179. In around October 2015, Post introduced the packaging pictured below.

180. The packaging of Post Honey Bunches of Oats Cereal – With Vanilla Bunches has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

   a. “Our Post Promise | No High Fructose Corn Syrup”
   b. “Heart Healthy”
   c. Depictions of heart in circle
   d. “a Touch of Honey!”
   e. “A delicious wholesome start to your day!”
   f. “4 Wholesome Grains”
   g. Whole Grains Council Stamp
7. **With Apples & Cinnamon Bunches**

181. Post introduced *Post Honey Bunches of Oats Cereal – With Apples & Cinnamon Bunches* in around September 2014. Its initial packaging is pictured below.

![](image1)

182. In around October 2015, Post introduced the packaging pictured below.

![](image2)
183. The packaging of *Post Honey Bunches of Oats Cereal – With Apples & Cinnamon Bunches* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. “Our Post Promise | No High Fructose Corn Syrup”

b. Whole Grains Council Stamp

8. **With Real Strawberries**

184. The packaging of *Post Honey Bunches of Oats Cereal – With Real Strawberries* that was in use when the class period began is pictured below.

185. In around November 2012, Post introduced the packaging pictured below.
186. In around December 2014, Post introduced the packaging pictured below.

187. In around October 2015, Post introduced the packaging pictured below.
188. The packaging of *Post Honey Bunches of Oats Cereal – With Real Strawberries* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. “Our Post Promise | No High Fructose Corn Syrup”

b. “Heart Healthy”

c. Depictions of heart in circle

d. “a Touch of Honey!”

e. “A delicious wholesome start to your day!”

f. “4 Wholesome Grains”

g. Whole Grains Council Stamp

9. **Fruit Blends – Banana Blueberry**

189. The packaging of *Post Honey Bunches of Oats Cereal – Fruit Blends – Banana*...
Blueberry that was in use when the class period began is pictured below.

190. In around March 2013, Post introduced the packaging pictured below.
191. The packaging of Post Honey Bunches of Oats Cereal – Fruit Blends – Blueberry has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:
   
a. “Our Post Promise | No High Fructose Corn Syrup”
   b. “Heart Healthy”
   c. Depictions of heart in circle
   d. “a Touch of Honey!”
   e. “A delicious wholesome start to your day!”
   f. “4 Wholesome Grains”
   g. Whole Grains Council Stamp

10. Fruit Blends – Peach Raspberry

192. The packaging of Post Honey Bunches of Oats Cereal – Fruit Blends – Peach Raspberry that was in use when the class period began is pictured below.
193. In around March 2013, Post introduced the packaging pictured below.

194. The packaging of Post Honey Bunches of Oats Cereal – Fruit Blends – Peach Raspberry has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:
   a. “Our Post Promise | No High Fructose Corn Syrup”
   b. “Heart Healthy”
   c. Depictions of heart in circle
   d. “a Touch of Honey!”
   e. “A delicious wholesome start to your day!”
   f. “4 Wholesome Grains”
   g. Whole Grains Council Stamp

11. Tropical Blends – Mango Coconut

196. In around March 2013, Post introduced the packaging pictured below.

197. The packaging of Post Honey Bunches of Oats Cereal – Tropical Blends – Mango Coconut has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:
a. “Our Post Promise | No High Fructose Corn Syrup”

b. “a Touch of Honey!”

c. “4 Wholesome Grains”

d. Whole Grains Council Stamp

12. **Whole Grain Honey Crunch**

   198. Post introduced *Post Honey Bunches of Oats Cereal – Whole Grain Honey Crunch* in around September 2014. The product’s packaging is pictured below.

   ![Image of Post Honey Bunches of Oats Cereal – Whole Grain Honey Crunch packaging]

   199. The packaging of *Post Honey Bunches of Oats Cereal – Whole Grain Honey Crunch* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

   a. “Our Post Promise | No High Fructose Corn Syrup”

   b. Heart design in “I” in “Whole Grain” name.

   c. “WHOLE GRAINS” – good for your **family**, good for your **health**, good
for you.”

d. “Honey Bunches of Oats Whole Grain Cereal has it all. . . . Fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. **Rich in nutrients:** Honey Bunches of Oats Whole Grain Cereal is rich in nutrients . . . important for moms-to-be and growing children. . . . Whole grains are an important part of a balanced diet, but on average, Americans eat less than 1 serving of whole grains per day.”

e. “Staring your day with a bowl of Honey Bunches of Oats Whole Grain Cereal is a smart step toward eating a balanced diet.”

f. Whole Grains Council Stamp

13. **Whole Grain with Vanilla Bunches**

200. Post introduced *Post Honey Bunches of Oats Cereal – Whole Grain with Vanilla Bunches* in around September 2014. The product’s packaging is pictured below.

![Image of cereal packaging]

201. The packaging of *Post Honey Bunches of Oats Cereal – Whole Grain With Vanilla Bunches* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:
a. “Our Post Promise | No High Fructose Corn Syrup”

b. Heart design in “I” in “Whole Grain” name.

c. “WHOLE GRAINS – good for your family, good for your health, good for you.”

d. “Honey Bunches of Oats Whole Grain Cereal has it all. . . . Fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. Rich in nutrients: Honey Bunches of Oats Whole Grain Cereal is rich in nutrients . . . important for moms-to-be and growing children. . . . Whole grains are an important part of a balanced diet, but on average, Americans eat less than 1 serving of whole grains per day.”

e. “Starting your day with a bowl of Honey Bunches of Oats Whole Grain Cereal is a smart step toward eating a balanced diet.”

f. Whole Grains Council Stamp

14. Greek Honey Crunch

Post introduced *Post Honey Bunches of Oats Cereal – Greek Honey Crunch* in around March 2013. The product’s packaging is pictured below.
203. The packaging of *Post Honey Bunches of Oats Cereal – Greek Honey Crunch* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

   a. “Our Post Promise | No High Fructose Corn Syrup”
   b. “a touch of wildflower honey”
   c. “WHOLESOME NUTRITION”
   d. “GOODNESS AND TASTE IN EVERY BOWL”
   e. Whole Grains Council Stamp

15. **Greek Mixed Berry**

204. Post introduced *Post Honey Bunches of Oats Cereal – Whole Grain Honey Crunch* in around March 2013. The product’s packaging is pictured below.
205. The packaging of Post Honey Bunches of Oats Cereal – Greek Mixed Berry has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. “Our Post Promise | No High Fructose Corn Syrup”

b. “a touch of wildflower honey”

c. “WHOLESOME NUTRITION”

d. “GOODNESS AND TASTE IN EVERY BOWL”

e. Whole Grains Council Stamp

16. Granola – Honey Roasted

206. Post introduced Post Honey Bunches of Oats Granola – Honey Roasted in around March 2013. The product’s packaging is pictured below.

207. The packaging of Post Honey Bunches of Oats Granola – Honey Roasted has made at least the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. “[I]t’s the perfect combination of wholesome goodness and honey-sweet
crunch that everyone in your entire family will love.”

b. Whole Grains Council Stamp

17. **Granola – Raspberry & Cinnamon**

208. The packaging of *Post Honey Bunches of Oats Granola – Raspberry and Cinnamon* are pictured below.
209. The packaging of *Post Honey Bunches of Oats Granola – Raspberry and Cinnamon* have made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the products are healthy:
   a. “[I]t’s the perfect combination of wholesome goodness and honey-sweet crunch that everyone in your entire family will love.”
   b. Whole Grains Council Stamp

18. **Protein Granola with Dark Chocolate**

210. The packaging of *Post Honey Bunches of Oats Protein Granola with Dark Chocolate* is depicted below.

![](image)

211. The packaging of *Post Honey Bunches of Oats Protein Granola with Dark Chocolate and Cinnamon* has made at least the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:
   a. “HELPS FUEL YOUR BODY WITH SUSTAINED ENERGY”
   b. “just a touch of wildflower honey”
   c. Whole Grains Council Stamp

C. **Post Shredded Wheat Cereal**

1. **Honey Nut**

212. The packaging of *Post Shredded Wheat Honey Nut* that was in use when the class period began is pictured below.
213. In around November 2012, Post introduced the packaging pictured below.
214. In around March 2017, Post introduced the packaging pictured below.

215. The packaging of Post Shredded Wheat Honey Nut has made at least the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

   a. “May Help Reduce the Risk of Heart Disease” and depiction of heart.

   b. “AN INGREDIENT LIST THAT IS SO GOOD, WE HAVE NOTHING TO HIDE.”

   c. “Wouldn’t it be great if it were easy to understand what is in your food? With Post Shredded Wheat, it’s easy to be confident with your breakfast choice. It is made with nothing but goodness, so go ahead and enjoy a bowl.”

   d. “We make it easy to understand what is in your food—we start with the goodness of whole grain wheat.”

   e. “We make it easy to understand what is in your food—it’s just the
wholesome goodness of whole grain wheat.’’

f. “Our flavor comes from 100% whole grain wheat, honey, almonds, molasses and real sugar. That means vitamin and mineral fortified Post Shredded Wheat Honey Nut contains no High fructose corn syrup or artificial ingredients.”

g. “No Sugar* [ ] Added: Our flavor comes from 100% whole grain wheat, nothing else. That means Post Shredded Wheat . . . has 0 grams of sugars per serving.”

h. “Natural source of fiber.”

i. “Bite-sized health tip.”

j. “Post Shredded Wheat is one of the simple things you can do to feel good each day.”

k. “THE BISCUIT OF BENEFITS / Post Shredded Wheat Honey Nut is made with 100% whole grain wheat, for a natural source of fiber. . . . So what does this mean in terms of health benefits for you? They are so plentiful, the cereal could be renamed Biscuit of Benefits!”

l. “Heart Health”

m. “Digestive Health: Diets rich in fiber have many benefits and are important for maintaining digestive health.”

n. “Reduced Cancer Risk”

o. Whole Grains Council Stamp

2. **Crunch!**

Post introduced *Post Shredded Wheat Crunch!* in around September 2014. The product’s packaging is pictured below.
217. The packaging of *Post Shredded Wheat Crunch!* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. “POST SHREDDED WHEAT CRUNCH MAY HELP REDUCE THE RISK OF HEART DISEASE”

b. “Post Shredded Wheat CRUNCH combines bite sized 100% natural whole grain wheat with granola cluster crunch for delicious heart healthy satisfaction. GOODNESS YOU CAN TASTE!”

c. Whole Grains Council Stamp

D. Post Single Cereals

1. *Raisin Bran*

218. The packaging of *Post Raisin Bran* that was in use when the class period began is pictured below.
219. In around January 2013, Post introduced the packaging pictured below.
220. In around March 2015, Post introduced the packaging pictured below.

