

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEBRA DAVIS and FRANCENIA CANION, on :  
behalf of themselves and all other similarly situated :  
persons, :

Plaintiffs, :

v. :

KRAFT FOODS NORTH AMERICA, INC., :

Defendant. :

CIVIL ACTION NO. 03-6060

**PLAINTIFFS' UNOPPOSED MOTION FOR: (1) PRELIMINARY APPROVAL OF A  
PROPOSED SETTLEMENT, AND (2) AUTHORIZATION TO DISSEMINATE NOTICE**

Named Plaintiffs Debra Davis and Francenia Canion by their undersigned Counsel, respectfully move this Honorable Court for preliminary approval of the class-wide settlement that they have negotiated with Defendant Kraft Foods North America, Inc. ("Kraft"). The Settlement Agreement in question is attached as Exhibit A hereto. The proposed class action notice, which the parties have also agreed upon, is attached as Exhibit B hereto.

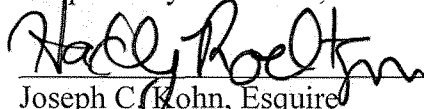
In support of this Motion for Preliminary Approval, Plaintiffs also rely upon the Memorandum of Law which is attached hereto.

Dated: April 17, 2007

 / HPR

Robert T. Vance, Jr., Esquire  
LAW OFFICES OF ROBERT T. VANCE, JR.  
100 South Broad Street, Suite 1530  
Philadelphia, PA 19110  
(215) 557-9550

Respectfully submitted,



Joseph C. Kohn, Esquire  
Hadley Perkins Roeltgen, Esquire  
KOHN, SWIFT & GRAF, P.C.  
One South Broad, Suite 2100  
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(215) 238-1700

Counsel for Plaintiffs and the Class

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

DEBRA DAVIS and FRANCENIA CANION, on :  
behalf of themselves and all other similarly situated :  
persons, :

Plaintiffs, :

v. :

KRAFT FOODS NORTH AMERICA, INC., :

Defendant. :

CIVIL ACTION NO. 03-6060

**ORDER PRELIMINARILY APPROVING CLASSWIDE SETTLEMENT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, upon consideration of the Motion for Preliminary Approval of Proposed Settlement with Kraft Foods North America, Inc. and for Authorization to Disseminate Notice ("Motion"), it is hereby **ORDERED** as follows:

1. The Motion is hereby **GRANTED**.
2. The Court finds that the proposed settlement with Kraft Foods North America, Inc. and its corporate predecessor Nabisco Biscuit Company (collectively hereafter "Kraft") as set forth in the Settlement Agreement, and subject to final determination following a hearing after notice to the proposed Settlement Class, is sufficiently fair, reasonable and adequate to authorize dissemination of notice to the proposed Settlement Class.
3. Notice shall be provided to the following proposed Settlement Class (the "Settlement Class"):

All African-Americans hourly employees who worked at the Kraft Philadelphia Bakery from November 3, 1999 to December 31, 2006.

4. The Court appoints the firms of Kohn, Swift & Graf, P.C. and the Law Offices of Robert T. Vance as Class Counsel for the Settlement Class. Plaintiffs Debra Davis and Francenia Canion are adequate representatives of the Settlement Class and are hereby appointed as the class representatives of the Settlement Class.

5. The Court approves the Notice, submitted as Exhibit “B” to the motion for preliminary approval of the Settlement Agreement, upon the condition that the content of the Notice, including all dates, times, and addresses, conform to the requirements of this Order. The Court further finds that the mailing of the Notice in the manner set forth in Paragraphs 6 and 7 below constitutes the best notice practicable under the circumstances as well as valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States.

6. Class Counsel are hereby directed to cause a Notice Of Pendency And Of Proposed Settlement Of Class Action With Kraft Foods North America, Inc. And Hearing on Settlement Approval (“Notice”), in the form attached as Exhibit “B” to the motion for preliminary approval of the Settlement Agreement, to be (a) mailed by first class mail, postage prepaid, within 10 days of entry of this Order (“Notice Date”) to all members of the Settlement Class.

7. Class Counsel are hereby directed to identify and maintain an address to receive requests from parties seeking to exclude themselves from the Settlement Class. Class Counsel must identify the address in the Notice and in the Summary Notice prior to mailing, providing, or distributing any Notice pursuant to Paragraph 6 herein.

8. The Court will hold a hearing (the "Hearing") on \_\_\_\_\_, 2007, at \_\_\_\_\_ .m. at 601 Market Street, Courtroom \_\_\_\_\_, Philadelphia, Pennsylvania 19106, to determine the fairness, reasonableness and adequacy of the proposed settlement with Kraft, to consider the proposed plan of distribution and Class Counsel's application for attorneys' fees and reimbursement of expenses, and to determine whether the proposed settlement, plan of distribution and application for attorneys' fees and reimbursement of expenses should be approved by the Court and a final judgment entered thereon. Any Settlement Class Member who follows the procedure set forth in the Notices may appear and be heard at this hearing. The hearing may be continued without further notice to the Settlement Class.

9. Class Counsel shall file with the Court and serve on the parties their motion for final approval of the Settlement Agreement, and their application for attorneys' fees and reimbursement of expenses 60 days prior to the Hearing.

10. All requests for exclusion from the Settlement Class shall be postmarked no later than 20 days prior to the Hearing, and shall otherwise comply with the requirements set forth in the Notices.

11. Any member of the Settlement Class who wishes to object to the terms of the Settlement Agreement between the Settlement Class and Kraft, the proposed plan of distribution, or the application for attorneys' fees and reimbursement of expenses must do so in writing, postmarked no later than 20 days prior to the Hearing, and shall otherwise comply with the requirements set forth in the Notice.

12. Ten days before the date fixed by this Court for the Hearing, Class Counsel shall cause to be filed with the Clerk of this Court, and served upon counsel for defendants, affidavits

or declarations of the person under whose general direction the mailing of the Notice was made, showing that mailing was made in accordance with this Order.

13. The litigation against Kraft Foods North America, Inc. is stayed except to the extent necessary to effectuate the Settlement Agreement.

