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7 Attorneys for Defendant
 DIAMOND FOODS, INC.

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

Winston & Strawn LLP
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 San Francisco, CA 94111-5802

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

14 Plaintiff,

15 v.

16 DIAMOND FOODS, INC., a Delaware
 17 corporation,

18 Defendant.

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

STIPULATION AND ~~PROPOSED~~
ORDER REGARDING *CY PRES*
DISTRIBUTION

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1 Plaintiff Elliott Zeisel and Defendant Diamond Foods, Inc. (collectively, the “Parties”),
2 through their undersigned counsel, hereby stipulate and agree as follows:

3 WHEREAS, in December 2011, the Parties entered into a Settlement Agreement providing
4 that that “[o]nce all proper Class Member Claims are paid, any residual restitution will be considered
5 *cy pres* which Diamond will donate to non-interested, national, geographically diverse, third party
6 food bank(s) in the form of food products.” (Docket Entry (“DE”) 205-1 at 14-15.);

7 WHEREAS, in 2012, employee(s) of the Greater Bay Area Division of the America Heart
8 Association (“AHA”) agreed that the AHA would accept food donations distributed in connection
9 with the Settlement Agreement (Segre Decl. ¶ 2.);

10 WHEREAS, on September 14, 2012, Diamond Foods filed a supplemental brief regarding
11 the *cy pres* portion of the Settlement Agreement. Based on the assurances it had received from the
12 AHA, Diamond Foods identified the AHA as a *cy pres* recipient. (DE 227.) Diamond Foods also
13 identified a number of geographically-diverse food banks that have nutritional education programs
14 as alternative *cy pres* recipients. (DE 228-1, attached hereto as Exhibit A.);

15 WHEREAS, on October 16, 2012, this Court issued an order granting final approval of the
16 Settlement Agreement. (DE 237.) This order approved the AHA as the *cy pres* recipient,
17 explaining “[t]he AHA is a nationwide organization, which reflects the fact that the Court approved
18 a nationwide class and thus enables t[he] Court to evaluate whether any Residual Restitution would
19 benefit areas where the class members may live. [Citation.] According to the record, the AHA
20 provides food education on issues relating to heart healthy food, including education about how to
21 read food labels.” (DE 237 (internal quotation marks omitted.) This Court also noted that the
22 Parties “identif[ied] a number of food banks across the nation that have an educational component to
23 their programs as alternative choices.” (*Id.*)

24 WHEREAS, consistent with its order re final approval, and also on October 16, 2012, this
25 Court entered Judgment in this case;

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WHEREAS, following the claims deadline of October 26, 2012, the settlement administrator sent 21,384 claimants checks totaling \$369,325.75 – and accounting for the \$23,306.00 in checks not cashed prior to the April 17, 2013 expiration deadline, the Residual Restitution totals \$2,253,980.25;

WHEREAS, despite the fact that the AHA previously agreed to receive food donations without indicating there might be future barriers to those donations, in March 2013, the AHA informed Diamond Foods that their national legal team had decided to not move forward with the donations. (Segre Decl. ¶ 2.)

WHEREAS, Feeding America — the nation’s leading domestic hunger-relief charity, which regularly distributes large volume of food product through its network of over 200 food banks across the country — has indicated its prepared to distribute the *cy pres* food donation to the geographically diverse food banks with nutrition-education programs that Diamond Foods previously submitted in connection with its supplemental brief regarding the *cy pres* portion of the Settlement Agreement (Hanner Decl. ¶¶ 1-3.);

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties and their counsel that, upon approval by this Court, Feeding America shall replace the AHA as the recipient of the retail value of the Residual Restitution of the Settlement Agreement in the form of food products and shall distribute the food products among the food banks with nutrition-education components previously submitted to the Court (DE 228-1, attached hereto as Exhibit A).

Dated: June 18, 2013

Respectfully Submitted,

**FEINSTEIN DOYLE
PAYNE & KRAVEC, LLC**

WINSTON & STRAWN LLP

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

By: /s/ Amanda L. Groves.
Amanda L. Groves

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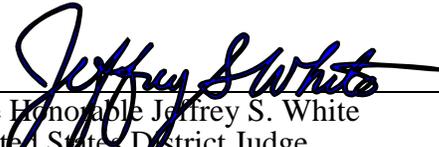
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 26, 2013



The Honorable Jeffrey S. White
United States District Judge

I, Amanda L. Groves, hereby attest, pursuant to rule 5-1(i) of the Civil Local Rules of the United States District Court, Northern District of California, that the concurrence to the filing of this document has been obtained from each signatory hereto.

/s/Amanda L. Groves
Amanda L. Groves