221. In around January 2017, Post introduced the packaging pictured below.
222. The packaging of *Post Raisin Bran* has made at least the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

   a. “contains NO HIGH FRUCTOSE Corn Syrup”
   b. “No High Fructose Corn Syrup”
   c. “Healthy”
   d. “Nutritious”
   e. “Where nutritious and delicious live in harmony”
   f. “NATURAL ADVANTAGE”
   g. “Fiber is good for digestive health”
   h. Whole Grains Council Stamp

2. **Bran Flakes**

223. The packaging of *Post Bran Flakes* is depicted below.
224. The packaging of *Post Bran Flakes* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. “DIETARY FIBER TO HELP MAINTAIN DIGESTIVE HEALTH”

b. “Contains no high fructose corn syrup”

c. “THE IMPORTANCE OF WHOLE GRAIN AND FIBER”

d. “WHOLE GRAINS FOR YOUR HEALTHY LIFESTYLE”

e. “Whole grains provide fiber and other important nutrients to help keep you healthy.”

f. “Getting enough fiber in your diet helps naturally regulate your digestive system. Choose a diet rich in a variety of fiber containing foods such as whole grain cereals, breads, and pastas and fruits and vegetables.”

g. “FIBER TO HELP WITH WEIGHT MANAGEMENT”

h. “Experts recommend diets rich in fiber to help keep you satisfied while you exercise and cut calories to lose weight. Diets rich in fiber are usually lower in calories and larger in volume than low fiber diets, and require more chewing which helps promote a feeling of fullness and satisfaction after eating.”

i. Whole Grains Council Stamp

3. *Alpha-Bits*


226. In around July 2012, Post entered into a deal to use characters from a PBS Kids show, *Super Why,* on the product’s packaging. The packaging of *Post Alpha-Bits* that was in use when the class period started is pictured below.
227. In around December 2016, Post introduced the packaging pictured below.
228. The packaging of *Post Alpha-Bits* has made at least the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

   a. “NO HIGH FRUCTOSE CORN SYRUP”
   b. “ALPHA-BITS IS A GOOD SOURCE OF NUTRIENTS THAT ARE BUILDING BLOCKS FOR YOUR CHILD’S DEVELOPING BRAIN”
   c. “Makes a Smart Snack!”
   d. Whole Grains Council Stamp

4. *Honeycomb*

229. The packaging of *Post Honeycomb* that was in use when the class period began is pictured below.

230. In around December 2012, Post introduced the packaging pictured below.
231. The packaging of Post Honey-Comb has made the following labeling claims, through at least around January of 2017, suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

   a. “Nutritious” (in “Nutritious Sweetened Corn & Oat Cereal”)

   b. “Why Vitamin D? – Many kids are not getting enough Vitamin D; - Important for a growing child’s health needs; - Promotes healthy bones and teeth by helping the body absorb calcium”

   c. “Each Serving Helps Start the Day in a HEALTHY Way”

   d. Whole Grains Council Stamp

5. Waffle Crisp

232. The packaging of Post Waffle Crisp is pictured below.
233. The packaging of Post Waffle Crisp has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. “NO HIGH FRUCTOSE CORN SYRUP!”
b. “Iron & Zinc for Growth”

POST’S UNLAWFUL ACTS AND PRACTICES

A. Post Marketed and Continues to Market its Cereals with Health and Wellness Claims that are Deceptive in Light of the Cereals’ High Sugar Content

1. Post Affirmatively Misrepresents that Some High-Sugar Cereals are “Healthy,” “Nutritious,” or “Wholesome”

234. Consumers interpret the words “nutritious” and “wholesome” to mean the same thing as, or to be euphemisms for, “healthy.”
235. In using these words in the manner described herein, Post also intends consumers to interpret “nutritious” and “wholesome” to mean healthy.

236. Although in some cases, Post’s labeling claims for its cereals are suggestive that they are healthy, in other cases, Post directly represents this is true by calling at least the following cereals “healthy,” “nutritious,” or “wholesome”:

a. *Post Great Grains Blueberry Morning* (“Less processed nutrition you can see,” “nutritious Blueberries,” and “nutritious fruits and nuts”)

b. *Post Great Grains Cranberry Almond Crunch* (“Less processed nutrition you can see,” “nutritious Cranberries,” “wholesome Almonds,” “nutritious fruits and nuts,” and “nutritious ingredients in every bite!”)

c. *Post Great Grains Banana Nut Crunch* (“Less processed nutrition you can see,” “wholesome Walnuts,” “wholesome Almonds,” “nutritious fruits and nuts,” “wholesome walnuts and almonds,” and “nutritious ingredients in every bite!”)

d. *Post Great Grains Raisins, Dates & Pecans* (“Less processed nutrition you can see,” “wholesome Pecans,” “naturally nutritious Raisins & Dates,” “We gently steam, roll and bake our whole grains to help maintain the full flavor and nutrition of our flakes,” “nutritious fruits and nuts,” and “nutritious ingredients in every bite!”)

e. *Post Great Grains Crunchy Pecans* (“Less processed nutrition you can see,” “wholesome Pecans,” “We gently steam, roll and bake our whole grains to help maintain the full flavor and nutrition of our flakes,” “nutritious fruits and nuts,” and “nutritious ingredients in every bite!”)

f. *Post Great Grains Blueberry Pomegranate* (“Less processed nutrition you can see,” “nutritious Blueberries,” “We gently steam, roll and bake our whole grains to help maintain the full flavor and nutrition of our flakes,” “nutritious fruits and nuts,” and “nutritious ingredients in every bite!”)

g. *Post Great Grains Protein Blend: Honey, Oats & Seeds* (“HELPS SUPPORT A HEALTHY METABOLISM,” “wholesome Almonds,” “nutritious Pumpkin Seeds,” “nutritious nuts and seeds,” “nutritious ingredients in every bite!”)
and “the less processed whole grain nutrition of Great Grains Protein Blend”

h. *Post Great Grains Protein Blend: Cinnamon Hazelnut* ("HELPS SUPPORT A HEALTHY METABOLISM,” “wholesome Almonds,” “nutritious Hazelnuts,” “nutritious nuts,” “wholesome hazelnuts, almonds, and multi grain clusters,” “nutritious ingredients in every bite!,” and “the less processed whole grain nutrition of Great Grains Protein Blend”)

i. *Post Honey Bunches of Oats – Honey Roasted, With Almonds, Raisin Medley, With Pecan Bunches, With Cinnamon Bunches, With Vanilla Bunches, With Real Strawberries, Fruit Blends – Banana Blueberry, Fruit Blends – Peach Raspberry (“Heart Healthy,” heart depictions, “4 Wholesome Grains,” and “A delicious, wholesome start to your day!”)

j. *Post Honey Bunches of Oats – Tropical Blends – Mango Coconut* ("4 Wholesome Grains")

k. *Post Honey Bunches of Oats – Whole Grain Honey Crunch and Whole Grain with Vanilla Bunches* (Heart design in “I” in “Whole Grain” name, “good for your family, good for your health, good for you,” “important to help maintain digestive health,” and “rich in nutrients.”)

l. *Post Honey Bunches of Oats – Greek Honey Crunch and Greek Mixed Berry* ("WHOLESOME NUTRITION")

m. *Post Honey Bunches of Oats Granola – Honey Roasted, Raspberry, and Cinnamon* ("wholesome goodness")

n. *Post Shredded Wheat Honey Nut* ("Bite-sized health tip,” “Heart Health,” “May Help Reduce the Risk of Heart Disease,” “Digestive Health,” “important for maintaining digestive health,” “what does that mean in terms of health benefits for you? They are so plentiful, the cereal could be renamed Biscuit of Benefits!”)

o. *Post Shredded Wheat Crunch!* ("heart healthy")

p. *Post Raisin Bran* ("Healthy,” “Nutritious,” “Where nutritious and delicious live in harmony,” and “good for digestive health")
q. *Post Bran Flakes* ("HELP MAINTAIN DIGESTIVE HEALTH," "FOR YOUR HEALTHY LIFESTYLE," and "important nutrients to help keep you healthy")

r. *Honey-Comb* ("Promotes healthy bones and teeth" and "Helps Start the Day in a HEALTHY Way")

237. Statements that these cereals are "healthy," “nutritious,” and “wholesome” are false, or at least highly misleading, because, due to their high added sugar content, consumption of these cereals is decidedly unhealthy, and the consequences of consuming the products—increased risk for, and in some cases contraction of chronic disease—are incompatible with Post’s representations that the cereals are “healthy,” “nutritious,” and “wholesome.”

2. **Post Affirmatively Misrepresents that Consuming Some of its High-Sugar Cereals Will Promote Bodily Health, Prevention of Disease, or Weight Loss**

238. In some cases, Post falsely represents that its high-sugar cereals are effective in promoting bodily health and preventing disease.

239. Post employs such a misleading tactic with respect to its *Post Great Grains Protein Blend: Honey, Oats & Seeds* and *Cinnamon Hazelnut* cereals, expressly and affirmatively representing that consumption of the cereals will promote weight loss. Specifically, Post states:

> “The process of metabolism establishes the rate at which we burn our calories and, ultimately, how quickly we gain weight or how easily we lose it. Although some factors affecting metabolic rate, like age and genetics can’t be changed, there are ways to maximize your metabolism.” **Breakfast:** Eat breakfast. . . . Start your day with the less processed whole grain nutrition of Great Grains Protein Blend to help jumpstart your metabolism. **Protein:** Eat protein. Did you know that protein generally requires about 25% more energy to digest? Because protein takes longer to breakdown than fat and carbohydrate, the body uses more energy to digest protein and this helps you burn more calories. . . . Great Grains Blend can actually help enhance your metabolism! [. . .] **Fiber:** Consume fiber. Diets rich in fiber help keep you fuller longer which is important for weight management. Great Grains Protein Blend can help keep you satisfied with the staying power of an excellent source of fiber.”
240. Post’s representation that consumption of *Post Great Grains Protein Blend: Honey, Oats & Seeds* and *Cinnamon Hazelnut* cereals will promote weight loss is false, or at least highly misleading because the cereals contain 9g of added sugar per serving, accounting for approximately 16% of the products’ calories—which is more than 300% the AHA’s recommended maximum of 5% of calories from added sugar. Moreover, a single serving of *Post Great Grains Protein Blend: Honey, Oats & Seeds* or *Cinnamon Hazelnut* cereal accounts for more than 23% of men’s, and 36% of women’s maximum AHA-recommended daily added sugar intake.