BY THE COURT:

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HONORABLE PAUL S. DIAMOND

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEBRA DAVIS and FRANCENIA CANION, on	:	
behalf of themselves and all other similarly situated	:	
persons,	:	
	:	CIVIL ACTION NO. 03-6060
Plaintiffs,	:	
	:	
v.	:	
	:	
KRAFT FOODS NORTH AMERICA, INC.,	:	
	:	
Defendant.	:	
	:	

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED  
SETTLEMENT AND FOR AUTHORIZATION TO DISSEMINATE NOTICE**

**I. INTRODUCTION**

As this Honorable Court is aware, Plaintiffs have reached a proposed class-wide settlement with defendant Kraft Foods Global, Inc. (f/k/a "Kraft Foods North America, Inc.") ("Kraft") that provides for the payment of \$1.325 million as well as comprehensive non-monetary relief for the class. At this juncture, the Court need only determine whether the settlement appears to be sufficiently fair, reasonable and adequate to authorize dissemination of the Notices to the Class. Plaintiffs submit that the proposed settlement amply satisfies this minimal standard.

Attached as Exhibit A hereto is the Settlement Agreement, upon which the parties have agreed. Exhibit B is an agreed-upon form of notice that may be mailed to all class members. The proposed order attached hereto preliminarily approves the settlement and directs that notice be given to the settlement class.

## II. BACKGROUND

The amended complaint in this race discrimination class action was filed by one current and one former African-American employee of defendant Kraft under Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1866, 42 U.S.C. § 1981, to redress alleged discrimination in Kraft's disciplinary practices and procedures.

After this Court determined that Plaintiff Davis' prior counsel had a conflict of interest,<sup>1</sup> Plaintiffs filed an amended complaint on behalf of Plaintiffs Debra Davis and Francenia Canion, and moved for certification of a class pursuant to Fed. R. Civ. P. 23(b)(2) consisting of all African-American hourly employees who worked at the Kraft Philadelphia Bakery from November 3, 1999 to the present.<sup>2</sup> This is essentially the same class for which certification is hereby sought for purposes of implementing the settlement. The proposed settlement class is very modest in scope in that it is limited to a relatively small number (260) of one type of employee (African-American, hourly), who work(ed) at one facility (the Philadelphia bakery), who seek to pursue only one type of class-wide claim (discriminatory discipline). This class could have been certified for litigation purposes. *A fortiori*, it may be certified for settlement purposes because, in the instant setting, manageability does not need to be addressed. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997). Moreover, the class should be certified pursuant to Fed. R. Civ. P. 23(b)(2) – the provision intended for civil rights actions.

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<sup>1</sup> *See Davis v. Kraft Foods North America*, C.A. No. 03-6060, 2006 WL 237512 (E.D. Pa. Jan. 31, 2006) ("Davis 1/31/06 Memorandum and Order").

<sup>2</sup> The only difference is that the proposed settlement class period has an end date (December 31, 2006) that had to be designated in order to finalize the identity of class members and the amount of their individual settlement proceeds. The class period may begin on November 3, 1999 because a four-year statute of limitations applies to claims brought under 42 U.S.C. § 1981. *See Jones v. R.R. Donnelly & Sons Co.*, 541 U.S. 369 (2004). Recovery based on Title VII claims, however, may be limited to the period of June 14, 2001 to the present because this Court held, in its January 31, 2006 Memorandum and Order, that the Title VII putative class is limited by the Title VII 300-day statute of limitation. *See Davis 1/31/06 Memorandum and Order*, supra n. 1, at 12.

Plaintiffs' position is that discipline in the Philadelphia bakery was imposed on the basis of race, not fairness. Plaintiffs support their position with statistical and anecdotal evidence. Plaintiffs' assert that their statistical evidence demonstrated that discipline at the bakery had a disparate impact on class members. Plaintiffs' anecdotal evidence included specific examples of class members allegedly receiving more severe and more frequent discipline for actions that resulted in no or lesser discipline when committed by White hourly employees. Defendant vigorously denies these allegations. Defendant maintains that it imposed discipline at the bakery without regard to race, including discipline it issued to Plaintiffs.

### **III. SUMMARY OF THE SETTLEMENT TERMS**

As set forth in the Settlement Agreement (Exhibit A hereto), this class action is being resolved on the following terms:

Kraft shall pay a total of \$1.325 million to resolve the Class Action, to be distributed as follows: (1) each Class member shall receive \$1,000; in addition, each class member suspended during the class period shall receive \$3,000, and each person terminated shall receive \$10,000, provided no employee receives both the \$3,000 suspension payment and the \$10,000 termination payment; (2) Kraft shall pay to Named Plaintiffs Debra Davis and Francenia Canion special compensatory awards, in addition to the amounts they are due as Class members; and (3) Plaintiffs' Counsel will seek an award of \$450,000 in Attorneys' Fees and \$140,000 in litigation costs, subject to court approval.

Kraft also has agreed to provide the non-monetary relief to the Class members, as outlined below:



a. Purging of Disciplinary/Corrective Records<sup>3</sup>

All records of coaching as well as minor violations that were given to class members during the first twenty-six months of the class period (*i.e.*, from 11/3/99 to 1/1/03), to the extent practicable, shall be removed from Kraft's HR databases, and not relied upon in any way.

b. Internal and External Disciplinary Tracking and Monitoring

All future discipline (all warnings or more severe punishments) shall be tracked by a form that will include the race(s) of the persons receiving and imposing the discipline. In addition, Human Resources ("HR") shall review each discipline and either approve or disapprove it. HR shall also note whether the discipline has placed an employee in jeopardy of a written warning or suspension based on the number of previous disciplines which (s)he has received. If an employee is in such a position, HR shall confirm that (s)he has been so notified. Summaries of the discipline received by class members shall be submitted to an outside expert who shall be paid by Kraft but selected by both sides and/or approved by the Court. If the expert determines that class members are being disciplined at a rate substantially greater than expected, then (s)he shall investigate. Kraft will cooperate with the expert's investigation by, among other things, making all pertinent records available to him or her and permitting interviews of pertinent personnel. If either the expert or Class counsel form a good faith belief that racially discriminatory discipline is occurring, they may inform the Court. Kraft's enhanced and race-specific record-keeping of discipline shall continue indefinitely. Related reporting to an outside expert shall continue for no less than two years and no more than five years. If no disputes between Kraft and Class counsel arise during the second year of outside monitoring, it shall cease.

