

**THE RICHMAN LAW GROUP**

Kim E. Richman

[krichman@richmanlawgroup.com](mailto:krichman@richmanlawgroup.com)

81 Prospect Street

Brooklyn, NY 11201

Telephone: (212) 687-8291

Facsimile: (212) 687-8292

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

<p>ROBERT STEPHENSON, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>POST FOODS, LLC and POST HOLDINGS, INC.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.</p> <p><b>CLASS ACTION COMPLAINT</b></p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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Plaintiff Robert Stephenson (“Plaintiff” or “Stephenson”), a resident of New York, individually and on behalf of other similarly situated individuals, by and through his counsel, hereby files this Class Action Complaint for Equitable Relief and Damages, against Defendants Post Holdings, Inc. and its wholly owned subsidiary, Post Foods, LLC (collectively, “Post”) and alleges the following based upon information, belief, and the investigation of his counsel:

1. Post aggressively advertises and promotes Post® Shredded Wheat products (collectively, “Shredded Wheat”)<sup>1</sup> as “100% Natural Whole Grain Wheat” and a “Natural Source of Fiber.” These claims are false, deceptive, and misleading. Shredded Wheat is not “100% Natural,” but instead contains the chemical glyphosate, a potent herbicide that last year was declared a probable human carcinogen by the cancer research arm of the World Health Organization. Glyphosate makes its way into Shredded Wheat not simply because it is used as an

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

agricultural weed killer, but because it is sprayed on the wheat as a drying agent shortly before harvest.

2. There is nothing unlawful about Shredded Wheat's growing and processing methods. What is unlawful is Post's claim that Shredded Wheat is something that it is not in order to capitalize on growing consumer demand for healthful, natural products.

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

### **INTRODUCTION**

4. This is a proposed Class Action Complaint against Post Foods, LLC and its parent, Post Holdings, Inc. (collectively, "Post"), for injunctive relief and economic damages based on misrepresentations and omissions committed by Post regarding its Post® Shredded Wheat products ("Shredded Wheat"), which Post falsely and deceptively labels and markets as "100% Natural Whole Grain Wheat" and a "Natural Source of Fiber." *See* product labels attached as Exhibit 1.

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

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

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

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

9. The only ingredient listed on Post's "100% Natural Whole Grain Wheat" Shredded

Wheat products is “Whole Grain Wheat.” *See* Ex. 1.

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

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

12. Glyphosate is not “Natural” or “100% Natural.” Glyphosate is a synthetic biocide and probable human carcinogen, with additional health dangers rapidly becoming known.

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

14. By deceiving consumers about the nature, quality, and/or ingredients of its Shredded Wheat, Post is able to sell a greater volume of Shredded Wheat, to charge higher prices for Shredded Wheat, and to take away market share from competing products, thereby increasing its own sales and profits.

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

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

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

June 22, 2016).

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

19. When a product purports to be “100% Natural,” consumers not only are willing to pay more for the product, they expect it to be pesticide-free.

20. Post’s false and misleading representations, failure to warn, and omissions of fact violate New York General Business Law (“GBL”) §§ 349-50 and common law.

21. Plaintiff is not seeking damages for any personal injuries in this Complaint; rather, this case is based on Post’s misrepresentations and omissions regarding the Shredded Wheat Products purchased by Plaintiff and Class Members during the class period, defined below.<sup>2</sup>

22. Accordingly, Plaintiff Stephenson seeks relief equal to the aggregate retail purchase price paid by Plaintiff and Class Members during the Class Period, because the products are worthless and useless due to Post’s misrepresentations regarding the true nature, quality, and ingredients of Shredded Wheat and its failure to warn consumers of the presence of glyphosate and the harmful effects of ingesting glyphosate.

23. Plaintiff Stephenson brings this action to stop Post’s deceptive and misleading practices.

#### **JURISDICTION AND VENUE**

24. This Court has original subject-matter jurisdiction over this proposed class action pursuant to 28 U.S.C. § 1332(d), which under the provisions of the Class Action Fairness Act (“CAFA”), explicitly provides for the original jurisdiction of the federal courts in any class action in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum

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

of \$5,000,000.00, exclusive of interest and costs. Stephenson is a citizen of New York, and on information and belief, defendant Post is a citizen of Delaware and Missouri. On information and belief, the amount in controversy exceeds \$5,000,000.00.