241. For these reasons, regular consumption of *Post Great Grains Protein Blend: Honey, Oats & Seeds* or *Cinnamon Hazelnut* cereals is highly likely to contribute to excess added sugar consumption, and thereby increased risk for, and actual contraction of, chronic disease, substantially harming both the human digestive system and overall human health.

242. Moreover, because of the products’ high added sugar content, their consumption is likely to promote weight gain, not weight loss.

243. Post makes a similar misrepresentation with respect to its *Bran Flakes* cereal, stating “FIBER TO HELP WITH WEIGHT MANAGEMENT,” and explaining that “Experts recommend diets rich in fiber to help keep you satisfied while you exercise and cut calories to lose weight.” Similar to Post’s *Great Grain Protein Blend* cereals, however, 20% of *Bran Flakes*’ calories come from its added sugar, such that it is likely to contribute to weight gain, not weight loss.

244. In several cases, Post misrepresents that certain cereals are heart healthy, including various *Honey Bunches of Oats* and *Shredded Wheat* varities.

3. **Even When Not Stating So Expressly, Post Strongly Suggests Its High-Sugar Cereals are Healthy**

245. Besides direct, express claims that some of its cereals are “healthy,” “nutritious,” and “wholesome,” Post also conveys this same idea through suggestion.
a. Post Touts Its High-Sugar Cereals’ Whole Grain, Fiber, and “Real” Ingredient Content to Distract From Their High Added Sugar Content

246. A major strategy Post employs is “calling out” the supposedly beneficial aspects of its cereals, and particularly their whole (or multi) grain, fiber, or “real” ingredient content.

247. In emphasizing the supposedly beneficial nutrients or other aspects of its cereals, Post necessarily and intentionally also de-emphasizes, hides, obscures, and otherwise omits material information regarding the products’ detrimental nutrient content, and specifically their high added sugar content.

b. Post Leverages a Deceptive Industry “Certification” Program—the Whole Grains Council Stamp—to Make its High-Sugar Cereals Seem Healthy

248. Many of Post’s cereals bear a stamp of the Whole Grains Council like that pictured below.

249. The Whole Grains Council was formed in 2003 and holds itself out as a purported “nonprofit consumer advocacy group.”91

250. Its membership, however, is comprised not of consumers or their advocates, but primarily of hundreds of food manufacturers, like Cargill, ConAgra, Domino’s Pizza, Frito-Lay, General Mills, Heinz, Hostess, Kellogg, Kraft, McDonald’s, Nestle, Quaker, Smucker, and of course, Post.

251. The Whole Grain’s Council stamp is frequently misused by food manufacturer-

91 See http://wholegrainscouncil.org/about-us
members—including by Post in this case—to bolster claims that foods are supposedly healthy, by suggesting that an independent, perhaps governmental authority has determined a food is healthy or otherwise sanctioned its health and wellness claims.

252. In order to use a Whole Grains Council Stamp, though, a food need only contain a minimum of 8g whole grain, and there are no disqualifying criteria. Accordingly, high-sugar foods can, and frequently do display the Whole Grains Council Stamp.

253. This is true of many of Post’s cereals, and the use of the stamp is deceptive because it implies independent verification that the cereals are healthy, despite that the Whole Grains Council is an industry group, and that Post’s cereals contain such high amounts of added sugar that they remain unhealthy choices notwithstanding their whole grain content.

c. In Representing that Many of Its High-Sugar Cereals Contain “No High Fructose Corn Syrup,” Post Leverages Consumer Confusion to Obscure the Dangers of the Added Sugar in its Cereals

254. Post has capitalized on consumer aversion toward high fructose corn syrup by touting the absence of that ingredient, deceptively suggesting that its cereals are healthier because HFCS is absent.

255. This strategy leverages consumer confusion over the relative dangers of different forms of sugar, inasmuch as many consumers incorrectly believe that HFCS is a substantially more dangerous form of added sugar than other forms.

256. Some consumers also incorrectly believe there are “healthy” forms of added sugar, for example honey, “cane sugar,” or “natural” sugars. Conversely, many consumers are not even aware that some more obscure ingredients are added sugars, such as Evaporated Cane Juice (the use of which the FDA has said is deceptive), Glycerin, and fruit and fruit juice “concentrates.” Many consumers also have no idea what invert sugar is, or that it is sucrose that has been broken into free glucose and free fructose, and thus is extremely similar to HFCS, despite that it is used in several Post cereals.

257. In reality, added sugar in virtually any form contains toxic fructose, and thus has essentially the same detrimental health effects, with typically only minor differences in the
ratio of fructose to glucose in a given form of added sugar. Thus, even if literally true, Post’s “no high fructose corn syrup” representations are highly misleading.

d. Post Falsely Markets Some of Its High-Sugar Cereals as “Simple,” “Whole Foods” that Are “Less Processed”

258. To capitalize on increasing consumer preference for fresh, unprocessed, “whole” foods, Post affirmatively misrepresents that several of its cereals have this characteristic.

259. Specifically, Post represents that its Great Grains Blueberry Morning, Cranberry Almond Crunch, Banana Nut Crunch, Raisins, Dates & Pecans, Crunchy Pecans, and Blueberry Pomegranate cereals are “Less processed nutrition you can see,” explaining, “Why less processed? Quite simply, because it’s good for you!”

260. Post similarly represents its Great Grains Protein Blend: Honey, Oats & Seeds cereal is “less processed whole grain nutrition,” while its Great Grains Protein Blend: Cinnamon Hazelnut is both “less processed whole grain nutrition,” and “less processed whole grain cereal,” with Post stating, “Why less processed? Quite simply because it’s good for you!”

261. Most of these Great Grains cereals’ packaging also states, “It’s whole foods from the field to your bowl.”

262. These statements are false or at least highly misleading. First, Post Great Grains cereals containing blueberries are sweetened with invert sugar and glycerin, two highly-processed forms of added sugar, while all Great Grains cereals are sweetened with sugar and brown sugar, and sometimes glycerin or juice concentrates, which are also highly-processed sweeteners.

263. Second, because these statements suggest Great Grains cereals are healthy food options, the statements are false, or at least highly misleading, due to the cereals’ high added sugar content.

e. Post Deceptively Omits, Intentionally Distracts From, and Otherwise Downplays the Cereals’ High Added Sugar Content

264. In marketing its cereals with health and wellness claims, Post regularly and
intentionally omits material information regarding the amount and dangers of the added sugars in its products. Post is under a duty to disclose this information to consumers because (a) Post is revealing *some* information about its products—enough to suggest they are healthy—without revealing additional material information, (b) Post’s deceptive omissions concern human health, and specifically the detrimental health consequences of consuming its products, (c) Post was, and is, in a superior position to know of the dangers presented by the sugars in its cereals, as it is a global food company whose business depends upon food science and policy, and (d) Post actively concealed material facts not known to plaintiff and the class.

265. Moreover, in marketing its cereals, Post regularly affirmatively uses certain words and phrases to falsely suggest their sugar content is low.

266. For example, Post’s representation that many varieties of *Honey Bunches of Oats Cereal* contain just “a Touch of Honey!” are false and misleading, where the products contain as much as 12g of sugar per serving (*Post Honey Bunches of Oats Cereal – With Vanilla Bunches*), and the added sugar generally accounts for 20% or more of the products’ calories, since reasonable consumers would expect a cereal supposedly sweetened with just a “touch” of honey to be relatively low in sugar.

267. These claims are false and misleading because the products’ added sugar content is high, not low. Such statements are likely to confuse even consumers aware of health issues regarding sugar, because they suggest any such health issues, in any event, do not pertain to these cereals sweetened with only a “touch” or “kiss” of honey.

4. **Post Immorally Markets Some High-Sugar Cereals to Children, Who Are the Most Vulnerable to the Dangers of Excess Added Sugar Consumption**

268. Post markets some of its cereals either directly to children, or to parents, as *for* their children. In some cases, these cereals are among the highest in sugar that Post offers.

269. For example, Post markets *Honey-Comb* cereal by stating that “Many kids are not getting enough Vitamin D,” and representing that the cereal’s Vitamin D content is “Important for a grown child’s health needs,” and “Promotes healthy bones and teeth by helping the body absorb calcium.”
270. Similarly, Post markets *Waffle Crisp* using a cartoon waffle mascot, and by
representing that it contains “Iron & Zinc for Growth.”

271. Post markets *Alpha-Bits* using characters from a popular PBS Kids cartoon
show, and by representing that it contains “NUTRIENTS THAT ARE BUILDING BLOCKS
FOR YOUR CHILD’S DEVELOPING BRAIN.”

272. At 6g per serving, the added sugar in *Alpha-Bits* cereal accounts for 20% of the
product’s weight and calories, 400% of the AHA’s recommended maximum of 5% of calories
from sugar, and 40-50% of children’s AHA-recommended maximum daily added sugar
intake of 12-15g per day.

273. At 10g per serving, the added sugar in *Honey-Comb* cereal accounts for more
than 31% of the product by weight, more than 30% of its calories, and up to 83% of children’s
AHA-recommended maximum daily added sugar intake.

274. At 12g per serving, the added sugar in *Waffle Crisp* accounts for 40% of the
product’s eight and calories, and up to 100% of children’s AHA-recommended maximum
daily added sugar intake.

275. These statements were malicious, immoral, and oppressive because there are
currently obesity and type 2 diabetes epidemics among American children, who are thus
among the most vulnerable to misleading health and wellness marketing that results in
substantially increased added sugar consumption.

276. Marketing high-sugar cereals to children, or for children’s consumption, is itself
an unfair and immoral business practice, but it is especially harmful when the marketing
suggests the high-sugar cereals are healthy options for children.

277. Thus, marketing *Honey-Comb* cereal as a healthy option for children to promote
bone and teeth health—even if true, which is dubious—while obscuring the detrimental effect
of the cereal’s consumption in promoting obesity, metabolic disease, cardiovascular disease,
and other morbidity, is immoral, malicious, and oppressive.

