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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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

**JOINT STIPULATED REQUEST AND
~~PROPOSED~~ ORDER AMENDING
OCTOBER 10, 2010 ORDER
SCHEDULING TRIAL AND PRETRIAL
MATTERS
AS MODIFIED HEREIN**

Date Complaint Filed: March 22, 2010

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1 Pursuant to this Court’s Civil Standing Orders, October 10, 2010 Order Scheduling Trial and
2 Pretrial Matters and Civil Local Rules 6-2, 7-1(a) and 7-12, Plaintiff Elliot Zeisel (“Plaintiff”) and
3 Defendant Diamond Foods, Inc. (“Diamond”) (collectively, the “Parties”) stipulate and agree as
4 follows:

5 WHEREAS, on October 19, 2010 the Court entered its Order Scheduling Trial and Pretrial
6 Matters [Doc. No. 41] (“Order”), scheduling the hearing on class certification for April 15, 2011 at
7 9:00 a.m. and making Plaintiff’s last day to file class certification moving papers March 11, 2011;

8 WHEREAS, the Parties do not seek to alter the trial date or pre-trial conference in the
9 Court’s Order and the Parties have not requested any previous modifications of the Order in this
10 case;

11 WHEREAS, the Parties have been working diligently and expeditiously to conduct discovery
12 in this matter, have successfully reached agreement on most all discovery issues to date and
13 respectfully request a one-month extension of the class certification hearing date and discovery cut-
14 off dates to accommodate the scheduling matters described herein;

15 WHEREAS, on January 19, 2011, Plaintiff served his Notice of Fed. R. Civ. P. 30(b)(6)
16 Deposition of Defendant Diamond Foods, Inc. (the “Deposition Notice”), noticing the 30(b)(6)
17 depositions for February 21, 2011 and designating fifteen (15) topics (plus subtopics) for designation
18 (attached hereto as Exhibit A);

19 WHEREAS, the Parties promptly began the process of meeting and conferring regarding
20 scheduling dates for the 30(b)(6) deposition and to resolve objections to the Deposition Notice,
21 including breadth and scope of the 30(b)(6) topics;

22 WHEREAS, Diamond identified the need for 3 to 5 individuals to testify as the persons most
23 knowledgeable on the 15 topics (plus subtopics) described in the Deposition Notice and these
24 various 30(b)(6) designees’ (all Diamond high level executives) had existing travel schedules (for
25 travel across California and out-of-state) in February and the first two weeks of March 2011 prior to
26 the service of the Deposition Notice;

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1 WHEREAS, due to the Parties' need to resolve the breadth and scope of the topics (plus
2 subtopics) in the Deposition Notice, the existing 30(b)(6) witness designees' travel schedules, and
3 schedules of lead trial counsel for both Parties, the Parties anticipate completing the 30(b)(6)
4 deposition(s) the week of March 21, 2011;

5 WHEREAS, Plaintiff intends to use testimony from the 30(b)(6) deposition to support his
6 upcoming Motion for Class Certification, presently due to filed on March 11, 2011;

7 WHEREAS, the Parties agree that extending Court's pre-trial deadlines by four weeks with
8 no change to the Court's established October 31, 2011 Jury Trial Date will resolve the scheduling
9 issues described herein;

10 THEREFORE, the undersigned Parties submit this stipulated request and respectfully request
11 the Court amend the Order as follows:

12 Jury Trial Date: 10/31/2011, at 8:30 a.m., 10-day estimate (*no change*)

13 Pretrial Conference: Tuesday, 10/10/2011, at 2:00 p.m. (*no change*)

14 Last Day to Hear Dispositive Motions: Friday, 9/2/2011, 9:00 a.m. (*previously 8/5/2011*)

15 Hearing on Motion for Class Certification: Friday, 5/13/2011, 9:00 a.m.
16 (*previously 4/15/2011*)

17 Last Day for Expert Discovery: 7/27/2011 (*previously 6/29/2011*)

18 Last Day for Expert Disclosure: 7/12/2011 (*previously 6/14/2011*)

19 Close of Non-Expert Discovery: 6/27/2011 (*previously 5/30/2011*)

20 Further Case Management Conference: 6/17/2011, 1:30 p.m. (*previously 5/20/2011*)

21 Joint Supplement Conference Statement due: 6/10/2011 (*previously 5/13/2011*)

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2 Respectfully submitted,

3 Dated: February 2, 2011

STEMBER FEINSTEIN DOYLE & PAYNE, LLC

4 By: /s/ Joseph N. Kravec, Jr.
5 Joseph N. Kravec, Jr.
6 Attorneys for Plaintiff
ELLIOT ZEISEL

7 Dated: February 2, 2011

WINSTON & STRAWN LLP

8 By: /s/ Amanda L. Groves
9 Amanda L. Groves
10 Attorneys for Defendant
DIAMOND FOODS, INC.

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

13 /s/ Amanda L. Groves

Amanda L. Groves

14 The Court adopts, in part, the parties' requests to modify the deadlines in this case. The
15 Court's modifications are set forth below.

~~PURSUANT TO STIPULATION, IT IS SO ORDERED.~~

16 February 3, 2011

17 Date


18 The Honorable Jeffrey S. White
19 United States District Judge

20 The parties' proposed modifications to the last date to hear dispositive motions do not provide
21 sufficient time for the Court to issue a ruling, which would enable the parties to meaningfully
22 prepare their pretrial filings in accordance with the time periods required by this Court's
23 Guidelines for Civil Jury Trials.

24 Accordingly, the pretrial conference shall be continued from October 10, 2011 at 2:00 p.m. to
25 November 7, 2011 at 2:00 p.m., and the trial shall be continued from October 31, 2011 to
26 November 28, 2011 at 8:00 a.m.

27 In all other respects the Court adopts the parties' proposed changes to the schedule.
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