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<sup>3</sup> "Corrective Actions" as used herein refer to the "Corrective Action Steps" as described in Kraft's Employee Guidelines (Exh. A to Defendant's Class Cert. Opposition) at pp. 19-20.

c. Employee Surveys

Beginning in 2007, all present hourly employees at the Philadelphia bakery shall be annually and anonymously surveyed to determine their attitudes with regard to workplace fairness. Survey questions will include inquiries about the fairness of supervisors. In addition, employees will be permitted to identify by name any supervisors whom they believe discriminate or harass on the basis of race.

d. Enhanced Supervisors' Performance Evaluations

Henceforth, Kraft bakery supervisors shall be evaluated annually. A factor that Kraft will consider in evaluating bakery supervisors is the imposition of discipline in compliance with all anti-discrimination laws and with Kraft's equal employment opportunity policies.

**IV. THE COURT SHOULD DETERMINE THAT THE PROPOSED SETTLEMENT IS SUFFICIENTLY FAIR, REASONABLE AND ADEQUATE TO AUTHORIZE DISSEMINATION OF NOTICE TO THE CLASS**

A. Governing Standards.

The procedure for disseminating notice to the class and then conducting a hearing to approve the settlement is well established by courts in the Third Circuit. *See In re Automotive Refinishing Paint Antitrust Litig.*, MDL 1426 (Mem. May 10, 2004) (E.D. Pa. 2004), 2003 U.S. Dist. LEXIS 4681 (E.D. Pa. Mar. 17, 2003). *See generally Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 117-120 (3d Cir. 1990).

The Manual For Complex Litigation (Fourth) § 21.632 (2004) provides a framework for the Court's preliminary evaluation of a proposed class action settlement.

Review of a proposed class action settlement generally involves two hearings. First counsel submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation. . . . The Judge must make a preliminary determination on the fairness, reasonableness and adequacy of the settlement terms and

must direct the preparation of notice of the . . . proposed settlement, and the date of the fairness hearing.

*See also* 2 NEWBERG ON CLASS ACTIONS, §11.24 (3d ed. 1992); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 254 (D. Del. 2002); *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997). A court's authorization to disseminate notice constitutes its recognition that the settlement is within the range of possible approval. *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 205 (5th Cir. 1981); *Holden v. Burlington Northern, Inc.*, 665 F. Supp. 1398, 1402 (D. Minn. 1987); *In re Montgomery County Real Estate Antitrust Litig.*, 83 F.R.D. 305, 313 (D. Md. 1979). As one court noted, approving dissemination of notice "is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Executive Assoc.-Eastern R.R.*, 627 F.2d 631, 634 (2d Cir. 1980).

A proposed settlement falls within the "range of possible approval" under Rule 23(e) where there is a conceivable basis for presuming that the proposed settlement will meet the more rigorous standards applied for final approval. The standard for final approval of a class action settlement is whether the proposed settlement is fair, reasonable and adequate. FED. R. CIV. P. 23(e)(1)(C); *Stoetznner*, 897 F.2d at 118; *Walsh v. Great Atlantic & Pacific Tea Co., Inc.*, 726 F.2d 956, 965 (3d Cir. 1983).

When authorizing the dissemination of notice, a court does not conduct a "definitive proceeding on the fairness of the proposed settlement, and the judge must be careful to make clear that the determination permitting notice to members of the class is not a finding that the settlement is fair, reasonable and adequate." *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D. Md. 1983). That determination must await the final hearing where the fairness, reasonableness and adequacy of the settlement is assessed under the factors set forth in

*Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975).<sup>4</sup> See *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).

**B. The Proposed Settlement Is Fair and Within The Range of Possible Approval**

Courts favor settlements. See, e.g., *In re Beef Industry Antitrust Litigation*, 607 F.2d 167, 174 (5th Cir. 1979), *cert. denied sub nom., Iowa Beef Processors, Inc., v. Meat Price Investigators Association*, 452 U.S. 905 (1981). Settlements proposed by experienced counsel and which result from arms-length negotiations are entitled to deference from the court. *In re Automotive Refinishing Paint*, 2003 WL 23316645 at \*6 (E.D. Pa. Sept. 5, 2003). See also *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 640 (“A presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.”) (citing *Hanrahan v. Britt*, 174 F.R.D. 356, 366 (E.D. Pa. 1997)); *Petruzzi’s, Inc. v. Darling-Delaware Co.*, 880 F. Supp. 292, 301 (M.D. Pa. 1995) (“the opinions and recommendations of such experienced counsel are indeed entitled to considerable weight.”); *Lake v. First National Bank*, 156 F.R.D. 615, 628 (E.D. Pa. 1994) (giving “due regard to the recommendations of the experienced counsel in this case, who have negotiated this settlement at arms-length and in good faith.”). The initial presumption in favor of such settlements reflects courts’ understanding that vigorous negotiations between seasoned counsel protects against collusion and advances the fairness concerns of Rule 23(e).

Plaintiffs submit that the proposed settlement before the Court is well within the range of possible approval and is sufficiently fair to warrant notice to class members. The settlement with

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<sup>4</sup> The *Girsh* factors that a court considers on a motion for final approval of a class settlement as “fair, reasonable and adequate” include the following: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best possible recovery; and (9) the range of reasonableness of the settlement in light of all attendant risks of litigation. *Girsh*, 521 F.2d at 157.

Kraft provides for substantial cash payments to class members<sup>5</sup> as well as meaningful non-monetary components designed to maintain an equal employment opportunity workplace at Kraft's Philadelphia bakery.

The settlement was negotiated by experienced counsel,<sup>6</sup> at arms-length, following substantial discovery, and under the supervision of this Court. Class Counsel have concluded, after investigation of the facts and after considering the circumstances of the case and the applicable law, that it would be in the best interest of Plaintiffs and the Class to enter into the Settlement Agreement.