278. Likewise, marketing other high-sugar children’s cereals, like *Waffle Crisp*, with
false and misleading health and wellness claims, is immoral, malicious, and oppressive.
5. **Post Egregiously Markets Some High-Sugar Cereals to Children Even Though They Contain Artificial Trans Fat**

279. In one case, Post even markets a high-sugar cereal to children despite that it also contains artificial trans fat, a substance so deadly that the FDA has banned it with a phase-out deadline of 2018. These claims are false and misleading because, in addition to the health dangers of consuming the products’ high sugar content, artificial trans fat is the single worst nutrient (the only nutrient worse than sugar) in terms of its effect on bodily health, and particularly heart health.

280. Specifically, Post markets its *Waffle Crisp* cereal with a cartoon waffle mascot, representing that it contains “Iron & Zinc for Growth.” But *Waffle Crisp* also contains 12g of sugar, accounting for 40% of the cereal by weight, and 40% of its calories, and contributing between 80% and 100% of children’s AHA-recommended daily maximum added sugar intake. In addition, *Waffle Crisp* is made with partially hydrogenated vegetable oil containing toxic artificial trans fat.

281. As noted above, there are obesity and type 2 diabetes epidemics among American children currently, rendering them most vulnerable to false advertising that has the effect of promoting sugar and artificial trans fat consumption.

282. Marketing such an unhealthy food to children or for their consumption, and especially through the use of claims that suggest the cereal is a healthy choice, is immoral, malicious, oppressive, and egregious.

6. **Post Knows or Reasonably Should Know of the Strong Scientific Evidence Demonstrating Its High-Sugar Cereals are Unhealthy to Consume But Fails to Warn Consumers of the Known Dangers of Consuming Its High-Sugar Cereals**

283. As a longtime and major national food manufacturer, Post is well-positioned to know the most current food science. Moreover, the issue of added sugar has gained increasing prominence over the past decade.

284. Post maintains on its website a page titled “Post Nutrition Pledge,” in which it
demonstrates it is aware of concerns regarding sugar, for example stating that it has “been steadily decreasing the sugar in all our varieties of sweetened cereals for years now.”[^92] Even if literally true, however, any such reduction has been minuscule.

285. For example, scientific evidence of the dangers of sugar was available to Post as a result of its membership in the Whole Grains Council. For example, the Whole Grains Counsel website notes Harvard research finding that replacing sugar with whole grains lowers heart disease risk.[^93]

286. Despite knowing of the dangers of the added sugar in its cereals, Post failed to adequately warn consumers, but instead induced them to consume the Post cereals through affirmative health and wellness misrepresentations that also distracted consumers from the dangers presented by the Post cereals.

7. Post Violates FDA and State Food Labeling Regulations

287. Several of Post’s cereals contain statements that violate FDA food labeling regulations, which have been adopted as California’s labeling regulations pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875 et seq. (the “Sherman Law”). See id. § 110665 (“Any food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulations adopted pursuant thereto.”).

a. In Violation of State and Federal Regulations, Post’s Health and Wellness Statements are False, Misleading, and Incomplete

288. Post’s health and wellness statements challenged herein were false and misleading for the reasons described herein, in violation of 21 U.S.C. § 343(a), which deems misbranded any food whose “label is false or misleading in any particular.” Post accordingly also violated California’s parallel provision of the Sherman Law. See Cal. Health & Safety


Code § 110660.

289. Post’s health and wellness statements challenged herein also “fail[ed] to reveal facts that are material in light of other representations made or suggested by the statement[s], word[s], design[s], device[s], or any combination thereof,” in violation of 21 C.F.R. § 1.21(a)(1). Such facts include the detrimental health consequences of consuming added sugars in amounts present in the challenged products.

290. Post similarly failed to reveal facts that were “[m]aterial with respect to the consequences which may result from use of the article under” both “[t]he conditions prescribed in such labeling,” and “such conditions of use as are customary or usual,” in violation of § 1.21(a)(2). Namely, Post failed to disclose the increased risk of serious chronic disease likely to result from the usual consumption of its cereals in the customary manner.

291. Post’s implied and express health claims challenged herein also violate 21 C.F.R. §§ 101.14(d)(2)(ii), (iii) & (e) because, for the reasons discussed herein, the claims are not “complete, truthful, and not misleading,” and many of the claims—like “heart healthy”—are not “limited to describing the value that ingestion (or reduced ingestion) of the substance, as part of a total dietary pattern, may have on a particular disease or health-related condition.”

292. On packaging of Shredded Wheat Honey Nut that was in use for some time, Post also falsely stated that the product contained “No Added [ ] Sugar,” and “0 grams of sugars per serving,” in violation of 21 C.F.R. § 101.13.

b. Post Violates Additional Regulations Governing Health Claims

293. A health claim “expressly or by implication . . . characterizes the relationship of any substance to a disease or health-related condition.” 21 C.F.R. § 101.14(a)(1). Foods may not contain such claims “unless: (1) The claim is specifically provided for in subpart E of this part; and (2) The claim conforms to all general provisions of this section as well as to all specific provisions in the appropriate section of subpart E of this part,” id. § 101.14(e).

294. Post’s cereals contain health claims in violation of § 101.14(e), as follows:

a. Honey Bunches of Oats – Honey Roasted, With Almonds, Raisin Medley,
With Pecan Bunches, With Vanilla Bunches, Fruit Blends – Banana Blueberry, Fruit Blends – Peach Raspberry (“Heart Healthy” with depiction of heart in circle);

b. Shredded Wheat – Honey Nut (“Heart Health,” “May Help Reduce the Risk of Heart Disease” along with depiction of heart, “Reduced Cancer Risk,” and “Digestive Health: Diets rich in fiber . . . are important for maintaining digestive health.”);

c. Shredded Wheat – Crunch! (“POST SHREDDED WHEAT CRUNCH MAY HELP REDUCE THE RISK OF HEART DISEASE,” and “heart healthy”);

d. Great Grains Protein Blend: Honey, Oats & Seeds & Cinnamon Hazelnut (“Diets rich in fiber help keep you fuller longer which is important for weight management.”);

e. Honey Bunches of Oats – Whole Grain Honey Crunch and Whole Grain with Vanilla Bunches (Heart design in “I” in “Whole Grain” name, and “Fiber . . . is important to help maintain digestive health.”);

f. Raisin Bran (“Fiber is good for digestive health.”);

g. Bran Flakes (“DIETARY FIBER TO HELP MAINTAIN DIGESTIVE HEALTH,” “FIBER TO HELP WITH WEIGHT MANAGEMENT,” and “Experts recommend diets rich in fiber to help keep you satisfied while you exercise and cut calories to lose weight.”).

295. Furthermore, Post’s statements that Post Great Grains Protein Blend: Honey, Oats & Seeds and Cinnamon Hazelnut will “help you burn more calories” and “enhance your metabolism,” because “protein generally requires about 25% more energy to digest” (as well as related statements suggesting eating the product will “increase your metabolism by 10%,” or otherwise representing the product will promote weight loss) are also unlawful, in violation of FDA and corresponding California food labeling regulations. Because metabolism and weight are “disease or health-related conditions,” and there is no protein-based health claim connected to weight loss or metabolism prescribed under Subpart E of title 21 of the Code of Federal Regulations, Post’s labeling of Post Great Grains Protein Blend: Honey, Oats & Seeds and Cinnamon Hazelnut is unlawful, in violation of FDA and corresponding California food labeling regulations.
Seeds and Cinnamon Hazelnut violates 21 C.F.R. § 101.14, and corresponding California law, rendering the product misbranded.

296. The statements set forth above associating fiber with weight loss or digestive health on Great Grains Protein Blend: Honey, Oats & Seeds & Cinnamon Hazelnut, Honey Bunches of Oats – Whole Grain Honey Crunch and Whole Grain with Vanilla Bunches, and Bran Flakes are unlawful for similar reasons.

297. The use of the term “Heart Healthy,” with depiction of heart in circle, on various Honey Bunches of Oats products violates § 101.14(e) because the statements are not permitted under Subpart E. And because the statements are made in connection with health claims permitted under the FDAMA, § 101.14(d)(2) does not allow Post to make claims, other than the health claim permitted under the FDAMA, even if such other claims are “related” and would be allowed for a health claim authorized under Subpart E instead of under the FDAMA.

298. The same is true for “heart healthy” statements and depictions of hearts on Honey Bunches of Oats – Whole Grain and Shredded Wheat cereals.

B. Post Used its Website, as Referenced on Some Labels, and Other Online Fora, to Spread Misinformation about the Dangers of Consuming the Added Sugar in its Cereals

299. The side panel of Post’s cereals invites consumers to “visit [Post] at: postfoods.com” (the “Post Website”).

300. Post uses the Post Website to further its deceptive marketing of high-sugar cereals as healthy.

301. For example, the Post Website states that one of Post’s “VALUE[S]” IS “Nourishing Goodness,” which according to Post means, “[w]e craft our products with careful attention to goodness. Start your day with us and nourish your body with whole, grains, protein, vitamins and minerals.” This statement appears adjacent to a photograph of a woman eating a bowl of Post Great Grains Crunchy Pecans.
302. Other “VALUE[S]” Post represents it has include:

   a. VALUE # 2 - “Goodness on Purpose” with Post stating, “We take great care to use wholesome ingredients to help you take great care of your whole family.”

   b. VALUE # 4 – “No HFCS, Ever”

   c. VALUE # 6 – “Something for Everyone,” with Post stating, “there’s a Post cereal for every taste and nutritional need to keep everyone in your family happy and healthy.”

   d. VALUE #7 – “The Best Nature has to Offer,” with Post stating, “We are committed to understanding and utilizing the highest quality of ingredients in order to nourish you and your family.”

303. The Post Webpage includes a purported “Nutrition Pledge,” wherein Post states, “We Pledge to Help you Start Each Day Right,” because “Post Foods was established on the principle that good nutrition can change the way we feel, look, and perform.”

304. Post further claims that:

   Helping you be healthy each day is rewarding for us and it’s in our roots. Post Foods was literally created to enhance health. . . . Over the years, we’ve learned
even more about the health benefits of a diet rich in grains. Eating grains – particularly whole grains – can help you meet your daily nutrient needs and provides broad-reaching health benefits. **Whole grains are an important source of many nutrients, including dietary fiber, several B vitamins, minerals, and natural antioxidants.** Peer-reviewed scientific studies show major health problems, from heart disease and obesity to diabetes and cancer, occur less frequently with a diet rich in whole grains. So, today, we know the benefits of what C.W. Post created reach far beyond digestive health.

