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Counsel for Plaintiff and the Class

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

14 ELLIOT ZEISEL, on behalf of himself and all
 15 others similarly situated,

16 Plaintiff,

17 v.

18 DIAMOND FOODS, INC., a Delaware
 corporation,

19 Defendant.

CASE NO. CV 10-01192-JSW (EDL)

CLASS ACTION

**STIPULATION AND ~~PROPOSED~~ ORDER
 STAYING ALL DEADLINES**

22 WHEREAS, on October 13, 2011, the Court entered an Order establishing deadlines for Class
 23 Notice to be sent, for summary judgment to be briefed and heard, for expert discovery and for a trial in
 24 this action. *See* Doc. 194;

25 WHEREAS, on October 13, 2011, after a day-long mediation and after the Court entered the
 26 above-referenced scheduling Order, Plaintiff Elliot Zeisel and Defendant Diamond Foods, Inc.
 27 (collectively, the “Parties”) reached an agreement in principle regarding the class-wide settlement of
 28

1 this class action lawsuit subject to final settlement documentation and approval of the Court of a final
2 settlement agreement;

3 WHEREAS, the Parties still need to document a final settlement agreement. After the Parties
4 document a final settlement agreement, the Parties anticipate filing a motion to submit to this Court for
5 preliminary approval of the settlement, for entry of plan for dissemination of settlement class notice and
6 for setting of a fairness hearing for final approval;

7 WHEREAS, the Parties believe that in light of their agreement in principle, all current pre-trial
8 and trial deadlines should be stayed pending a Case Management Conference on Friday, December 9,
9 2011 at 1:30 p.m., so that the Parties can focus on documenting a final settlement agreement and
10 preparing a motion for preliminary approval;

11 WHEREAS, if the Parties are able to document a final settlement agreement and file a motion
12 for preliminary approval of the settlement before the Case Management Conference on Friday,
13 December 9, 2011 at 1:30 p.m., then the Parties agree the December 9, 2011 Case Management
14 Conference may be vacated and removed from the Court's calendar, and all pre-trial and trial deadlines,
15 other than those associated with the settlement, may be vacated in their entirety and removed from the
16 Court's calendar;

17 WHEREAS, there have been seven prior extensions of time in this Action. *See* Docs. 5, 27, 32,
18 66, 158, 163, and 194;

19 WHEREAS, this Stipulation is made in good faith and not for purposes of delay;

20 WHEREAS, good cause exists for the foregoing modifications to the schedule in this action
21 because it would promote judicial efficiency to stay all deadlines pending a Case Management
22 Conference on Friday, December 9, 2011 at 1:30 p.m. to allow the Parties time to document a final
23 settlement agreement and to prepare and submit a motion for preliminary approval of the agreed-upon
24 settlement.

25 IS HEREBY STIPULATED by and between the Parties, through their respective counsel of
26 record, as follows:

27 (a) All current deadlines are stayed pending a Case Management Conference on Friday,
28 December 9, 2011 at 1:30 p.m.;

(b) If the Parties are able to document a final settlement agreement and file a motion for preliminary approval before the Case Management Conference on Friday, December 9, 2011 at 1:30 p.m., then the Parties agree the December 9, 2011 Case Management Conference may be vacated and removed from the Court's calendar, and all pre-trial and trial deadlines, other than those associated with the settlement, may be vacated in their entirety and removed from the Court's calendar.

Dated: October 28, 2011

**STEMBER FEINSTEIN DOYLE
& PAYNE LLC**

WINSTON & STRAWN LLP

By: /s/ Joseph N. Kravec, Jr.
Joseph N. Kravec, Jr.
(Admitted Pro Hac Vice)

By: /s/ Amanda L. Groves

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Attorneys for Plaintiff and the Class

I, Amanda L. Groves, hereby attest, pursuant to N.D. Cal. General Order No. 45, that the concurrence to the filing of this document has been obtained from each signatory hereto.

/s/ Amanda L. Groves
Amanda L. Groves

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~~PROPOSED~~ ORDER

1
2 PURSUANT TO STIPULATION, IT IS SO ORDERED. If the parties are unable to finalize a settlement
3 agreement by December 2, 2011, a case
4 management statement shall be due on that date.

5 Dated October 31, 2011


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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE