

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

KARA TOWNSEND, Individually and
on behalf of a Class of Similarly
Situated Individuals

PLAINTIFF

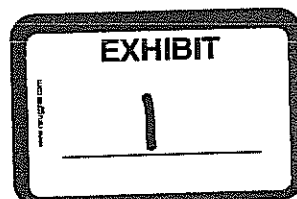
vs.

Case No. CV 14-958-4

BLUE DIAMOND GROWERS

DEFENDANT

STIPULATION OF SETTLEMENT



This Stipulation of Settlement is made and entered into by and among Plaintiffs Kara Townsend, Ashley Melvin, Taline Keshishian, Claire Harlam, Casley Vass, Levon Tchayelian, Larry Tran, Linda Willason, and Daniel Mitchell on behalf of themselves and all others similarly situated (“Plaintiffs”), and Defendant Blue Diamond Growers (“Blue Diamond”) (collectively, the “Parties”).

I. RECITALS

A. WHEREAS plaintiff Kara Townsend has filed a Class Action Complaint, which is now pending in the Circuit Court of Washington County, Arkansas, Case No. CV 14-958-4 (the “Arkansas Litigation”), and whereas a forthcoming Third Amended Complaint, with the addition of plaintiffs Linda Willason and Levon Tchayelian, seeks certification of a nationwide class alleging that Defendant improperly advertised, marketed, and labeled its Products during the Class Period;

B. WHEREAS plaintiffs Ashley Melvin and Taline Keshishian have filed a class action complaint, which is now pending in the Superior Court of the State of California, County of Los Angeles, Case No. BC532044 (the “California Almond Breeze Litigation”), alleging that Defendant improperly advertised, marketed, and labeled its Almond Breeze Products;

C. WHEREAS plaintiff Casley Vass has filed a class action complaint, which is now pending in the United States District Court, District of Massachusetts, Case No. 1:14-cv-13610-IT (the “Massachusetts Litigation”), alleging that Defendant improperly advertised, marketed, and labeled its Almond Breeze Products;

D. WHEREAS plaintiff Claire Harlam has filed a class action complaint, which is now pending in the United States District Court, Eastern District of New York, Case No. 1:15-cv-00877-MKR-RML (the “New York Litigation”), alleging that Defendant improperly advertised, marketed, and labeled its Almond Breeze Products;

E. WHEREAS plaintiffs Larry Tran and Daniel Mitchell have filed class action complaints, which have been coordinated and are now pending in the Superior Court of the State of California, County of Los Angeles, Case No. JCCP 4822 (the “California Nut-Thins Litigation”), alleging that Defendant improperly advertised, marketed, and labeled certain of its Nut-Thins Products.

F. The Arkansas Litigation, California Almond Breeze Litigation, Massachusetts Litigation, New York Litigation, and California Nut-Thins Litigation are collectively referred to as the “Lawsuits.”

G. WHEREAS Defendant has denied and continues to deny all material allegations of the Lawsuits and contends that its labeling, marketing, and/or use of endorsements were appropriate and did not intentionally or negligently mislead consumers about its Products;

H. WHEREAS Plaintiffs, while believing that the claims asserted in the Lawsuits have substantial merit, have considered the risks associated with the continued prosecution and possible appeal of this complex and time-consuming litigation, as well as the likelihood of success on the merits of the respective Lawsuits, and believe that, in consideration of all the circumstances, the proposed settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members;

I. WHEREAS Defendant, while denying any wrongdoing of any kind whatsoever and without admitting any liability, nevertheless agreed to enter into this Stipulation to avoid the further burden and expense of protracted litigation and to be completely free of any further controversy with respect to the class claims which have been asserted or could have been asserted in the Lawsuits; and

J. WHEREAS on April 17, 2015, some of the Parties participated in a mediation conducted by Martin Quinn, Esq. at JAMS in San Francisco, California regarding claims involving Blue Diamond’s Almond Breeze Almondmilk Products (“Almond Breeze”).