305. Post further claims it “believe[s] whole grains are an essential component of a healthy lifestyle,” but also “believe[s] that sugar in moderation brings fun to breakfast.”

306. These statements, both alone, and in combination with Post’s other advertising, mislead consumers into believe that Post’s cereals are healthy and the supposed “moderate” amount of sugar in them is not concerning.

307. The Post Website also includes a link to a page titled “**Our Brands,**” which includes pictures of “Post’s Family of cereals,” and allows a browser to click on each cereal for more information about it.

308. Post uses each cereal’s dedicated webpage to further its false and misleading health and wellness messaging, as follows:

a. **Post Alpha-Bits:** Underneath the heading “Enriching from A to Z,” Post claims “Alpha-Bits is a trusted source of essential vitamins and minerals that your child needs, including vitamin A, iron and zinc!” Lower on the same page, Post claims, “It’s an excellent source of vitamin, and has added nutrients like iron and zinc that help support healthy brain development. Alpha-Bits also provides 20g of whole grain (per 30g serving), and 12 essential vitamins and minerals that growing kids need!”
(i.) After clicking the “VIEW NUTRITION INFO” link, Post makes the following additional health and wellness claims:

(A) “Alpha-Bits is fortified with nutrients that growing kids need”

(B) “Did You Know? Alpha-Bits has: • Iron and zinc help to support healthy brain development • 20g whole grain per 30g serving* • Excellent source of vitamin D and iron • 12 essential vitamins and minerals • No artificial flavors • Contains nutrients that support healthy brain development”

(C) “Post® Alpha-Bits® cereal is fortified with nutrients that help support healthy brain development in children. Iron helps deliver oxygen to the brain & body. Zinc helps brain & body cells grow and develop. Choline helps the brain send messages.”
(ii.) After clicking the “Our Story” link for Post Alpha-Bits, Post continues its deceptive marketing strategy under the heading “The Alpha-Bit Story: Wholesome From A to Z,” by claiming that “For decades, Post Alpha-Bits has remained a trusted brand with its great-tasting, whole grain oat and corn cereal pieces, nutrients to support healthy brain development and the alphabet fun that kids and mom L-O-V-E.” “In fact, the Alpha-Bits on shelves today has a more nutritious formula that the original cereal that launched more than 50 years ago. The cereal has 20 grams of whole grain, only 6 grams of sugar and 12 essential vitamins and minerals. Alpha Bits cereal is a great way for growing children to start their day.”
b. **Post Golden Crisp:** After clicking the “VIEW NUTRITION INFO” link on the *Post Golden Crisp* webpage, Post claims “Golden Crisp isn’t just sweet to eat. It also has good stuff, like essential vitamins and minerals,” and asks “Did You Know? Golden Crisp Has: ● 10 essential vitamins and minerals ● Excellent source of six B vitamins ● Excellent source of vitamin D ● Good source of iron and zinc ● Fat- and cholesterol-free.”

c. **Post Great Grains:** Prominently featured on the *Post Great Grains* webpage is a large banner depicting a bowl of the cereal, next to the claim, “Nutrition You Can See,” underneath which Post claims, “You can’t argue with nutrition you can see. Great Grains starts whole and stays whole, so you know you’re eating better nutrition,” with a clickable button inviting consumers to “See the Difference.” Clicking “See the Difference” sends the browser a page which furthers Post’s health and wellness messaging by touting *Post Great Grains* as “Less-Processed Nutrition,” “Quite simply because it’s good for you!,” and contains “nutritious fruit, nuts and/or seeds” “balance[d] . . . with . . . grains,” for a “less processed whole grain cereal that’s high in natural fiber.” At the bottom of this page is a variety of *Post Great Grains* nutrition information. These “Nutrition” pages for each variety including further claims; for example, on the “Nutrition” page for Post Great Grains Cranberry Almond Crunch, Post asks “Did You Know? Great Grains Cranberry Almond Crunch has: ●
35g of whole grain per serving** • 24% of your Daily Value for fiber (6g of fiber per serving) • 0g saturated fat, 0g trans fat and 0mg cholesterol per serving • 14 vitamins and minerals • Excellent source of antioxidant vitamins C and E . . . • 9g Protein with milk”

d. **Post Honey Bunches of Oats:** The Post Honey Bunches of Oats webpage similarly continues Post’s deceptive health and wellness messaging. Prominently displayed on the page is a large banner stating that “Honey Bunches of Oats Whole Grain Varieties” contain “2/3 of your day’s whole grain.”
(i.) Clicking on the “Our Story” link brings a browser to a video that touts Post Honey Bunches of Oats as “WHOLE Some,” overlaid on a field of grain.

(ii.) The “Nutrition” links for each variety continue this messaging with claims such as “Heart Healthy (0g trans fat, 0g saturated fat, 0mg cholesterol per serving) • 2/3 of your day’s whole grain (32g per serving); whole grains are an important part of a balanced diet, but on average, Americans eat less than 1
serving of whole grains per day. ● Good source of fiber (5g per serving); fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. ● 12 essential vitamins and minerals; including iron and folic acid which are important for moms-to-be and growing children.”

e. **Post Honeycomb:** The “Nutrition” link on the Post Honeycomb webpage asks, “Did You Know? Honeycomb cereal has: 8g of whole grain per serving ● Excellent source of vitamin D ● Low in fat and cholesterol-free ● 10 essential vitamins and minerals.”

f. **Post Bran Flakes:** Prominently displayed on the Post Bran Flakes page is a banner claiming the product will “Improve Your Digestive Health,” because “Post Bran Flakes is an excellent source of fiber, which aids digestion. When you feel good inside, you feel better all over.” Post further describes Post Bran Flakes as “a wholesome breakfast choice for the whole family, made with whole grain wheat and wheat bran. Each serving provides 16g of whole grain, 5g of fiber and 13 essential vitamin and minerals.” The “Nutrition” link on the Post Bran Flakes webpage continues this health messaging by claiming that “Post Bran Flakes is an excellent source of fiber, which is good for your digestive health,” and asking “Did You Know
Post Bran Flakes has: 16g of whole grain per serving* • 20% of your Daily Value for fiber (5g of fiber per serving) • Low in fat and cholesterol-free • 13 vitamins and minerals.”

g. **Post Raisin Bran:** Prominently displayed on the Post Raisin Bran webpage is a banner with the large claim, “No High-Fructose Corn Syrup” underneath which is the further claim, that “As part of Post’s commitment to goodness, we don’t use high-fructose corn syrup in Post Raisin Bran – or any of our products.” Below that Post asks “Have you ever wondered: How is Raisin Bran Naturally Delicious?,” answering, “Post Raisin Bran has hundreds of 100% Sun-Maid® California Raisins in every box, and is made with whole grain wheat and wheat bran for delicious nutrition. It provides 23g of whole grain (per serving), provides 13 essential vitamins and minerals, and 32% of your Daily Value for fiber (8g per serving).”
h. **Post Shredded Wheat:** Upon arriving at the *Post Shredded Wheat* webpage, consumers are greeted by a large banner depicting a bowl of Post Shredded Wheat next to the claim “Zero In On Your Health,” underneath which Post claims, “The 100% whole grain goodness of Post Shredded Wheat has zero sodium, 0g sugar and zero cholesterol per serving.” This is especially deceptive because Post does not distinguish between Post Shredded Wheat and sweetened varieties, such as Post Shredded Wheat Honey Nut, which contains 12g of sugar per serving. Each variety, including those sweetened varieties containing high amounts of added sugar, are pictured below the banner, and the “Nutrition” link on the same page takes a browser to information about all these varieties of shredded wheat.
Clicking on the “Learn More” link on the “Zero In On Your Health” banner takes users to a page dedicated entirely to Post’s deceptive health and wellness marketing strategy. Post claims “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. Get even more expert nutrition and health information by browsing the topics below,” which include “Fiber & Whole Grains,” “Diet & Exercise” and “Heart Health,” and include the following 5 articles: “Whole Grains Shown to be Naturally Protective for Your Heart,” “Inflammation, The Second Half of the Cardiovascular Heart Disease Puzzle,” “Studies Show Eating Whole Grains Reduces Chronic Inflammation in Diabetics,” “Whole Grains—A Natural Way to Fight Diabetes,” and “Antioxidants in Whole Grains May Boost Immunity and Slow Aging.” Each of these supposed “articles” is actually just a summary of information found elsewhere, without identifying the author of any of the “articles.” Each “article” concludes “With all this great news, why wait? Fill your bowl at least once a day with whole-grain Post cereal and be good to your heart! Our whole grains contain natural fiber and antioxidants — that’s the Post Natural Advantage.” All but one of these articles touts the health benefits of whole grains while omitting the negative health consequences of consuming the sugar in Post’s products. The
one article that mentions sugar, “Inflammation, the Second Half of the Coronary Heart Disease Puzzle,” declares that “a diet rich in high calorie, processed, easily digestible, nutrient poor foods is an underlying cause of inflammation . . . . These types of meals lead to spikes in blood sugar and fat, including oxidative stress which among other things leads to inflammation,” demonstrating Post was and is well aware of the deleterious effects of the processed sugar in its products, yet leverages its whole grain messaging to convince consumers that its cereals are nonetheless healthy.

(ii.) The “Zero In On Your Health” banner also scrolls to reveal other health and wellness banners, such as “9 of 10 Doctors Agree! 94% of physicians surveyed with over 15 years experience would recommend adding Post Shredded Wheat to your diet to improve and maintain heart health.” The “Learn More” link on the banner takes consumers to a page titled “The Right Choice for Your Heart” which makes further health and wellness claims.
i. **Post Waffle Crisp:** Post furthers its health and wellness messaging about Post Waffle Crisp online, as well. For example, the webpage for Post Waffle Crisp states that “Waffle Crisp also provides 10 essential vitamins and minerals in every serving.” The “Nutrition” link leads to a claim that “Each serving provides essential nutrients that make eating waffle crisp just a little bit sweeter,” and asks “Did You Know? Waffle Crisp has: Low in saturated fat and cholesterol-free • 10 essential vitamins and minerals • Excellent source of six B vitamins • Good source of iron and zinc.”
C. Post Made Misleading Public Statements Concerning High-Sugar Cereals

309. Post has also periodically issued press releases furthering its misleading health and wellness messaging of its cereals.