While the standards that have developed for approval of class action settlements use varying terminology, the "bottom line" of this jurisprudence is that the settlement must be in the

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<sup>5</sup> Named Plaintiffs will receive special payments to compensate them for the time and effort that they have devoted to this litigation and for losses which Plaintiffs believe they have suffered as a result of this lawsuit. In these circumstances, the special payments to the Named Plaintiffs are appropriate and consistent with prevailing guidelines. See, e.g., *Buttram v. United Parcel Service*, No. C-97-D1590 (N.D.Cal. April 9, 1997) (race discrimination suit settled for \$12.1 million to be shared by some 15,000 part time UPS workers; \$150,500 to be paid to seven named plaintiffs); *Royal v. Aramark Corp.* No. 97-CV-6226 (E. D. Pa. July 29, 1999) (approving settlement in which three named plaintiffs each received \$50,000 in \$3.75 million settlement arising from alleged race discrimination). See generally *Gaskill v. Boula*, 1995 US Dist. LEXIS 18576 (E.D. Ill. 1995) ("these individuals [class representatives] invested their time and effort and exposed themselves to litigation costs even though there was a significant risk that they might lost. Equity requires that they receive greater compensation than others who did not."); *Carroll v. Blue Cross and Blue Shield of Massachusetts*, 157 F.R.D. 142, 143 (D. Mass. 1994) (class representative received additional payments "as compensation for services rendered to the class in initiating and prosecuting this action ..."); *In re Dun & Bradstreet Credit Services Customer Litigation*, 130 F.R.D. 366, 376 (S.D. Ohio 1990) (incentive awards to compensate the class representatives for "time, risk and expenses" granted). Generally, the courts look favorably upon such reasonable additional compensation for named class representatives who play an active role in the suit, because such awards serve as an incentive for average persons to commence and work actively on the prosecution of a class suit for the benefit of others. See, e.g., *Bogosian v. Gulf Oil Corp.*, 621 F. Supp. 27, 32 (E.D. Pa. 1985).

<sup>6</sup> The experience and reputation of counsel and the arms-length nature of the negotiations have often been recognized as important facts to be considered in assessing the fairness and reasonableness of proposed settlements. See, e.g., *Fisher Brothers*, 604 F. Supp. 446 at 452 (the "professional judgment of counsel involved in the litigation is entitled to significant weight."); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659, 667 (D. Minn. 1974) (the "recommendation of experienced antitrust counsel is entitled to great weight."); *Blank v. Talley Industries, Inc.*, 64 F.R.D. 125, 132 (S.D.N.Y. 1974) (a factor "entitled to substantial weight, is that [the settlement] bears the imprimatur of seasoned and experienced counsel").

best interests of the class. 2 NEWBERG ON CLASS ACTIONS (3d ed. 1992 and 1996 Cum. Supp.)

§ 11.43. The proposed settlement undoubtedly satisfies this standard.

**C. Class Notice**

Fed. R. Civ. P. 23(e) provides that “notice of the proposed dismissal or compromise (of a class action) shall be given to all members of the class in such manner as the court directs.” The notice to class members should make it clear that no decision on final approval<sup>7</sup> has yet been reached. *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D. Md. 1983). *See also Holden*, 665 F. Supp. at 1403 (in authorizing notice, the court refrained from “expressing any opinion concerning the ultimate merits of the proposed settlement.”).

Plaintiffs have prepared, and respectfully submit for the Court’s consideration, a proposed Notice of Class Action Settlement. Kraft has agreed to the language of the same. The settling parties propose providing individual notice to Class Members via first class mail. The content and mode of dissemination of the Notice fulfill the requirements of Rule 23(e), and due process. *See generally In re Prudential Ins. Co. America Practices Sales Litig.*, 148 F.3d 283, 326-27 (3d Cir. 1998).

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<sup>7</sup> The standard for final approval of a settlement is that the settlement is fair, reasonable and adequate. *See Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118 (3d Cir. 1990); *Walsh v. Great Atlantic & Pacific Tea Co. Inc.*, 726 F.2d 956, 965 (3d Cir. 1983).

V. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement with Kraft, and authorize the mailing of notice to class members.

Dated: April 17, 2007

Respectfully submitted,

 HPR

Robert T. Vance, Jr., Esquire  
LAW OFFICES OF ROBERT T. VANCE, JR.  
100 South Broad Street, Suite 1530  
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(215) 557-9550



Joseph C. Kohn, Esquire  
Hadley Perkins Roeltgen, Esquire  
KOHN, SWIFT & GRAF, P.C.  
One South Broad, Suite 2100  
Philadelphia, PA 19107  
(215) 238-1700

Counsel for Plaintiffs and the Class

**CERTIFICATE OF SERVICE**

I, Hadley Perkins Roeltgen, hereby certify that, on this 17<sup>th</sup> day of April, 2007, a true and correct copy of Plaintiffs' Unopposed Motion for: (1) Preliminary Approval of a Proposed Settlement, and (2) Authorization to Disseminate Notice and Supporting Memorandum were served upon the following by ECF and first class mail:

Marguerite S. Walsh, Esquire  
Michele Halgas Malloy, Esquire  
Littler Mendelson, P.C.  
Three Parkway, Suite 1400  
1601 Cherry Street  
Philadelphia, PA 19102

  
Hadley Perkins Roeltgen, Esquire



# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEBRA DAVIS and FRANCENIA CANION, on :  
behalf of themselves and all other similarly situated :  
persons, :

Plaintiffs,

V.

KRAFT FOODS NORTH AMERICA, INC.,

Defendant.

CIVIL ACTION NO. 03-6060

## CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of April 2007 (the “Execution Date”), by and between Defendant Kraft Foods North America, Inc., now known as Kraft Foods Global, Inc. and its corporate predecessor Nabisco Biscuit Company (collectively hereafter, “Kraft”) and Plaintiff Class Representatives Debra Davis and Francenia Canion (together, “Plaintiffs”), both individually and on behalf of a class of all African-American hourly employees employed at the Kraft Philadelphia Bakery from November 3, 1999 to December 31, 2006 (the “Class”).

WHEREAS, Plaintiffs allege that Kraft created and maintained a racially hostile and unfair system of discipline at the Philadelphia Bakery; and

WHEREAS, Kraft denies Plaintiffs' allegations; and

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding this action and have concluded that a settlement with Kraft according to the terms set forth below is in the best interests of Plaintiffs and the Class; and

WHEREAS, Plaintiffs and Kraft mutually desire to settle and terminate the Class Action and any and all disputes between them, which settlement shall not be deemed or construed to be an admission of liability or wrongdoing by Kraft, but which constitutes a good faith settlement of the disputed claims;

NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that this action against Kraft (hereafter, the "Action") be settled, compromised, and dismissed with prejudice, without costs to the Plaintiffs or the Class, subject to the approval of the Court, on the following terms and conditions.

**A. Definitions**

The following terms, as used in this Agreement, have the following meanings:

1. "Class" means:

All African-American hourly employees employed at the Kraft Philadelphia Bakery from November 3, 1999 to December 31, 2006.

