1 2 3 4 5 6 7 8 9	Scott Edward Cole, Esq. (S.B. #160744) Molly A. DeSario, Esq. (S.B. #230763) SCOTT COLE & ASSOCIATES, APC 1970 Broadway, Ninth Floor Oakland, California 94612 Telephone: (510) 891-9800 Facsimile: (510) 891-7030 Email: scole@scalaw.com Email: mdesario@scalaw.com Web: www.scalaw.com Meb: www.scalaw.com Attorneys for Representative Plaintiff and the Plaintiff Classes JENNER & BLOCK LLP Kenneth K. Lee (Cal. Bar No. 264296) klee@jenner.com	
10	Kelly M. Morrison (Cal. Bar No. 255513) kmorrison@jenner.com	
11	633 West 5th Street, Suite 3600 Los Angeles, CA 90071-2054 Phone: (212) 220, 5100	
12	Phone: (213) 239-5100 Facsimile: (213) 239-5199	
13	JENNER & BLOCK LLP Dean N. Panos (admitted <i>pro hac vice</i>)	
14	dpanos@jenner.com 353 N. Clark Street	
15	Chicago, IL 60654-3456 Phone: (312) 222-9350	
16	Facsimile: (312) 527-0484	
17	Attorneys for The Hain Celestial Group, Inc.	
18	UNITED STATES DISTRICT COURT	
19	NORTHERN DISTRICT OF CALIFORNIA	
20		
21	ANA BELEN HAM, individually, and on behalf of all others similarly) Case No. 3:14-cv-02044-WHO
22	situated,) CLASS ACTION
23	Plaintiff,) STIPULATION AND ORDER TO STAY CASE PENDING THE NINTH CIRCUIT'S
24	VS.) CASE LENDING THE NINTH CIRCUIT S) RESOLUTION OF BRAZIL V. DOLE FOOD) COMPANY, INC., JONES V. CONAGRA
25	THE HAIN CELESTIAL GROUP,) FOODS, INC., AND KOSTA V. DEL MONTE) FOODS, INC.,
26	INC.) 100D5, 1110.)
27	Defendant.)
28		/

-1-Stipulation and Order to Stay Case

- Plaintiff Ana Belen Ham ("Plaintiff") and defendant The Hain Celestial Group, Inc. ("Defendant") hereby agree and stipulate as follows:
- WHEREAS this lawsuit challenges allegedly false and deceptive mislabeling of food products manufactured by Defendant;

WHEREAS the parties expect that anticipated decisions made by the Ninth Circuit in the appeals in Brazil v. Dole Food Company, Inc., No. 14-17480 (9th Cir. Filed December 17, 2014), Jones v. ConAgra Foods, Inc., No. 14-16327 (9th Cir. Filed July 14, 2014), and Kosta v. Del Monte Foods, Inc., No. 15-16974 (9th Cir. Filed October 2, 2015) will provide useful guidance on threshold issues in this case relating to ascertainability, predominance, and monetary 10 relief;

11 **WHEREAS** other courts in this district have stayed similar food labeling cases because the litigants expect that the aforementioned anticipated decisions made by the Ninth Circuit will 12 13 provide useful guidance on threshold issues of ascertainability, predominance, and monetary 14 relief. See Pardini v. Unilever United States, Inc., No. 13-cv-01675-SC, 2015 U.S. Dist. LEXIS 15 49752, at *6 (N.D. Cal. Apr. 15, 2015); Wilson v. Frito-Lay North Am., Inc., No. 12-CV-1586 SC, 2015 U.S. Dist. LEXIS 94179, at *5 (N.D. Cal. July 20, 2015); Leonhart v. Nature's Path 16 17 Foods, Inc., No. 13-cv-00492-BLF, 2015 U.S. Dist. LEXIS 73269, *9 (N.D. Cal. June 5, 2015); 18 Order Staying Case, Parker v. J.M. Smucker Co., No. 13-0690 SC, Dkt. No 74 (N.D. Cal. 19 December 18, 2014); Gustavson v. Mars, Inc., No. 13-CV-04537-LHK, 2014 U.S. Dist. LEXIS 20 171736 (N.D. Cal. Dec. 10, 2014); Stipulation And Order Staying Case, Swearingen v. ConAgra 21 Foods, Inc., No. C13-05322, Dkt. No. 36 (N.D. Cal. Jan. 9, 2015); and Order By Judge Haywood 22 S. Gilliam, Jr. Staying Case, Allen v. ConAgra Foods, Inc., 3:13-CV- 01279-VC, Dkt. No. 152 23 (N.D. Cal. 2013);

