

1 Jeffrey J. Lederman (SBN: 104622)
 jlederman@winston.com
 2 Jeffrey S. Bosley (SBN: 167629)
 jbosley@winston.com
 3 Amanda L. Groves (SBN: 187216)
 agroves@winston.com
 4 WINSTON & STRAWN LLP
 101 California Street
 5 San Francisco, CA 94111-5802
 Telephone: (415) 591-1000
 6 Facsimile: (415) 591-1400

7 Attorneys for Defendant
 DIAMOND FOODS, INC.

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 9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO DIVISION**

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Winston & Strawn LLP
 101 California Street
 San Francisco, CA 94111-5802

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

Plaintiffs,

v.

DIAMOND FOODS, INC., a Delaware
 corporation,

Defendant.

Case No. 3:10-cv-01192 JSW (EDL)

**~~PROPOSED~~ ORDER GRANTING IN
 PART AND DENYING IN PART
 PLAINTIFF'S ADMINISTRATIVE
 MOTION FOR LEAVE TO FILE A
 SUPPLEMENTAL BRIEF IN SUPPORT OF
 PLAINTIFF'S UNOPPOSED MOTION
 FOR PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT TO
 ADDRESS NEW LAW**

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5802

1 Having considered: (a) Plaintiff’s Administrative Motion for Leave to File a Supplemental
2 Brief in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action
3 Settlement to Address New Law (“Plaintiff’s Administrative Motion”); (b) the Declaration of Joseph
4 N. Kravec, Jr. in Support of Plaintiff’s Administrative Motion for Leave to File a Supplemental Brief
5 in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement to
6 Address New Law; and (c) Defendant Diamond Foods, Inc.’s Response Pursuant to Civil Local Rule
7 7-11 Regarding Plaintiff’s Administrative Motion for Leave to File a Supplemental Brief in Support
8 of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement to Address
9 New Law, the Court rules as follows:

10 1. IT IS HEREBY ORDERED that Plaintiff’s Administrative Motion is GRANTED IN
11 PART AND DENIED IN PART.

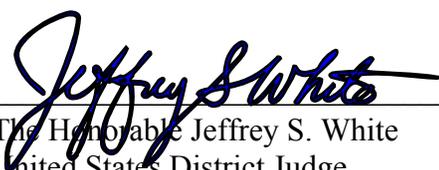
12 2. Plaintiff’s Administrative Motion is GRANTED to the extent it seeks leave to file a
13 supplemental brief regarding the Ninth Circuit’s opinion in *Mazza v. American Honda Motor Co.*
14 *Inc.*, --- F.3d ---, 2012 WL 89176 (9th Cir. Jan. 12, 2012) *DB Investments*, _F.3d_, 2011 WL 6367740 (3rd
15 and to bring to the Court’s attention *Sullivan v.*
16 Cir. December 20, 2011).

17 3. Plaintiff’s Administrative Motion is DENIED to the extent it seeks leave to file a
18 supplemental brief regarding amendment of the operative complaint.

19 4. Plaintiff’s Supplemental Brief in Support of Plaintiff’s Unopposed Motion for
20 Preliminary Approval of Class Action Settlement to Address New Law attached to Plaintiff’s
21 Administrative Motion as Exhibit 1 (“Plaintiff’s Supplemental Brief”) is hereby deemed filed, in
22 part. Certain portions of Plaintiff’s Supplemental Brief do not address the extent the *Mazza* opinion
23 does or does not impact certification of the proposed settlement class, and instead addresses
24 proposed amendments to the operative complaint. These arguments, at page 3, line 11 through page
25 4, line 16 (including footnote 1) and page 4, line 20 beginning with the word “If” through page 4,
26 line 22, are inappropriate at this stage, and are deemed stricken from Plaintiff’s Supplemental Brief.

27 **IT IS SO ORDERED.**

28 Dated: January 30, 2012


The Honorable Jeffrey S. White
United States District Judge