2. "Class Counsel" shall refer to the law firms of Kohn, Swift, & Graf, P.C.

(hereafter, "KSG"), One South Broad Street, Suite 2100, Philadelphia, PA 19107, and The Law Offices of Robert T. Vance, 100 South Broad Street, Suite 1530, Philadelphia, PA 19110.

3. "Class Member" means each member of the Class who does not timely elect to be excluded from the Class.

4. "Class Period" means the period from and including November 3, 1999 to and including December 31, 2006.

5. "Class Representative" or "Plaintiffs" means Debra Davis and Francenia Canion.

6. "Releasees" shall refer jointly and severally, individually and collectively to Kraft, Foods North America, Inc. and its corporate predecessor Nabisco Biscuit Company, its

direct and indirect parents, subsidiaries, affiliates, divisions, and partners, the past and present officers, directors, members of any supervisory board or board of management, employees, agents, attorneys, servants, and representatives of the aforesaid entity, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

7. “Releasors” shall refer jointly and severally, individually and collectively to Plaintiffs and the Class Members and their respective past and present parents, subsidiaries, affiliates, predecessors, and agents. As used in this definition, “affiliates” means entities controlling, controlled by or under common control with a Releasor. Plaintiffs shall release all legally waivable employment-related claims that they currently may have against Kraft. Class Members shall only release claims related to or arising from allegedly unfair discipline.

8. “Settlement Amount” means One Million Three Hundred Twenty-Five Thousand Dollars (\$1,325,000) in United States currency.

9. The “Settlement Fund” shall be the Settlement Amount after Kraft transfers the Settlement Amount to an escrow account at PNC Bank in Philadelphia established by Plaintiffs’ Counsel, on behalf of the Class.

**B. Stipulation to Class Certification**

10. The parties to this Agreement hereby stipulate for purposes of settlement only that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b) are satisfied in this case, and, subject to Court approval, the following Settlement Class shall be certified for settlement purposes:

All African-American hourly employees employed at the Kraft Philadelphia Bakery from November 3, 1999 to December 31, 2006.

11. Subject to any opt-outs, it is presently anticipated that the class is comprised of two hundred sixty individuals, of whom thirty-three were suspended and twenty-one were terminated (for cause).

12. A class may be certified under Fed.R.Civ.P. 23(b)(2) for purposes of effecting this settlement. A subclass class may be certified under Rule 23(b)(3) for purposes of distributing monetary payments pursuant to this settlement.

13. If this Agreement fails to gain Preliminary Approval or Final Approval by the Court or the Effective Date, as defined in paragraph 17, does not occur, Kraft retains all rights to object to the maintenance of this case as a class action, and the Agreement is not admissible in any proceeding for any purpose.

**C. Approval of this Agreement and Dismissal of Claims**

14. Plaintiffs and Kraft shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking the Court's approval of procedures under Federal Rules of Civil Procedure 23(c) and (e) to secure certification of the Settlement Class and the prompt, complete, and final dismissal with prejudice of the Action.

15. After the execution of this Agreement, Plaintiffs shall submit to the Court a motion, to be joined in or stipulated to by Kraft, requesting entry of an Order preliminarily approving the settlement and authorizing dissemination of notice to the proposed Settlement Class (the "Motion"). The Motion shall include: (a) the definition of the Settlement Class to be certified by the Court pursuant to this Agreement; and (b) the proposed form and date of notice to be mailed to the Settlement Class.

16. Plaintiffs and Kraft shall jointly seek entry of a final judgment order providing:

- (a) as to the Action, approving finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class

Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

- (b) directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;
- (c) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement; and
- (d) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and entered forthwith.

17. This Agreement shall become final only when: (a) the Court has entered a final judgment order approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Action with prejudice as to all Settlement Class Members and without costs has been entered, and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this Agreement and the final judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review, and (c) the opt-out period of thirty (30) days has ended and no more than five (5) percent of absent class members have elected to opt out. ("Effective Date"). If more than five (5) percent of absent class members have elected to opt out, this proposed settlement may, at Kraft's sole discretion, be terminated and shall become null and void. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. §1651, shall be taken into account in determining the above-stated times.

**D. Release and Discharge**

18. Plaintiffs shall release all legally waivable employment-related claims that they currently may have against Kraft, pursuant to a separate Settlement and Release Agreement.

This Agreement shall preclude any absent class members from pursuing any claim(s) for alleged racially discriminatory discipline during the class period.

19. The Plaintiffs acknowledge:

(a) that they have read the terms of the Agreement, that they have been advised that prior to executing this Agreement they should discuss the language of this Agreement with their attorneys, that they have had an opportunity to do so, and that they understand this Agreement's terms and effects;

(b) that they are not waiving any rights or claims arising after the date of this Agreement; and

(c) that they are executing this Agreement of their own volition, with full understanding of its terms and effects, and with the intention of releasing all claims recited herein in exchange for the consideration described herein, which they acknowledge is adequate and satisfactory to them and which is in addition to anything to which they are already entitled. Neither Kraft nor any of its agents, representatives, or attorneys has made any representations to them concerning the terms or effects of this Agreement other than those contained herein.

**E. Claims Administration**

20. Kraft shall pay or cause to be paid the Settlement Amount of One Million Three Hundred Twenty-Five Thousand Dollars (\$1,325,000) in settlement of the Action. The Settlement Amount shall be wire transferred by Kraft within ten (10) business days after the Court grants preliminary approval of the settlement, into the Settlement Fund which shall be managed and administered by Class Counsel in accordance with the provisions of Sections E, F, J and H of this Agreement.

21. The Settlement Fund shall be invested in United States Government Treasury obligations (provided, however, that such portions of the Settlement Fund as may reasonably be needed to pay current expenses associated with providing notice to the Class, administering the Settlement Fund and the settlement, and any taxes may be deposited in a federally insured bank account in the Bank or United States Treasury Money Market funds in an amount not exceeding \$100,000). All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund.

22. Upon making the settlement payment as set forth in paragraph 20 above, Kraft shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution among Class Members, use, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution or administration.

23. After the Effective Date of this Agreement, Plaintiffs and Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees, and past, current, or future litigation expenses, including expert expenses. Kraft shall not be liable for any costs, fees, or expenses of any of Plaintiffs' attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund. No disbursements shall be made from the Settlement Fund prior to the Effective Date of this Agreement except as described in paragraph 21 above.