24 **WHEREAS** the *Brazil* appeal raises issues pertinent to Plaintiff's motion for class 25 certification: While Judge Koh initially certified a damages and injunctive class of consumers 26 who purchased Dole food products bearing the allegedly false label "All Natural Fruit," she later decertified the class because she found the plaintiff's regression analysis to be insufficient. Brazil 27 *v. Dole Packaged Foods, LLC*, No. 12-CV-01831-LHK, 2014 U.S. Dist. LEXIS 74234, at *68-28

SCOTT COLE & ASSOCIATES, APC ATTORNEYS AT LAW THE TOWER BUILDING 0 BROADWAY, NINTH FLOOR OAKLAND, CA 94612 0261

1

2

3

4

5

6

7

8

9

71 (N.D. Cal. May 30, 2014); Brazil v. Dole Packaged Foods, LLC, No. 12-CV-01831-LHK, 1 2 2014 U.S. Dist. LEXIS 157575, at *45 (N.D. Cal. Nov. 6, 2014) (decertifying damages class). At issue on appeal in *Brazil* is whether the only possible model of restitution or disgorgement is the 3 4 difference-in-value method adopted by this Court;

WHEREAS the Jones appeal raises three additional relevant issues: (1) imposition and analysis of the ascertainability requirement; (2) analysis of the predominance requirement; and (3) determination of an acceptable restitution/damages theory. See Brief of Appellant at 2, Jones v. ConAgra Foods, Inc., No. 14-16327 (9th Cir. Nov. 21, 2014). "Those very same issues are almost certain to be raised in this case, and they are likely to be dispositive on a motion for class certification." Pardini, 2015 U.S. Dist. LEXIS 49752, at *6; 10

WHEREAS the *Del Monte* appeal involves, *inter alia*, the issues of ascertainability and materiality, both of which Plaintiff anticipates Defendant will raise as issues in this case.

13 WHEREAS the Court has the inherent power to stay proceedings. *Pardini*, 2015 U.S. Dist. LEXIS 49752, at *2 (quoting Landis v. Am. Co., 299 U.S. 248, 254 (1936)). In deciding 14 15 whether to stay proceedings, the Court considers "the possible damage which may result from granting a stay, the hardship or inequity which a party may suffer in being required to go 16 forward, and the orderly course of justice measured in terms of the simplifying or complicating 17 of issues, proof, and questions of law which could be expected to result from a stay." Id. at *2-3 18 19 (quoting CMAX, Inc. v. Hall, 300 F. 2d 265, 268 (9th Cir. 1962)). In cases where substantial 20 litigation is likely to take place during the pendency of an appeal, courts have granted a stay as a 21 means of conserving judicial resources. See Canal Props. LLC v. Alliant Tax Credit V, Inc., No. C04-03201 SI, 2005 U.S. Dist. LEXIS 49366, at *9 (N.D. Cal. June 29, 2005) (granting stay 22 23 where case on appeal was likely to have preclusive effect, and where substantial litigation would 24 likely take place during the pendency of the appeal);

25 WHEREAS a stay here will promote the orderly course of justice through the simplification of the legal questions of how the requirements for ascertainability, materiality, and 26 27 predominance apply in consumer class actions, as well as what the appropriate damages theories might be; 28

SCOTT COLE & ASSOCIATES, APC ATTORNEYS AT LAW THE TOWKER BUILDING 1970 BROADWAY, NINTH FLOOR OAKLAND, CA 94612 TEL: (510) 891-9800 5