310. For example, Post issued a press release on January 17, 2013 titled “New Post Great Grains Protein Blend Cereal Aims to Boost Americans’ Metabolisms in 2013,” claiming that the “Combination Of Protein, Whole Grain And Fiber Helps Increase Metabolic Rate.” Post further claims that “Americans’ top resolution for 2013 is to lose weight. Post Foods, LLC, is doing their part to help these goals come to fruition with the introduction of the new Great Grains Protein Blend cereal, which helps support a healthy metabolism.” The press release continues to mislead consumers into thinking this high-sugar cereal is “nutritious” and “wholesome” and “heart healthy.”

311. On February 5, 2014, Post issued another press release in which it claimed that, “All Great Grains cereals are made with less processed grains for more wholesome nutrition in every bowl. Every recipe has at least 30g of whole grains per serving and is a heart healthy way to start the day.”

D. The Foregoing Behaviors are Part of Post’s Longstanding Policy, Practice, and Strategy of Marketing its High-Sugar Cereals as Healthy in Order to Increase Sales and Profit

312. The practices complained of herein, while specific to certain cereal lines, cereal
flavors or varieties, and certain packaging claims, are exemplary of, and consistent with, Post’s longtime practice of intentionally and strategically marketing high-sugar cereals with health and wellness claims that both deceptively suggest the products are healthy, and deceptively omit the dangers of consuming the products.

313. These practices have been consistent notwithstanding Post’s occasional discontinuation or introduction of new products or lines of cereal, reformulation of products, or labeling or packaging changes.

314. This strategy is based on sophisticated consumer marketing research, and has been undertaken by Post with the purpose of increasing the prices, sales, and market share of its cereals.

315. Unless enjoined from using in the marketing of high-sugar cereals the health and wellness marketing statements, representations, strategies, and tactics complained of herein, Post will continue to employ this strategy, as the consumer preference for healthier-seeming foods is strong.

316. In fact, Neilson’s 2015 Global Health & Wellness Survey found “88% of those polled are willing to pay more for healthier foods.”

E. Post’s Policy and Practice of Marketing High-Sugar Cereals as Healthy is Especially Harmful Because Consumers Generally Eat More than One Serving of Cereal at a Time, Which Post Knows or Reasonably Should Know

317. The serving size for Post’s cereals is generally either 1 cup or, less frequently, 3/4 cup. Depending on the type of cereal, this generally means either around 30g or 50g per serving.

318. In 2014, the FDA analyzed food consumption data between 2003 and 2008, from the National Health and Nutrition Examination Survey (NHANES, discussed previously above), finding that at least 10% of Americans eat at one sitting, 2 to 2.6 times the amount of

94 Nancy Gagliardi, Forbes, Consumers Want Healthy Foods--And Will Pay More For Them, (Feb. 18, 2015) (citing Neilson, We are what we eat, Healthy eating trends around the world, at 11 (Jan. 2015)).
cereal as the labeled serving size. Federal regulations thus provide that the reference amount customarily consumed (RACC) for cereal is 110 grams. 21 C.F.R. § 101.12(b).

319. A study conducted by cereal giant General Mills found that children and adolescents 6 to 18 years old typically eat about twice as much cereal in a single meal compared to the suggested serving size.

320. Another study, by Yale University’s Rudd Center for Food Policy and Obesity, found that children 5 to 12 years old ate an average of 35 grams of low-sugar cereals, but an average of 61 grams of high-sugar cereals.95

321. As a result of consumers’ actual eating habits, Post’s high-sugar cereals in reality contribute significantly more sugar to their consumers’ diets than even the high amount in a single serving suggests.

322. For example, doubling a serving of most Post cereals would cause men, women, and children all to exceed their AHA-recommended maximum daily sugar intake in just the single breakfast serving—in some cases providing more than three times the daily maximum.

323. For this reason, the Post high-sugar cereals are especially dangerous to the health of those who regularly consume them.

PLAINTIFFS’ PURCHASES, RELIANCE, AND INJURY

A. Plaintiff Debbie Krommenhock

324. Over the past approximately two years, plaintiff Debbie Krommenhock purchased the following Post cereals and granolas.

a. Post Honey Bunches of Oats Cereal – With Almonds
b. Post Honey Bunches of Oats Granola – Honey Roasted
c. Post Shredded Wheat - Honey Nut
d. Post Raisin Bran

325. Ms. Krommenhock purchased the foregoing Post cereals and granolas at either

the Lucky’s located at 21001 San Ramon Valley Boulevard, in San Ramon, California 94583, or the Wal-Mart located at 9100 Alcosta Boulevard, in San Ramon, California 94583.

326. As best she can recall, Ms. Krommenhock purchased Post Honey Bunches of Oats – With Almonds multiple times, beginning approximately two years ago, with her most recent purchase in approximately July 2016, purchasing the product approximately a few times per year.

327. As best she can recall, Ms. Krommenhock purchased Post Honey Bunches of Oats Granola – Honey Roasted one time during the past two years.

328. As best she can recall, Ms. Krommenhock purchased Post Shredded Wheat Honey Nut approximately six times over the past several years, with her last purchase in around June 2016.

329. As best she can recall, Ms. Krommenhock purchased Post Raisin Bran on a few occasions, with the last time in or about summer 2015.

330. For each Post cereal and granola purchased, Ms. Krommenhock read and decided to purchase the product in substantial part based upon Post’s health and wellness labeling statements discussed herein and set forth above with respect to each cereal or granola variety, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like healthy food choices to Ms. Krommenhock.

*  *  *

331. When purchasing the Post cereals and granola, Ms. Krommenhock was seeking products that were healthy to consume, that is, of which consumption would not increase her risk of CHD, stroke, and other morbidity.

332. The health and wellness representations on the Post cereals’ and granola’s labeling, however, was misleading, and had the capacity, tendency, and likelihood to confuse or confound Ms. Krommenhock and other consumers acting reasonably (including the putative Class) because, as described in detail herein, the products are not healthy but instead their consumption increases the risk of CHD, stroke, and other morbidity.

333. Ms. Krommenhock is not a nutritionist or food scientist, but rather a lay
consumer who did not have the specialized knowledge that Post had regarding the nutrients present in the Post cereals and granolas. At the time of purchase, plaintiff was unaware of the extent to which consuming high amounts of added sugar in any form adversely affects blood cholesterol levels and increases risk of CHD, stroke, and other morbidity, or what amount of sugar might have such an effect.

334. Ms. Krommenhock acted reasonably in relying on Post’s health and wellness marketing, which Post intentionally placed on the products’ labels with the intent to induce average consumers into purchasing the products.

335. Ms. Krommenhock would not have purchased Post cereals and granola if she knew that their labeling claims were false and misleading in that the products were not as healthy as represented.

336. The Post cereals and granolas cost more than similar products without misleading labeling, and would have cost less absent the misleading health and wellness claims. If Post were enjoined from making the misleading claims, the market demand and price for its cereals and granola would drop, as it has been artificially and fraudulently inflated due to Post’s use of deceptive health and wellness labeling.

337. Ms. Krommenhock paid more for the Post cereals and granola, and would only have been willing to pay less, or unwilling to purchase them at all, absent the misleading labeling statements complained of herein.

338. For these reasons, the Post cereals and granola were worth less than what Ms. Krommenhock paid for them, and may have been worth nothing at all.

339. Instead of receiving products that had actual healthful qualities, the products Ms. Krommenhock received were not healthy, but rather their consumption causes increased risk of CHD, stroke, and other morbidity.

340. Ms. Krommenhock lost money as a result of Post’s deceptive claims and practices in that she did not receive what she paid for when purchasing the Post cereals and granola.

341. Ms. Krommenhock detrimentally altered her position and suffered damages in
an amount equal to the amount she paid for the products.

342. As a result of Post’s practices, Ms. Krommenhock has suffered bodily injury in the form of increased risk of CHD, stroke, and other morbidity.

B. Plaintiff Stephen Hadley

343. Plaintiff Stephen Hadley has been a frequent cereal eater for many years. Mr. Hadley is relatively health-conscious. During the past several years and prior, in seeking out cereals to eat, Mr. Hadley has generally tried to choose healthy options, and has been willing to pay more for cereals he believes are healthy.

344. Over the past several years, Mr. Hadley has purchased Post cereals on multiple occasions, including Post Great Grains cereals, Post Honey Bunches of Oats cereals and granolas, Post Shredded Wheat cereals, and various Post single cereals.

345. Post Great Grains Cereals. Over the past several years, Mr. Hadley has purchased the following varieties of Post Select/Great Grains cereals:

a. Post Great Grains Blueberry Morning

b. Post Great Grains Cranberry Almond Crunch

c. Post Great Grains Banana Nut Crunch

d. Post Great Grains Raisins, Dates & Pecans

e. Post Great Grains Crunchy Pecans

346. Mr. Hadley believes he may also have purchased Post Great Grains Blueberry Pomegranate, and Post Great Grains Protein Blend: Cinnamon Hazelnut cereals.

347. To the best of his recollection, Mr. Hadley has been purchasing Post Great Grains cereals since early 2012 (including in their earlier incarnation as Post Selects or Post Selects/Great Grains). Given plaintiff’s habits, he believes he purchased one variety or another with a frequency of approximately once every couple of months. Plaintiff believes he purchased Post Great Grains cereals from locations including: (a) the Nob Hill Foods located at 900 Lighthouse Avenue, in Monterey, California 93940, (b) the Trader Joe’s located at 570 Munras Avenue, in Monterey, California (c) the Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940, (d) the Grocery Outlet located at 1523...
Freemont Boulevard, in Seaside, California 93955, (e) the Wal-Mart located at 150 Beach Road, in Marina, California 93933, and (f) the Target located at 2040 California Avenue, in Sand City, California 93955. Mr. Hadley believes he last purchased a Post Great Grains cereal in approximately April or May 2016.

348. For each Post Great Grains cereal purchased, Mr. Hadley read and decided to purchase the product in substantial part based upon Post’s health and wellness labeling statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like healthy food choices to Mr. Hadley.

