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9 *Attorneys for Plaintiffs*

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12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15  
16 MICHAEL KOSTA and STEVE BATES,  
individually and on behalf of all others  
17 similarly situated,

18 Plaintiffs,

19 v.

20 DEL MONTE FOODS, INC.,

21 Defendant.

Case No. 4:12-cv-01722-YGR

**STIPULATION AND PROPOSED ORDER  
DISMISSING ACTION WITH PREJUDICE**

1 The parties hereby stipulate to request dismissal of the above-captioned case with  
2 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Defendant enters into this  
3 stipulation without prejudice as to any rights or contentions that it may have had in the action on  
4 the merits. Plaintiffs will appeal the dismissal in order to appeal the denial of class certification.  
5 *See Berger v. Home Depot USA, Inc.*, 741 F. 3d 1061, 1064-66 (9th Cir. 2014). The parties  
6 stipulate to this dismissal with each party to bear its own costs.

7 The parties therefore request that the Court enter the Proposed Order lodged concurrently  
8 herewith.

9 Dated: September 4, 2015

Respectfully submitted,

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11 By: /s/ Brian K. Herrington  
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Attorneys for Defendant  
DEL MONTE FOODS, INC.

21  
22 **ATTESTATION**

23 I, Brian K. Herrington, am the ECF user whose ID and password are being used to E-file  
24 this STIPULATION AND [PROPOSED] ORDER DISMISSING ACTION WITH PREJUDICE.  
25 In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this  
26 document has been obtained from signatory William L. Stern.

27 /s/ Brian K. Herrington  
28 Brian Herrington

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**[PROPOSED] ORDER**

**GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT:**

The above-captioned case is dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2), with each side to bear their own costs.

Date: September \_\_\_\_\_, 2015.

\_\_\_\_\_  
Honorable Judge Yvonne Gonzalez Rogers