. Orrick

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.