**F. Plan of Distribution**

24. Within ten (10) days of the Parties' execution of this Agreement, Kraft agrees that it will provide to Class Counsel the name, last known address and, for purposes of distribution,



social security numbers, of all Class members and the distribution to which each is entitled. Class members' personal information shall be used only for distribution purposes and shall remain confidential. Any disputes related to this paragraph shall be resolved by the Court. Class Counsel shall be responsible for sending via first class mail a personalized notice to each Class Member, in the form agreed to by the parties, notifying him/her of his/her rights under this Agreement.

25. Before the Effective Date of this Agreement, reasonable disbursements for expenses associated with providing notice of the settlement to the Settlement Class, expenses associated with administering the settlement, and any payments and expenses incurred in connection with taxation matters relating to the settlement and this Agreement (as addressed by paragraph 36 of this Agreement) may be made from the Settlement Fund, and such amounts shall not be refundable to Kraft in the event the Agreement is disapproved, rescinded, or otherwise fails to become effective.

26. Kraft shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution, administration, or use except as expressly otherwise provided in this Agreement. Kraft specifically shall not be responsible for any claims administration expenses, notice expenses, attorneys' fees, escrow fees, or any other costs and expenses incurred by Plaintiffs in bringing and settling the Action.

27. The Settlement Fund shall be distributed as follows:

(a) Each Class Member shall receive \$1,000. In addition, each Class Member suspended during the class period shall receive \$3,000, and Class Member terminated shall

receive \$10,000. Class Members shall receive the higher of the suspension or termination amount to which they are entitled but, in any event, shall only receive one such recovery. Thus, the most that may be distributed to an absent Class Member is \$11,000.

(b) In addition to the payments referred to in subparagraph (a) hereof, Kraft has agreed to certain payments to be made to the Plaintiffs pursuant to separate Settlement Agreements and Releases to be executed by Kraft and the Plaintiffs.

(c) Garden City Group shall serve as the Claims Administrator solely for purposes of distributing payments to the Class Members. For each Class Member, Garden City Group shall: (i) calculate the amount of tax withholding under this agreement; (ii) calculate the net payment to the Class Member; (iii) cause a check to be sent via first class U.S. Mail to each Class Member at the address provided by Class Counsel; (iv) pay the amounts due to all taxing authorities; and (v) issue a report of all such calculations and payments to Class Counsel and counsel for Kraft. As soon as practicable after the Effective Date, Garden City Group shall request Class Counsel to transmit a payment from the Settlement Fund in the amount necessary to pay the Class Members and taxing authorities.

28. At the conclusion of the distribution of the settlement fund, and after the expiration of that period of time during which Kraft reports disciplinary actions to an outside expert as set forth in paragraph 29(b), any remaining funds after all payments to Class members, costs of administration, taxes, and payment of attorneys' fees and costs shall be paid *cy pres*, subject to Court approval, to a charity agreed to by the parties or, in the absence of agreement, designated by the Court.

**G. Non-Monetary Relief**

29. In addition to the Settlement Amount as described in Section F, Kraft agrees to provide the following non-monetary relief to the Class members:

(a) Non-Reliance on Certain Disciplinary/Corrective Records

All records of coaching/counseling and verbal or written warnings that were given to class members during the first twenty-six months of the class period (*i.e.*, from 11/3/99 to 1/1/03) shall be removed, to the extent practicable, from Kraft's Human Resources (HR) databases, Kraft shall not rely upon such records in any way in the imposition of any future discipline.

(b) Internal and External Disciplinary Tracking and Monitoring

All future discipline (at or above the level of warnings) shall be tracked by a form that will include the race(s) of the persons receiving and imposing the discipline. In addition, Human Resources ("HR"), as soon as reasonably practicable, shall review each discipline and either approve or disapprove it. Discipline forms given to employees, to the extent not already provided, shall be modified to state prominently thereon that any future infractions may result in discipline, up to and including termination. Summaries of the discipline received by class members shall be submitted to an outside expert(s) who shall be paid by Kraft (up to \$50,000 from settlement proceeds) but selected by both sides and/or approved by the Court. Such Summaries shall be submitted to the parties on an annual basis for a period of at least two years, *i.e.*, in January 2008 for discipline imposed in 2007 and in January 2009 for discipline imposed in 2008. If the expert(s) determine(s) that class members are being disciplined at a rate substantially greater than expected, then (s)he shall investigate. Kraft will cooperate with the expert investigation by, among other things, making all pertinent records available to him or her and permitting interviews of pertinent personnel. If either the expert(s) or Class counsel form a good faith belief that racially discriminatory discipline is occurring, they may inform the Court.

Kraft may respond accordingly. Related reporting to an outside expert shall continue for no less than two years and no more than five years. If no disputes between Kraft and Class counsel arise during the second year of outside monitoring, it shall cease. If disputes arise and the parties, after reasonable efforts, cannot agree on any extended monitoring period, then either party may seek Court intervention.

(c) Employee Surveys

In 2007, 2008 and 2009, all present hourly employees at the Philadelphia bakery shall be annually and anonymously surveyed to determine their attitudes with regard to workplace fairness. Survey questions will include inquiries about the fairness of supervisors.

(d) Enhanced Supervisors' Performance Evaluations

Kraft agrees that a factor that Kraft will consider in evaluating bakery supervisors is the imposition of discipline in compliance with all anti-discrimination laws and with Kraft's equal employment opportunity policies.

**H. Attorneys' Fees**

30. Subject to approval of the District Court, Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees, past, current, or future litigation expenses. Kraft shall not be liable for any costs, fees, or expenses of any of Plaintiffs' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

31. Plaintiffs' Counsels' request for attorneys' fees (exclusive of cost reimbursements) will not exceed the amount of \$450,000. The amount of attorneys' fees and

costs awarded by the Court shall be paid from the Settlement Fund five (5) business days after the Effective Date.