25. This Court has personal jurisdiction over the parties in this case. Plaintiff Stephenson is a citizen of New York and resident of Ridgewood, Queens County, New York. Post purposefully avails itself of the laws of New York to market Shredded Wheat to consumers nationwide, including consumers in New York, and distributes Shredded Wheat to numerous retailers throughout the United States, including New York.

26. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the nature, quality, and/or ingredients of Shredded Wheat, occurred within this District.

#### **PARTIES**

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

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

29. At all times mentioned herein, Plaintiff Stephenson was and is an individual consumer over the age of 18, a citizen of the State of New York, and a resident of the County of Queens. During the class period, Plaintiff Stephenson purchased Shredded Wheat (specifically, Post Shredded Wheat Original Big Biscuit cereal and Post Shredded Wheat Original Spoon Size

cereal) on multiple occasions at a Rite Aid store located on Fresh Pond Road in Ridgewood, New York and a Stop and Shop supermarket located on Myrtle Avenue in Glendale, New York.

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

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

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

33. Had Stephenson been warned of the dangers of ingesting glyphosate, and of the presence of glyphosate in the Shredded Wheat, he would not have purchased 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, Stephenson 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.

**A. 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.

Post Holdings 2015 Annual Report at 25.

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

41. Post presents itself as an expert source of information on whole grains, touting their nutritional and health benefits. Post's website directs consumers to "Get even more expert nutrition and health information by browsing the topics below," which include "Fiber & Whole Grains," "Diet & Exercise," and "Heart Health." <http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health> (last visited June 22, 2016).

42. Post also promotes the health benefits of its products, stating, “Making 100% whole grain Post Shredded Wheat part of your regular diet, at breakfast or any other meal, is just one way to choose a healthier lifestyle.” <http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health> (last visited June 22, 2016).

43. Post’s website advises consumers that including Shredded Wheat in a person’s “regular diet” is “one way to choose a healthier lifestyle.” <http://postfoods.com/our-brands/post-shredded-wheat/zero-in-on-health> (last visited June 22, 2016).

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

45. Post also states, on the front label of its Shredded Wheat Original Big Biscuit product: “9 out of 10 doctors recommend Post Shredded Wheat to help reduce the risk of heart disease.”

46. According to Post, Shredded Wheat “has always been a heart-healthy choice.” *Id.* (last visited June 22, 2016).

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

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

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

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

50. 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."

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

52. Representing that a product is "Natural," "100% Natural," or "100% Natural Whole Grain Wheat" is a statement of fact.

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

54. Consumers reasonably believe that a product labeled "Natural" or "100% Natural" does not contain synthetic ingredients.

55. Consumers reasonably believe that a product labeled "Natural" or "100% Natural" does not contain pesticides.

56. 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 June 22, 2016).

57. 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." Eighty-six percent of respondents said that a "natural" label on packaged and processed foods should mean that "no toxic pesticides were used." *See Id.*

58. 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.

59. 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.

60. 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.

**C. Glyphosate: The Unnatural Hidden Substance**

61. Post's representations that Shredded Wheat is "Natural," "100% Natural," or "100% Natural Whole Grain Wheat" are false. In fact, quantitative testing reveals that Shredded Wheat contains glyphosate.

62. 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.

63. 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>

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

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

66. Glyphosate was invented by the agrochemical and agricultural biotechnology corporation Monsanto, which began marketing the herbicide in 1974 under the trade name

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<sup>3</sup> *See* <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm064919.htm> (last visited June 22, 2016).

Roundup, after DDT was banned.<sup>4</sup>

67. 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>

68. 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.

69. Between 1996 and 2011, herbicide use in the United States *increased* by 527 million pounds, despite Monsanto's claims that genetically modified crops would *reduce* pesticide and herbicide use.<sup>7</sup>

70. 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>8</sup> The IARC study noted such carcinogenic risk factors as DNA damage to human cells resulting from exposure to glyphosate. *See id.* Glyphosate has been previously found to be a suspected human endocrine disruptor, with estrogenic effects even at

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<sup>4</sup> See <https://www.organicconsumers.org/news/monsantos-roundup-enough-make-you-sick> (last visited June 22, 2016).