349. Post Honey Bunches of Oats Cereals & Granolas. Over the past several years, Mr. Hadley has purchased the following varieties of Post Honey Bunches of Oats cereals and granolas:

a. Post Honey Bunches of Oats Cereal – Honey Roasted  
b. Post Honey Bunches of Oats Cereal – With Almonds  
c. Post Honey Bunches of Oats Cereal – Raisin Medley  
d. Post Honey Bunches of Oats Cereal – With Pecan Bunches  
e. Post Honey Bunches of Oats Cereal – With Vanilla Bunches  
f. Post Honey Bunches of Oats Cereal – With Real Strawberries  
g. Post Honey Bunches of Oats Cereal – Whole Grain Honey Crunch  
h. Post Honey Bunches of Oats Cereal – Greek Honey Crunch  
i. Post Honey Bunches of Oats Granola – Honey Roasted  
j. Post Honey Bunches of Oats Protein Granola – with Dark Chocolate

350. Mr. Hadley believes he may also have purchased the Apples & Cinnamon Bunches variety of Honey Bunches of Oats cereal, and Cinnamon granola.

351. To the best of his recollection, Mr. Hadley has been purchasing Post Honey Bunches of Oats cereals since early 2012. Given plaintiff’s habits, he believes he purchased one variety or another with a frequency of approximately once every two weeks. Plaintiff believes he purchased Post Honey Bunches of Oats cereals from locations including: (a) the
Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940, (b) the Wal-Mart located at 150 Beach Road, in Marina, California 93933, and (c) the Target located at 2040 California Avenue, in Sand City, California 93955. Plaintiff believes he last purchased a Post Honey Bunches of Oats cereal in July 2016.

352. To the best of his recollection, Mr. Hadley purchased Post Honey Bunches of Oats granolas likely one time, in the spring of 2013, from the Nob Hill Foods located at 900 Lighthouse Avenue, in Monterey, California 93940.

353. For each Post Honey Bunches of Oats cereal purchased, Mr. Hadley read and decided to purchase the product in substantial part based upon Post’s health and wellness labeling statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like healthy food choices to Mr. Hadley.

354. Post Shredded Wheat. Over the past several years, Mr. Hadley has purchased Post Shredded Wheat Honey Nut cereal.

355. To the best of his recollection, Mr. Hadley has been purchasing Post Shredded Wheat Honey Nut cereals since fall (approximately August or September) of 2014. Given plaintiff’s habits, he believes he purchased one variety or another with a frequency of approximately once every four months. Plaintiff believes he purchased Post Shredded Wheat Honey Nut cereal from the Grocery Outlet located at 1523 Freemont Boulevard, in Seaside, California 93955. Plaintiff believes he last purchased Post Shredded Wheat Honey Nut cereal in summer 2015.

356. For each Post Shredded Wheat Honey Nut cereal purchased, Mr. Hadley read and decided to purchase the product in substantial part based upon Post’s health and wellness labeling statements discussed herein and set forth above, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like healthy food choices to Mr. Hadley.

357. Post Singles Cereals. Over the past several years, Mr. Hadley has purchased the following “single” varieties of Post cereals:
a. Raisin Bran
b. Bran Flakes
c. Alpha Bits
d. Honey-Comb
e. Waffle Crisp

358. To the best of his recollection, Mr. Hadley purchased Post Raisin Bran in or around the summer of 2014, from the Nob Hill Foods located at 900 Lighthouse Avenue, in Monterey, California 93940.

359. For each of the foregoing Post cereals purchased, Mr. Hadley read and decided to purchase the product in substantial part based upon Post’s health and wellness labeling statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like healthy food choices to Mr. Hadley.

* * *

360. When purchasing the Post cereals and granola, Mr. Hadley was seeking products that were healthy to consume, that is, whose consumption would not increase his risk of CHD, stroke, and other morbidity.

361. The health and wellness representations on the Post cereals’ and granolas’ labeling, however, was misleading, and had the capacity, tendency, and likelihood to confuse or confound Mr. Hadley and other consumers acting reasonably (including the putative Class) because, as described in detail herein, the products are not healthy but instead their consumption increases the risk of CHD, stroke, and other morbidity.

362. Mr. Hadley is not a nutritionist or food scientist, but rather a lay consumer who did not have the specialized knowledge that Post had regarding the nutrients present in the Post cereals and granolas. At the time of purchase, plaintiff was unaware of the extent to which consuming high amounts of added sugar in any form adversely affects blood cholesterol levels and increases risk of CHD, stroke, and other morbidity, or what amount of sugar might have such an effect.
363. Mr. Hadley acted reasonably in relying on Post’s health and wellness marketing, which Post intentionally placed on the products’ labels with the intent to induce average consumers into purchasing the products.

364. Mr. Hadley would not have purchased Post cereals and granolas if he knew that their labeling claims were false and misleading in that the products were not as healthy as represented.

365. The Post cereals and granolas cost more than similar products without misleading labeling, and would have cost less absent the misleading health and wellness claims. If Post were enjoined from making the misleading claims, the market demand and price for its cereals and granolas would drop, as it has been artificially and fraudulently inflated due to Post’s use of deceptive health and wellness labeling.

366. Mr. Hadley paid more for the Post cereals and granolas, and would only have been willing to pay less, or unwilling to purchase them at all, absent the misleading labeling statements complained of herein.

367. For these reasons, the Post cereals and granolas were worth less than what Mr. Hadley paid for them, and may have been worth nothing at all.

368. Instead of receiving products that had actual healthful qualities, the products Mr. Hadley received were not healthy, but rather their consumption causes increased risk of CHD, stroke, and other morbidity.

369. Mr. Hadley lost money as a result of Post’s deceptive claims and practices in that he did not receive what he paid for when purchasing the Post cereals and granolas.

370. Mr. Hadley detrimentally altered his position and suffered damages in an amount equal to the amount he paid for the products.

371. As a result of Post’s practices, Mr. Hadley has suffered bodily injury in the form of increased risk of CHD, stroke, and other morbidity.

**CLASS ACTION ALLEGATIONS**

372. Pursuant to Fed. R. Civ. P. 23, plaintiffs seek to represent a class of all persons in California who, at any time from August 29, 2012 to the time a class is notified, purchased
high-sugar Post cereals bearing health and wellness claims for their own personal, family, or household use and not for resale.

373. Plaintiffs nevertheless reserve the right to divide into subclasses, expand, narrow, more precisely define, or otherwise modify the class definition prior to (or as part of) filing a motion for class certification.

374. The members in the proposed class and subclass are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all class members in a single action will provide substantial benefits to the parties and Court. Fed. R. Civ. P. 23(a)(1).

375. Questions of law and fact common to plaintiffs and the class (Fed. R. Civ. P. 23(a)(2) include, without limitation:

a. Whether certain Post cereals contain sufficient added sugar to contribute substantially to the excessive consumption of added sugar;

b. Whether the excessive consumption of added sugar presents significant health risks;

c. Whether, if the former questions of fact are answered in the affirmative, this renders misleading to the reasonable consumer Post’s use of health and wellness claims on the packaging of high-sugar Post cereals;

d. Whether the challenged Post health and wellness claims were material;

e. Whether Post made any statement it knew or should have known was false or misleading;

f. Whether Post maintained a longstanding marketing policy, practice, and strategy of selling high-sugar cereals with health and wellness claims;

g. Whether Post’s practices were immoral, unethical, unscrupulous, or substantially injurious to consumers;

h. Whether the utility of any of Post’s practices, if any, outweighed the gravity of the harm to its victims;

i. Whether Post’s conduct violated public policy, including as declared by specific constitutional, statutory or regulatory provisions;

j. Whether the consumer injury caused by Post’s conduct was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided;

l. Whether Post’s policies, acts, and practices with respect to the Post high-sugar cereals were designed to, and did result in the purchase and use of the products by the class members primarily for personal, family, or household purposes;

m. Whether Post represented that Post high-sugar cereals have characteristics, uses, or benefits which they do not have, within the meaning of Cal. Civ. Code § 1770(a)(5);

n. Whether Post represented Post high-sugar cereals are of a particular standard, quality, or grade, when they were really of another, within the meaning of Cal. Civ. Code § 1770(a)(7);

o. Whether Post advertised Post high-sugar cereals with the intent not to sell them as advertised, within the meaning of Cal. Civ. Code § 1770(a)(9);

p. Whether Post represented that Post high-sugar cereals have been supplied in accordance with previous representations when they have not, within the meaning of Cal. Civ. Code § 1770(a)(16);

q. Whether through the challenged labels and advertising, Post made affirmations of fact or promises, or descriptions of the goods;

r. Whether Post’s affirmations of fact or promises, or descriptions of the goods became part of the basis of the bargain for the Class’s purchases;

s. Whether Post failed to provide the goods in conformation with its affirmations of fact, promises, and descriptions of the goods;

t. The proper equitable and injunctive relief;

u. The proper amount of restitution or disgorgement; and

v. The proper amount of reasonable litigation expenses and attorneys’ fees.

376. Plaintiffs’ claims are typical of class members’ claims in that they are based on the same underlying facts, events, and circumstances relating to Post’s conduct. Fed. R. Civ. P. 23(a)(3).

377. Plaintiffs will fairly and adequately represent and protect the interests of the
class, have no interests incompatible with the interests of the class, and have retained counsel competent and experienced in class action, consumer protection, and false advertising litigation, including within the food industry.

378. Class treatment is superior to other options for resolution of the controversy because the relief sought for each class member is small such that, absent representative litigation, it would be infeasible for class members to redress the wrongs done to them.

379. Questions of law and fact common to the class predominate over any questions affecting only individual class members.

380. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), and may be appropriate for certification “with respect to particular issues” under Rule 23(b)(4).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW,
CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.

381. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if fully set forth herein.

382. The FAL prohibits any statement in connection with the sale of goods “which is untrue or misleading,” Cal. Bus. & Prof. Code § 17500.

383. Post’s use of health and wellness advertising for Post Cereal products that contain substantial amounts of added sugar is deceptive in light of the strong evidence that excessive sugar consumption greatly increases risk of chronic disease.

384. Post knew, or reasonably should have known, that the challenged health and wellness claims were untrue or misleading.

SECOND CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,
CAL. CIV. CODE §§ 1750 ET SEQ.

385. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as
386. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

387. Post’s policies, acts, and practices were designed to, and did, result in the purchase and use of the products primarily for personal, family, or household purposes, and violated and continue to violate the following sections of the CLRA:

   a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;

   b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;

   c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and

   d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

388. In compliance with Cal. Civ. Code § 1782, plaintiffs sent written notice to Post of their claims, but Post has failed, after 30 days, to satisfy plaintiffs’ demand or to rectify the behavior. Accordingly, plaintiffs, on behalf of themselves and the class, seek injunctive relief, restitution, statutory damages, compensatory damages, punitive damages, and reasonable attorneys’ fees and costs.