6

7

8

9

11

12

WHEREAS staying this case will also conserve the parties' resources and enable a more 1 2 efficient and less expensive resolution of Plaintiff's claims. If this case were to go forward, the 3 parties would expend significant time and resources in discovery and at the class certification 4 stage and beyond. They would also expend considerable resources arguing the class certification 5 motion, and possibly appealing any ruling on class certification to the Ninth Circuit. But the Ninth Circuit may clarify the applicable law and the requirements for the factual record that 6 7 needs to be developed at this stage. Just as the parties urged in *Leonhart*, absent a stay the parties 8 here would likely be forced to re-depose key witnesses, and re-brief class certification after a 9 decision in Brazil, et al.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED that the instant action should be stayed pending resolution of the appeals in Brazil v. Dole Food Company, Inc., No. 14-17480 (9th Cir. Filed December 17, 2014), Jones v. ConAgra Foods, Inc., No. 14-16327 (9th Cir. Filed July 14, 2014), and Kosta v. Del Monte Foods, Inc., No. 15-16974 (9th Cir. Filed October 2, 2015).

18 Dated: December , 2015 19 SCOTT COLE & ASSOCIATES, APC 20 21 By: 22 Molly A. DeSario, Esq. Attorneys for the Representative Plaintiff 23 and the Plaintiff Classes 24 25 Dated: December , 2015 26 **JENNER & BLOCK LLP** 27 28 By: -4-

SCOTT COLE & ASSOCIATES, APC ATTORNEYS AT LAW THE TOWER BUILDING BROADWAY, NINTH FLOOR 1970

10

11

12

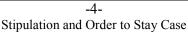
13

14

15

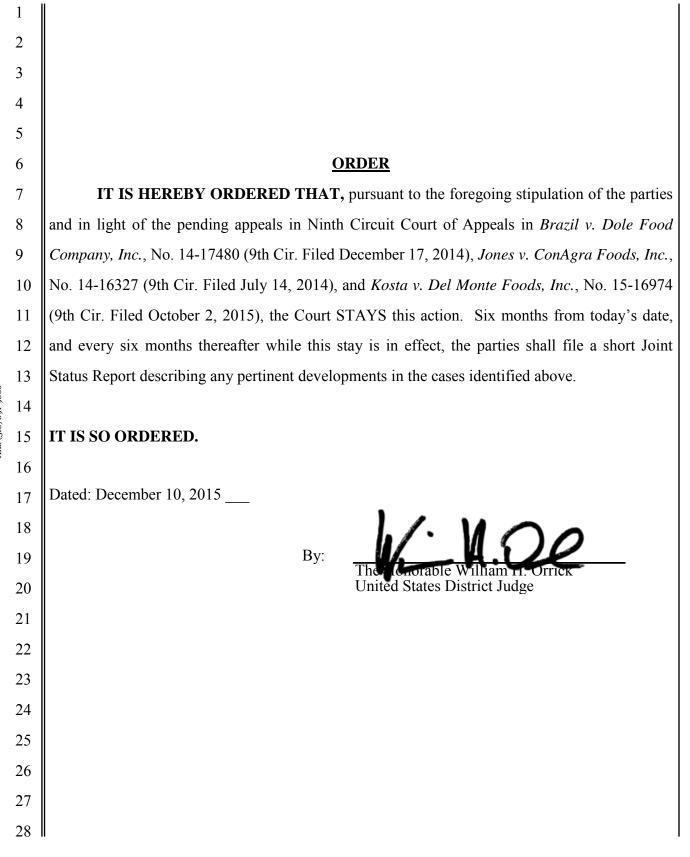
16

17



Kelly M. Morrison Attorneys for Defendant The Hain Celestial Group, Inc. **ATTESTATION** I, Molly A. DeSario, am the ECF user whose ID and password are being used to file this Stipulation and [Proposed] Order to Stay Case. In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from signatory Kelly M. Morrison. ATTORNEYS AT LAW THE TOWER BUILDING 1970 BROADWAY, NINTH FLOOR OAKLAND, CA 94612 TEL: (510) 891-9800

SCOTT COLE & ASSOCIATES, APC



SCOTT COLE & ASSOCIATES, APC ATTORNEYS AT LAW THE TOWER BUILDING 1970 BROADWAY, NINTH FLOOR OAKLAND, CA 94612 TEL: (510) 891-9800