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

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

<sup>7</sup> *See id.*

<sup>8</sup> Available at <http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045%2815%2970134-8/abstract> (last visited June 22, 2016).

extremely low concentrations.<sup>9</sup>

71. In November 2015, the European Food Safety Agency published conclusions suggesting that the combined use of glyphosate with other chemicals posed greater potential health risks than when glyphosate is used alone. In light of those conclusions, in April 2016, following a review of products containing glyphosate and tallowamine, France's health and safety agency announced its intention to ban weed-killers that combine the two chemicals.<sup>10</sup>

72. Glyphosate, as a biocide, functions by disrupting the shikimate pathway.<sup>11</sup> Although humans themselves do not have a shikimate pathway, the shikimate pathway is present in bacteria, including bacteria that inhabit the human gut and are essential to proper immune functioning. Glyphosate thus is suspected to disrupt human immune function as well.

73. Studies examining low doses of glyphosate-based herbicides at levels that are generally considered "safe" for humans show that these compounds can nevertheless cause liver and kidney damage.<sup>12</sup>

74. Glyphosate is derived from the amino acid glycine. To create glyphosate, one of

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<sup>9</sup> See Thongprakaisang, S. *et al.*, "Glyphosate induces human breast cancer cells growth via estrogen receptors," 59 *Food & Chem. Toxicol.* 129 (June 2013), *abstract available at* <http://www.ncbi.nlm.nih.gov/pubmed/23756170> (last visited June 22, 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, 2009), *abstract available at* <http://www.ncbi.nlm.nih.gov/pubmed/19539684> (last visited June 22, 2016).

<sup>10</sup> See "France to Ban Some Glyphosate Weedkillers Amid Health Concerns," Reuters, Apr. 8, 2016, available at <http://www.reuters.com/article/us-france-glyphosate-idUSKCN0X512S> (last visited June 22, 2016).

<sup>11</sup> See, *e.g.*, Heike, H. & N. Amrhein, "The Site of the Inhibition of the Shikimate Pathway by Glyphosate," *Plant Physiol.* 66:823 (1980), *available at* <http://www.plantphysiol.org/content/66/5/823.full.pdf> (last visited June 22, 2016); *see also* <http://www.glyphosate.eu/glyphosate-mechanism-action> (last visited June 22, 2016).

<sup>12</sup> Myers, J. *et al.*, "Concerns over use of glyphosate-based herbicides and risks associated with exposures: a consensus statement," *Environ. Health* 2016 15:19, available at <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-016-0117-0> (last visited June 22, 2016). *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 June 22, 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 June 22, 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 visited June 22, 2016).

the hydrogen atoms in glycine is artificially replaced with a phosphonomethyl group.

75. Glyphosate is not “Natural.”

76. Glyphosate is neither “100% Natural” nor present in “100% Natural Whole Grain Wheat.”

77. On information and belief, glyphosate 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.

78. Glyphosate is a dangerous substance, the presence and dangers of which should be disclosed.

**D. Post’s Misleading Labeling and Omissions**

79. 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.

80. 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.

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

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

83. 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.

84. 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.

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

**E. Post's Knowledge That Its Representations Were False**

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

87. 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.

88. 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.

**F. Post's Intention That Consumers Rely on Its Misrepresentations**

89. 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.

90. In making the false, misleading, and deceptive representations and omissions at

issue, Post knew and intended that consumers would purchase the Shredded Wheat when consumers would otherwise purchase a competing product.

91. Consumers are not only willing to pay more for a product that purports to be “100% Natural,” they expect that product to be pesticide-free.

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

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

94. Similarly, independent surveys confirm that consumers will purchase more “Natural” products than conventional products, and will pay more for “Natural” products.

**G. Consumers’ Reasonable Reliance on Post’s Misrepresentations**

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

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

97. These misrepresentations and omissions were uniform and were communicated to Plaintiff Stephenson and every other member of the Class at every point of purchase and

consumption.

98. Plaintiff Stephenson and the Class members were among the intended recipients of Post's deceptive representations and omissions.

99. Plaintiff Stephenson and the Class members reasonably relied to their detriment on Post's misleading representations and omissions.

100. Post's false, misleading, and deceptive misrepresentations and omissions deceived and misled, and are likely to continue to deceive and mislead, Plaintiff Stephenson, the Class members, reasonable consumers, and the general public.

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

102. Post made the deceptive representations and omissions with the intent to induce Plaintiff Stephenson and the Class members to purchase Shredded Wheat. Plaintiff Stephenson's and the Class members' reliance upon such representations and omissions may be presumed.