32. Plaintiffs' Counsels' request for cost reimbursements will not exceed \$135,000.

33. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment order or if the Court enters the final judgment order and appellate review is sought and, on such review, such final judgment order is not affirmed, then Kraft and the Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety and any and all amounts then constituting the Settlement Fund (including all interest earned thereon) shall be returned forthwith to Kraft, except for such disbursements made or incurred in accordance with paragraph 21 of this Agreement. A modification or reversal on appeal of any amount of Class Counsel's fees and expenses awarded by the Court from the Settlement Fund or any plan of allocation or distribution of the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment order. Kraft and Plaintiffs expressly reserve all of their rights if the Agreement does not become effective or if it is rescinded by Kraft or Plaintiffs.

#### **H. Taxes**

34. Class Counsel shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Kraft shall have no responsibility to

make any filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund or to pay any taxes on the Settlement Fund unless the settlement is not consummated and the Settlement Fund is returned to Kraft. In the event the settlement is not consummated, Kraft shall be responsible for the payment of all taxes (including any interest or penalties), if any, on said income.

**J.     Taxation**

35.     Payments for suspensions and terminations made to Class Members will be deemed 70% compensatory damages for pain and suffering and this portion shall not be subject to withholding. Thirty percent (30%) of the disciplinary payments will be considered back pay, and will be taxed accordingly. Payments of \$1,000 are not for back pay and shall not be subject to withholding. Garden City Group shall be responsible for calculating and paying all appropriate taxes relating to the payment to class members under this agreement. In the event that any governmental agency, taxing authority or court determines that the Settlement Amount and/or the payments set forth above, or any portion thereof, have been improperly classified, each Plaintiff, Class member, and Plaintiffs' Counsel who receives payment will be solely responsible for any and all taxes due as a result of his or her own non-payment or underpayment of taxes.

**K.     Miscellaneous**

36.     The Named Plaintiffs and their Counsel agree to treat any reports, documents, and information received pursuant to this Agreement, particularly those reports, documents, and information received pursuant to paragraph G of this Agreement, as confidential. They agree not to divulge or communicate the contents of any reports, documents, and information in any way to any person or entity unless that disclosure is essential for the enforcement of this Agreement.

37. The parties agree not to promulgate any statement to any media source or any other individual or entity whatsoever regarding this settlement. If questioned regarding the matter, the parties agree that any response shall be limited to the statement: "The matter has been resolved to the mutual satisfaction of the parties."

38. This Agreement constitutes the entire agreement among Plaintiffs and Kraft pertaining to the settlement of the Action against Kraft and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Kraft in connection therewith. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Kraft and approved by the Court.

39. This Agreement may be executed in counterparts by Plaintiffs and Kraft, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

40. The parties agree that this Agreement shall be interpreted under the laws of the Commonwealth of Pennsylvania.

41. The parties agree that the Court shall retain jurisdiction of the Action.

42. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, Plaintiffs Debra Davis and Francenia Canion and Plaintiffs' Counsel, on behalf of a class of all African-American hourly employees of the Kraft Philadelphia Bakery from November 3, 1999 to December 31, 2006, Kraft Foods North America, Inc., and Counsel for Kraft Foods North America, Inc. hereby execute the foregoing Settlement Agreement.

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Joseph C. Kohn, Esquire  
Hadley Perkins Roeltgen, Esquire  
KOHN, SWIFT & GRAF, P.C.  
One South Broad, Suite 2100  
Philadelphia, PA 19107  
(215) 238-1700

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Robert T. Vance, Jr., Esquire  
LAW OFFICES OF ROBERT T. VANCE, JR.  
100 South Broad Street, Suite 1530  
Philadelphia, PA 19110  
(215) 557-9550

Counsel for The Named Plaintiffs and the Plaintiff Class

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DEBRA DAVIS

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FRANCENIA CANION

Plaintiffs

Marguerite S. Walsh  
LITTLER MENDELSON  
Three Parkway  
1601 Cherry Street, Suite 1400  
Philadelphia, PA 19102  
(267) 402-3000  
Counsel for Defendants

KRAFT FOODS NORTH AMERICA, INC.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Title: \_\_\_\_\_



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Defendant.

CIVIL ACTION NO. 03-6060

It is hereby stipulated, by and between counsel for Plaintiffs Debra Davis and Francenia Canion, on behalf of a class of hourly employees of the Kraft Philadelphia Bakery between November 3, 1999 until December 31, 2006, and Defendant Kraft, Inc., that the claims set forth in above-captioned action are hereby dismissed with prejudice pursuant to Fed. R. Civ. P. 41(a)(1).

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT B**

**TO: ALL AFRICAN-AMERICAN PERSONS WHO ARE EMPLOYED BY KRAFT  
(OR HAVE BEEN EMPLOYED BY KRAFT SINCE NOVEMBER 3, 1999) IN AN  
HOURLY POSITION AT THE PHILADELPHIA BAKERY, LOCATED ON  
12000 E. ROOSEVELT BOULEVARD**

DEBRA DAVIS and FRANCENIA CANION, on	:	
behalf of themselves and all other similarly situated	:	U.S. DISTRICT COURT FOR THE
persons,	:	EASTERN DISTRICT OF PA
Plaintiffs,	:	
	:	CIVIL ACTION NO. 03-6060
v.	:	
	:	
KRAFT FOODS NORTH AMERICA, INC.,	:	
Defendant.	:	

### NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT

This Notice is being sent to you, as ordered by the Court, to advise you of the preliminary approval of the settlement of a race discrimination action against Kraft Foods North America, Inc. ("Kraft").

- Summary of Litigation.** The Plaintiffs (*i.e.*, the people who filed this lawsuit) claimed that Kraft discriminates against its African-American or Black hourly employees at the Philadelphia Bakery by disciplining them more frequently and more severely than Caucasian or White hourly employees at the bakery who have committed the same or similar types of infractions. The two people who filed this lawsuit are Debra Davis, a terminated employee, and Francenia Canion, a current employee. Kraft denies any wrongdoing.
- Summary of the Proposed Settlement With Kraft.** Under the terms of the proposed settlement, Kraft will pay a total of \$1.325 million to resolve the Class Action, distributed, in part, as follows: (1) each Class member shall receive \$1,000; in addition, each class member suspended during the class period shall receive \$3,000, and each person terminated shall receive \$10,000. Class members who were suspended and terminated during the class period shall receive the \$10,000 payment only. They will not receive the \$3,000 payment; (2) Kraft shall pay an agreed upon amount to Named Plaintiffs Debra Davis and Francenia Canion in special compensatory awards and (3) Plaintiffs' Counsel will petition the Court for an award of up to \$450,000 in Attorneys' Fees and \$125,000 in reimbursement of their out of pocket litigation costs. Kraft also has agreed to provide the following non-monetary relief to the Class members. All records of coaching as well as minor violations that were given to class members during the first twenty-six months of the class period (*i.e.*, from 11/3/99 to 1/1/03), to the extent practicable, shall be removed from Kraft's HR data bases. Kraft will not rely upon such disciplinary records in any way. All future discipline (all warnings or more severe punishments) shall be tracked by a form that will include the race(s) of the persons receiving and imposing the discipline. In addition, Human Resources ("HR") shall revise