389. In compliance with Cal. Civ. Code § 1782(d), an affidavit of venue was filed concurrently with the original Complaint.

THIRD CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW,
CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.

390. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if fully set forth herein.

391. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice,”

**Fraudulent**

392. Post’s use of the challenged health and wellness claims on products containing high amounts of added sugar are likely to deceive reasonable consumers.

**Unfair**

393. Post’s conduct with respect to the labeling, advertising, and sale of Post high-sugar cereals was and is unfair because Post’s conduct was and is immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

394. Post’s conduct with respect to the labeling, advertising, and sale of Post high-sugar cereals was also unfair because it violated public policy as declared by specific constitutional, statutory or regulatory provisions, including the False Advertising Law, the Federal Food, Drug, and Cosmetic Act, and the California Sherman Food, Drug, and Cosmetic Law.

395. Post’s conduct with respect to the labeling, advertising, and sale of Post high-sugar cereals was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

**Unlawful**

396. The acts alleged herein are “unlawful” under the UCL in that they violate at least the following laws:


b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; and


FOURTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY, CAL. COM. CODE § 2313(1)

397. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

398. Through the labels of high-sugar Post products bearing health and wellness claims, Post made affirmations of fact or promises, and made descriptions of goods, that formed part of the basis of the bargain, in that plaintiffs and the class purchased the products in reasonable reliance on those statements. Cal. Com. Code § 2313(1).

399. These affirmations and descriptions include, for example:

a. **Great Grains Blueberry Morning**
   - “Less processed nutrition you can see”
   - “it’s good for you!”
   - “less processed whole grain cereal”

b. **Great Grains Cranberry Almond Crunch**
   - “Less processed nutrition you can see”
   - “it’s good for you!”
   - “nutritious ingredients in every bite!”
   - “less processed whole grain cereal”

c. **Great Grains Banana Nut Crunch**
   - “Less processed nutrition you can see”
   - “it’s good for you!”
   - “nutritious ingredients in every bite!”
   - “less processed whole grain cereal”

d. **Great Grains Raisins, Dates & Pecans**
   - “Less processed nutrition you can see”
   - “it’s good for you!”
   - “nutritious ingredients in every bite!”
e. **Great Grains Crunchy Pecans**
   - “Less processed nutrition you can see”
   - “it’s good for you!”
   - “nutritious ingredients in every bite!”

f. **Great Grains Blueberry Pomegranate**
   - “Less processed nutrition you can see”
   - “it’s good for you!”
   - “nutritious ingredients in every bite!”

f. **Great Grains Protein Blend: Honey, Oats & Seeds**
   - “HELPS SUPPORT A HEALTHY METABOLISM”
   - “it’s good for you!”
   - “nutritious ingredients in every bite!”
   - “Support a Healthy Metabolism”
   - “less processed whole grain cereal”

h. **Great Grains Protein Blend: Cinnamon Hazelnut**
   - “HELPS SUPPORT A HEALTHY METABOLISM”
   - “nutritious ingredients in every bite!”
   - “it’s good for you!”
   - “less processed whole grain cereal”
   - “Support a Healthy Metabolism”

i. **Honey Bunches of Oats Cereal – Honey Roasted, With Almonds, Raisin Medley, With Pecan Bunches, With Cinnamon Bunches, With Vanilla Bunches, With Real Strawberries, Fruit Blends – Banana Blueberry, and Fruit Blends – Peach Raspberry**
   - “Heart Healthy”
   - heart depictions
   - “wholesome”
j. **Honey Bunches of Oats Cereal – Tropical Blends – Mango Coconut**
   - “wholesome”

k. **Honey Bunches of Oats Cereal – Whole Grain Honey Crunch and Whole Grain With Vanilla Bunches**
   - “a smart step toward eating a balanced diet”
   - “Honey Bunches of Oats Whole Grain Cereal has it all. . . Fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. Rich in nutrients: Honey Bunches of Oats Whole Grain Cereal is rich in nutrients . . . important for moms-to-be and growing children. . . . Whole grains are an important part of a balanced diet, but on average, Americans eat less than 1 serving of whole grains per day.”
   - “good for your family, good for your health, good for you”
   - Heart design in “I” in “Whole Grain” name

l. **Honey Bunches of Oats Cereal – Greek Honey Crunch & Greek Mixed Berry**
   - “WHOLESOME NUTRITION”

m. **Honey Bunches of Oats Granola – Honey Roasted, Raspberry, and Cinnamon**
   - “wholesome”

n. **Honey Bunches of Oats Protein Granola with Dark Chocolate**
   - “HELPS FUEL YOUR BODY WITH SUSTAINED ENERGY”

o. **Shredded Wheat Honey Nut**
   - “An ingredient list that is so good, we have nothing to hide. Wouldn’t it be great if it were easy to understand what is in your food? With Post Shredded Wheat, it’s easy to be confident with your breakfast choice. It is made with nothing but goodness, so go ahead and enjoy a bowl.”
• “We make it easy to understand what is in your food—we start with the goodness of whole grain wheat. No artificial flavors or colors added: Our flavor comes from whole grain wheat, honey, almonds, molasses and real sugar. That means vitamin and mineral fortified Post Shredded Wheat Honey Nut contains no High fructose corn syrup or artificial ingredients.”

• “We make it easy to understand what is in your food—it’s just the wholesome goodness of whole grain wheat.”

• “No Sugar* [ ] Added: Our flavor comes from 100% whole grain wheat, nothing else. That means Post Shredded Wheat . . . has 0 grams of sugars per serving.”

• “THE BISCUIT OF BENEFITS / Post Shredded Wheat Honey Nut is made with 100% whole grain wheat, for a natural source of fiber. . . . So what does this mean in terms of health benefits for you? They are so plentiful, the cereal could be renamed Biscuit of Benefits!”

• “Heart Health”

• “Digestive Health: Diets rich in fiber have many benefits and are important for maintaining digestive health.”

p. Shredded Wheat Crunch!

• “POST SHREDDED WHEAT CRUNCH MAY HELP REDUCE THE RISK OF HEART DISEASE”

• “heart healthy”

q. Raisin Bran

• “Healthy”

• “Nutritious”

• “Where nutritious and delicious live in harmony”

• “good for digestive health”
r.  *Bran Flakes*

- “TO HELP MAINTAIN DIGESTIVE HEALTH”
- “YOUR HEALTHY LIFESTYLE”
- “nutrients to help keep you healthy”
- “TO HELP WITH WEIGHT MANAGEMENT”

s.  *Alpha-Bits*

- “ALPHA-BITS IS A GOOD SOURCE OF NUTRIENTS THAT ARE BUILDING BLOCKS FOR YOUR CHILD’S DEVELOPING BRAIN”

t.  *Honey-Comb*

- “Nutritious”

400. Post breached its express warranties by selling products that do not meet the above affirmations and product descriptions because they are not healthy, and not heart healthy, but in fact detrimentally affect health, increasing risk of CHD, stroke, and other morbidity.

401. That breach actually and proximately caused injury in the form of the lost purchase price that plaintiffs and Class members paid for the high-sugar Post products bearing health and wellness claims.

402. Plaintiffs gave Post notice of the breach before filing or asserting the claims, but Post failed to remedy the breach.

403. As a result, plaintiffs seek, on behalf of themselves and other class members, actual damages arising as a result of Post’s breaches of express warranty.

**FIFTH CAUSE OF ACTION**

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY,**

**CAL. COM. CODE § 2314**

404. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.
405. Post, through its acts and omissions set forth herein, in the sale, marketing and promotion of high-sugar Post products bearing health and wellness claims, made representations to plaintiffs and the Class that, among other things, the products are healthy. This specifically includes those statements set forth in paragraph 399(a)-(t) above. Plaintiffs and the Class bought high-sugar products bearing health and wellness claims manufactured, advertised, and sold by Post as described herein.

406. Post is a merchant with respect to the goods of this kind which were sold to plaintiffs and the class, and there was, in the sale to plaintiffs and other consumers, an implied warranty that those goods were merchantable.

407. However, Post breached that implied warranty in that Post high-sugar products bearing health and wellness claims are not healthy, as set forth in detail herein.

408. As an actual and proximate result of Post’s conduct, plaintiffs and the class did not receive goods as impliedly warranted by Post to be merchantable in that they did not conform to promises and affirmations made on the container or label of the goods.

409. Plaintiffs gave Post notice of the breach before filing or asserting the claims, but Post failed to remedy the breach.

410. As a result, plaintiffs seek, on behalf of themselves and other class members, actual damages arising as a result of Post’s breaches of implied warranty.

**PRAYER FOR RELIEF**

411. Wherefore, plaintiffs, on behalf of themselves, all others similarly situated, and the general public, pray for judgment against Post as to each and every cause of action, and the following remedies:

a. An Order certifying this as a class action, appointing plaintiffs and their counsel to represent the class, and requiring Post to pay the cost of class notice;

b. An Order enjoining Post from labeling, advertising, or packaging the Post high-sugar cereals identified herein with the challenged health and wellness statements identified herein;

c. An Order compelling Post to conduct a corrective advertising campaign
to inform the public that Post high-sugar cereals were deceptively marketed;

d. An Order enjoining Post’s longstanding policy, practice, and strategy of marketing high-sugar cereals with misleading health and wellness claims;

e. An Order requiring Post to pay restitution to restore funds that may have been acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the UCL, FAL, or CLRA;

f. An Order requiring Post to pay all statutory, compensatory, and punitive damages permitted under the causes of action alleged herein;

g. An Order requiring Post to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice;

h. Pre- and post-judgment interest;

i. Costs, expenses, and reasonable attorneys’ fees; and

j. Any other and further relief the Court deems necessary, just, or proper.

**JURY DEMAND**

412. Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: September 14, 2017

/s/ Jack Fitzgerald

THE LAW OFFICE OF JACK FITZGERALD, PC
JACK FITZGERALD
jack@jackfitzgeraldlaw.com
TREVOR M. FLYNN
trevor@jackfitzgeraldlaw.com
MELANIE PERSINGER
melanie@jackfitzgeraldlaw.com
Hillcrest Professional Building
3636 4th Ave., Ste. 202
San Diego, CA 92103
Phone: (619) 692-3840
Fax: (619) 362-9555

*Counsel for Plaintiffs and the Putative Class*