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

#### **H. Post's Conduct and Plaintiff's and the Class Members' Injury**

104. As an immediate, direct, and proximate result of Post's false, misleading, and deceptive representations and omissions, Post injured Plaintiff Stephenson and the Class members in that they:

- a. paid a sum of money for a product that was falsely represented;



- b. paid a sum of money for a product containing glyphosate, of which they received 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 (or caused their children to ingest) a substance that was other than what was represented;
- h. ingested (or caused their children to ingest) a substance they did not expect or consent to;
- i. ingested (or caused their children to ingest) a product that included an unnatural substance;
- j. without their knowing consent, ingested (or caused their children to ingest) a biocide that is harmful to their health or their children's health;
- k. without their knowing consent, ingested (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 (or caused their children to ingest) a substance that poses health or environmental risks;
- m. without their knowing consent, ingested (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 (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 (or caused their children to ingest);
  - p. were caused unwittingly to support an industry that contributes to environmental, ecological, or 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.

105. 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 Stephenson and the Class members would not have been injured as listed above. Accordingly, Plaintiff Stephenson and the Class members have suffered “injury in fact” as a result of Post’s wrongful conduct.

106. Plaintiff Stephenson 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 Stephenson 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 Stephenson and the Class members have suffered “injury in fact” and lost money or property as a result of Post’s wrongful conduct.

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

107. 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.

108. 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.

109. 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 Stephenson and the Class members. As a direct and proximate result of its deception, Post also unfairly obtained other benefits, including the higher value associated with a "natural" brand, redirecting sales to it and away from its competitors, and increased sales of its other products.

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

111. Post has profited by failing to warn consumers of the presence of glyphosate in Shredded Wheat or of the health effects of consuming glyphosate.

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

113. Plaintiff Stephenson would continue to purchase Shredded Wheat again in the future if it were reformulated so that it did not contain glyphosate.

114. Post has failed to provide adequate relief to Plaintiff Stephenson or Class Members as of the date of filing this Complaint.

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

116. Reasonable consumers do not expect products advertised as "Natural," "100% Natural," and "100% Natural Whole Grain Wheat" to contain unnatural ingredients such as glyphosate. Defendants' statements and other representations convey a series of express and

implied claims and/or omissions which Defendants know are material to the reasonable consumer in making a purchasing decision, and which Defendants intended for consumers to rely upon when choosing to purchase Shredded Wheat.

117. Defendants misrepresented the nature, quality, and/or ingredients of Shredded Wheat, and/or failed to adequately disclose the health risks of ingesting the glyphosate contained in Shredded Wheat, which was and is false, misleading, and/or likely to deceive reasonable consumers. Reasonable consumers expect the presence of such ingredients to be disclosed so that they can make informed purchasing decisions.

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

119. Accordingly, Plaintiff Stephenson seeks, individually and on behalf of all other similarly situated purchasers of Shredded Wheat during the Class Period, injunctive relief, and actual economic damages equaling the aggregate purchase price paid for Shredded Wheat by Plaintiff Stephenson and Class Members during the Class Period.

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

#### **CLASS ALLEGATIONS**

121. Plaintiff Stephenson re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

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

123. The class definition(s) may depend on the information obtained throughout

discovery. Notwithstanding, at this time, Plaintiff Stephenson brings this action and seeks certification of the claims and certain issues in this action on behalf of a Class of individuals defined as:

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

124. Additionally, Plaintiff Stephenson brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all other similarly situated New York residents (the “New York Sub-Class”), defined as follows:

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

125. Excluded from the Class and the New York Sub-Class are (1) Defendants, any entity or division in which Defendants have 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.

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

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

128. All members of the Class and New York 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 New York Sub-Class.

**A. Numerosity**

129. At this time, Plaintiff Stephenson does not know the exact number of the Class and

New York 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 New York Sub-Class is so large as to make joinder impracticable, if not impossible. Class and New York 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.

**B. Common Questions of Law and Fact Predominate**

130. 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 New York Sub-Class that predominate over questions that may affect individual Class and New York 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 New York 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 New York Sub-Class Members of the presence of glyphosate in Shredded Wheat and/or of the health effects of ingesting glyphosate in violation of New York 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 New York Sub-Class Members; and
- (g) Whether Plaintiff and New York Sub-Class Members are entitled to injunctive relief.