discipline forms and shall amend them to display prominently that any future infractions may result in further discipline up to and including termination. Summaries of the discipline received by class members shall be submitted to an outside expert. If the expert determines that class members are being disciplined at a rate substantially greater than expected, then (s)he shall investigate. If either the expert or Class counsel form a good faith belief that racially discriminatory discipline is occurring, they may inform the Court. Beginning in 2007, all present hourly employees at the Philadelphia bakery shall be annually and anonymously surveyed to determine their attitudes with regard to workplace fairness. Survey questions will include inquiries about the fairness of supervisors. Finally, Kraft bakery supervisors shall be evaluated annually. A factor that Kraft will consider in evaluating bakery supervisors is the imposition of discipline in compliance with all anti-discrimination laws and with Kraft's equal employment opportunity policies.

3. **Your Settlement Payment.** Kraft's records indicate that under the terms of the settlement agreement, as set forth in paragraph 2 above, you are entitled to a payment of \$1,000, from which no taxes will be withheld. [In addition, as a result of your suspension/termination, you are also entitled to a payment of \$3,000/\$10,000, from which taxes will be withheld as described in paragraph 6 below.]
4. **The Settlement Process.** Every class action settlement must be approved by the court which presided over the class action litigation. In order to decide whether to give final approval to the proposed settlement, the Court (the Hon. Paul S. Diamond) will consider the papers submitted by Kraft and by the Plaintiffs. In addition, Judge Diamond will hold a hearing in open court, as described in paragraph 7 below. You may submit any objections that you may have to the proposed settlement to the Court in writing. For any such written objections to be considered, they must be mailed to the following post office box and postmarked by \_\_\_\_\_.

**Kraft Discrimination Class Action**  
**P.O. Box \_\_\_\_\_**  
**Philadelphia, PA \_\_\_\_\_**

Please do not send any comments directly to the Court or attempt to reach Judge Diamond in person. You may, however, review a copy of the Settlement Agreement at the Clerk's Office at the federal Courthouse in Philadelphia (6<sup>th</sup> & Market) or online at [www.kohnswift.com](http://www.kohnswift.com).

5. **Eligibility to Receive Settlement Money.** You are eligible to participate in this Settlement if you are an African-American who worked in an hourly position at the Kraft/Nabisco bakery in Philadelphia at any time from November 3, 1999 to December 31, 2006. If you want to receive settlement funds, you do not need to take any action. The amount of your settlement check will be either \$1,000 or \$4,000 (if you have been suspended) or \$11,000 (if you have been terminated), subject to applicable tax withholding, explained in Paragraph 5. If you elect to remain in the lawsuit, you will be

waiving (or dismissing) any and all claims that you might have filed against Kraft based on alleged racial discrimination in discipline.

6. Payments for suspensions and terminations made to Class Members will be deemed seventy percent (70%) compensatory damages for pain and suffering and this portion shall not be subject to tax. Thirty percent (30%) of the payments will be considered back pay, and will be subject to appropriate tax withholding. Therefore, any settlement checks received for a termination or suspension will have taxes withheld from 30% of the total amount. Payments of \$1,000 are not for back pay and shall not be taxed.
7. **Right To Opt Out of the Settlement.** If you want to opt out or exclude yourself from the Settlement, you must send a letter requesting exclusion to the post office box identified above. Your exclusion request must be postmarked by \_\_\_\_\_, 2007. It must include your name, address, social security number, and the years during which you worked at Kraft. If you exclude yourself from this Settlement, you will not be eligible to receive any money. You will, however, be able to bring your own action against Kraft for any alleged discrimination.
8. **Final Fairness Hearing.** A Settlement Hearing will be held on \_\_\_\_\_, 2007 at \_\_\_\_\_ m., in the Courtroom of Judge Paul S. Diamond (U.S. Courthouse, 6th & Market Streets, Philadelphia, Room \_\_\_\_\_). You may attend this hearing. Further, any person who has not opted out of the Settlement and who has filed a written objection to the Settlement, may speak at the Final Fairness Hearing. If you seek to present any evidence or appear through a lawyer at the final fairness hearing, you must state your intention to do so in writing (sent to the post office box identified in this notice) postmarked on or before \_\_\_\_\_.
9. **Change of Address.** If your name and address have recently changed, please provide any such change by writing to the P.O. Box listed above.

### **IMPORTANT REMINDER:**

**If you wish to remain a member of the Kraft Discrimination Class, you do not need to do anything at this time.**

**If you want to object to the proposed settlement and/or the request for attorneys' fees and costs, or exclude yourself from the Class, you must send a letter to P.O. Box \_\_\_\_\_, Philadelphia, PA \_\_\_\_\_ postmarked on or before \_\_\_\_\_.**

**If you have any questions concerning this settlement, you may write counsel at the addresses listed below.**

**Plaintiffs' Counsel:**

Joseph C. Kohn, Esq., Hadley Perkins Roeltgen, Esq., Kohn, Swift & Graf, P.C., One South Broad St., Suite 2100, Philadelphia, PA 19107

Robert T. Vance, Jr., Esq., Law Offices of Robert T. Vance, Jr., 100 South Broad Street, Suite 1530, Philadelphia, PA 19110

**Kraft's Counsel:**

Marguerite S. Walsh, Esq., Littler Mendelson, P.C., Three Parkway, Suite 1400, 1601 Cherry Street, Philadelphia, PA 19102

**PLEASE DO NOT CONTACT THE COURT.**

If you have questions concerning this litigation, you may contact Class Counsel identified above.  
**Do not contact the Clerk of the Court or the Judge.**

Dated: \_\_\_\_\_

BY ORDER OF:  
Michael E. Kunz  
The Clerk of the United States  
District Court for the Eastern  
District of Pennsylvania