**C. Typicality**

131. Plaintiff Stephenson's claims are typical of those of the Class and New York Sub-Class, as the claims arise from the same course of conduct by Defendants, and the relief sought within the Class and New York Sub-Class is common to the Class and New York Sub-Class members. Plaintiff Stephenson, like all members of the Class and New York Sub-Class, relied on Defendants' false and misleading representations and purchased Shredded Wheat, or paid more for Shredded Wheat than Plaintiff Stephenson would have paid if the products had been properly labeled, and sustained injury from Defendants' wrongful conduct. Further, there are no defenses available to Defendants that are unique to Plaintiff.

**D. Adequacy**

132. Plaintiff Stephenson will fairly and adequately protect the interests of the Class and New York Sub-Class. Plaintiff is an adequate representative of the Class and New York Sub-Class because his interests do not conflict with the interests of the Class and New York Sub-Class members he seeks to represent, and he has retained counsel competent and experienced in both consumer protection and class action litigation. Plaintiff Stephenson and his counsel will fairly and adequately protect the interests of the members of the Class and New York 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.

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

133. 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 and New York Sub-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.

134. Individual joinder of the Class and New York Sub-Class Members is not practicable, and questions of law and fact common to the Class and New York Sub-Class

predominate over any questions affecting only individual Class and New York Sub-Class Members. Each Class and New York Sub-Class Member has been damaged and is entitled to recovery as a result of the violations alleged herein.

135. Moreover, because the damages suffered by individual members of the Class and New York Sub-Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual Class and New York 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.

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

**F. Declaratory and Injunctive Relief**

137. Certification also is appropriate under Rule 23(b)(2) because Defendants acted, or refused to act, on grounds generally applicable to the Class and New York Sub-Class, thereby making appropriate the injunctive relief sought on behalf of the Class and New York Sub-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**

**(Violation of New York General Business Law § 349: Mislabeling)  
On Behalf of the Class and New York Sub-Class**

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

139. Post has labeled its Shredded Wheat products as “Natural” and “100% Natural Whole Grain Wheat,” has indicated that Shredded Wheat’s ingredients are limited to “whole grain



wheat,” and has otherwise presented an image and marketing materials suggesting that the products contain nothing other than whole-grain wheat, when in fact the products contain glyphosate, an unnatural biocide.

140. Post has violated, and continues to violate, § 349 of the New York General Business Law, which makes deceptive acts and practices unlawful. As a direct and proximate result of Post’s violation of § 349, Plaintiff Stephenson and other members of the Class and New York Sub-Class have suffered damages in an amount to be determined at trial.

141. Pursuant to New York General Business Law § 349, Plaintiff Stephenson seeks an order of this Court that includes, but is not limited to, enjoining Post from continuing to engage in unlawful, unfair, or fraudulent business practices or any other act prohibited by law.

142. Plaintiff Stephenson and the other members of the Class and New York Sub-Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

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

144. THEREFORE, Plaintiff Stephenson prays for relief as set forth below.

## **COUNT II**

### **(Violation of the New York General Business Law § 349: Failure to Warn) On Behalf of the Class and New York Sub-Class**

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

146. Post has indicated that its Shredded Wheat contains only “100% Natural Whole Grain Wheat,” has failed to warn that Shredded Wheat in fact contains glyphosate, and has failed to warn consumers of the dangers associated with glyphosate.

147. Post has violated, and continues to violate, § 349 of the New York General Business

Law, which makes deceptive acts and practices unlawful. As a direct and proximate result of Post's violation of § 349, Plaintiff Stephenson and other members of the Class and New York Sub-Class have suffered damages in an amount to be determined at trial.

148. Pursuant to New York General Business Law § 349, Plaintiff Stephenson seeks an order of this Court that includes, but is not limited to, enjoining Post from continuing to engage in unlawful, unfair, or fraudulent business practices or any other act prohibited by law.

149. Plaintiff Stephenson and the other members of the Class and New York Sub-Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

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

151. THEREFORE, Plaintiff Stephenson prays for relief as set forth below.

**COUNT III**

**(Violation of the New York General Business Law § 350)  
On Behalf of the Class and New York Sub-Class**

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

153. New York General Business Law § 350 provides: "False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful."

154. GBL § 350-a defines "false advertising," in relevant part, as "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect."

155. Plaintiff and the members of the Class and New York Sub-Class are consumers who purchased Shredded Wheat in New York.

156. As sellers of goods to the consuming public, Post is engaged in the conduct of

business, trade, or commerce within the intended ambit of GBL § 350.

157. Post's representations made by statement, word, design, device, sound, or any combination thereof, and also the extent to which Post's advertising fails to reveal material facts with respect to Shredded Wheat, as described above, constitute false advertising in violation of the New York General Business Law.

158. Post's false advertising was knowing and intentional.

159. Post's actions led to direct, foreseeable, and proximate injury to Plaintiff Stephenson and the Class and New York Sub-Class.

160. As a consequence of Post's deceptive marketing scheme, Plaintiff Stephenson and the other members of the Class and New York Sub-Class suffered an ascertainable loss, insofar as they would not have purchased Shredded Wheat had the truth been known, or would have purchased Shredded Wheat on different terms, and as a result of Post's conduct, they received a product of less value than what they paid for.

161. By reason of the foregoing, Post is liable to Plaintiff Stephenson and the other members of the Class and New York Sub-Class for actual damages or five hundred dollars (\$500) for each sale of Shredded Wheat (whichever is greater), injunctive relief, attorneys' fees, and the costs of this suit.

162. Plaintiff Stephenson and the other members of the Class and New York Sub-Class further seek to enjoin the false advertising described above.

163. Absent injunctive relief, Post will continue to deceptively market Shredded Wheat.

164. THEREFORE, Plaintiff Stephenson prays for relief as set forth below.

#### **COUNT IV**

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

165. Post provided Plaintiff Stephenson and other members of the Class and New York 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.”

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

167. Plaintiff Stephenson and members of the Class and New York Sub-Class purchased Shredded Wheat believing it to conform to the express warranties.

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

169. As a proximate result of the breach of warranties by Post, Plaintiff Stephenson and the other members of the Class and New York Sub-Class did not receive goods as warranted. Plaintiff Stephenson and the members of the Class and New York 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 New York Sub-Class did not receive the benefit of the bargain and have suffered other injuries as detailed above. Moreover, had Plaintiff Stephenson and the Class and New York Sub-Class members known the true facts, they would not have purchased Shredded Wheat, or would have purchased Shredded Wheat on different terms.

170. THEREFORE, Plaintiff Stephenson prays for relief as set forth below.

**COUNT V**

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

171. 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 Stephenson and the other members of the Class and New York 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.

172. 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 Stephenson and the other members of the Class and New York 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.

173. 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 Stephenson and the other members of the Class and New York Sub-Class, in light of the fact that the Shredded Wheat purchased by Plaintiff Stephenson and the other members of the Class and New York 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 Stephenson and the other members of the Class and New York Sub-Class for the monies paid to Post for Shredded Wheat.

174. THEREFORE, Plaintiff Stephenson prays for relief as set forth below.

**PRAYER FOR RELIEF**

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

A. Certification of the Class and New York Sub-Class proposed herein under Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3); appointment of Plaintiff Stephenson as representative of the Class and New York Sub-Class; and appointment of his undersigned counsel as counsel for the Class and New York Sub-Class;

B. A declaration that Post is financially responsible for notifying members of the Class and New York Sub-Class of the pendency of this suit;

C. An order requiring an accounting for, and imposition of a constructive trust upon, all monies received by Post as a result of the unfair, misleading, fraudulent, and unlawful conduct alleged herein;

D. Restitution, disgorgement, refund, and/or other monetary damages, together with

costs and disbursements, including reasonable attorneys' fees pursuant to the applicable statutes and prejudgment interest at the maximum rate allowable by law;

E. Injunctive relief pursuant to New York General Business Law § 349 and common law, enjoining Post's unlawful and deceptive acts;

F. Injunctive relief and statutory or actual damages pursuant to New York General Business Law § 350;

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

H. Such further relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff Stephenson hereby demands a trial by jury.

DATED: June 22, 2016

**THE RICHMAN LAW GROUP**



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Kim E. Richman  
krichman@richmanlawgroup.com  
81 Prospect Street  
Brooklyn, NY 11201  
Telephone: (212) 687-8291  
Facsimile: (212) 687-8292

*Attorneys for Plaintiff and Proposed Classes*

# EXHIBIT I