Previously, in another substantially similar food labeling class action case brought against Blue Diamond regarding its Almond Breeze Products, Plaintiffs' counsel and counsel for Blue Diamond engaged in two mediation sessions before Sue Stott, Esq., on May 29, 2014 and July 11, 2014, respectively. Subsequent to the April 17, 2015 mediation, some of the Parties engaged in an additional mediation session before Mr. Quinn on August 4, 2015, during which they engaged in further hard-fought settlement negotiations concerning the Almond Breeze Products. At the conclusion of the August 4, 2015 mediation, the parties reached a tentative nationwide class settlement agreement for the Almond Breeze Products. A separate mediation session regarding claims involving Blue Diamond's Nut-Thins Products ("Nut-Thins") was held before Mr. Quinn on November 14, 2015. At the conclusion of the November 14, 2015 mediation, the parties reached a tentative nationwide class settlement agreement for the Nut-Thins Products. The combined result of these and other extensive negotiations and settlement agreements is memorialized in the terms set forth in this Stipulation.

K. NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, it is hereby STIPULATED AND AGREED by and between the Parties, through their respective counsel, that the Lawsuits be settled and compromised by Plaintiffs, the Settlement Class, and the Defendant on the following terms and conditions, subject to preliminary and final approval of the Court, pursuant to Rule 23 of the Arkansas Rules of Civil Procedure, after hearing as provided in this Stipulation.

L. This Stipulation effectuates the resolution of disputed claims and is for settlement purposes only.

II. DEFINITIONS

A. As used in this Stipulation the following capitalized terms have the meanings specified below. Unless otherwise indicated, defined terms include the plural as well as the singular.

1. “Administrative Costs” means the reasonable and necessary fees and expenses incurred by the Class Action Settlement Administrator for all tasks the Class Action Settlement Administrator and any third parties perform in furtherance of the notice and administration of the settlement and to secure performance as set forth in this Stipulation.

2. “Attorneys’ Fees and Costs” means such funds as may be awarded by the Court based on the settlement of the Lawsuits described herein to compensate Almond Breeze Class Counsel and Nut-Thins Class Counsel, as determined by the Court, as described more particularly in Section VIII of this Stipulation.

3. “Claim” means a request for relief pursuant to this Stipulation submitted by or on behalf of a Settlement Class Member on a Claim Form submitted to the Class Action Settlement Administrator in accordance with the terms of this Stipulation.

4. “Challenged Ingredients” means Evaporated Cane Juice contained in Defendant’s Almond Breeze or Nut-Thins Products during the Settlement Class Period; and it means any other ingredients contained in Defendant’s Almond Breeze or Nut-Thins Products bearing the labeling statements “All Natural” or “Natural” on any portion of the packaging (other than the ingredients list) during the Settlement Class Period, including, but not limited to, one or more of the following ingredients: Cocoa (Dutch process), Potassium Citrate, Xanthan Gum, Vitamin A Palmitate, Vitamin D2, D-Alpha-Tocopherol, Disodium Phosphate, Maltodextrin, Ascorbyl Palmitate, Carrageenan, and Gellan Gum.

5. “Claim Deadline” means the date by which a Claim Form must be submitted electronically or postmarked to be considered timely and shall be a date no later than fifteen (15) days after entry of the Final Judgment at 11:59 p.m. Central Standard Time. The Claim Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Class Notice and the Claim Form.

6. “Claim Form” means the document (in paper or electronic form) to be

submitted by Claimants seeking payment pursuant to this Stipulation, which shall be substantially in the form attached hereto as Exhibit A, that will be available through the Settlement Website as well as upon request from the Class Action Settlement Administrator.

7. “Claims Period” means the ninety (90) day period of time during which a Settlement Class Member must submit a Claim Form to be eligible to receive monetary relief as part of the settlement. The Claims Period shall commence seventy five (75) days before the Final Approval Hearing and will continue for fifteen (15) consecutive days thereafter.

8. “Claimant” means a Settlement Class Member who submits a Claim Form for payment pursuant to this Stipulation.

9. “Class Action Settlement Administrator” means Heffler Claims Administration, subject to Court approval.

10. “Almond Breeze Class Counsel” means, subject to Court approval: Chant & Company A Professional Law Corporation, through Chant Yedalian, Esq.; Pratt & Associates, through Pierce Gore, Esq.; Lovelace Law Firm, P.A., through Dewitt M. Lovelace, Esq. and Valerie Lauro Nettles, Esq.; Cuneo Gilbert & LaDuca, LLP through Charles J. LaDuca, Esq.; Shemin Law Firm, PLLC, through Kenneth R. Shemin, Esq.; Thrash Law Firm, P.A., through Thomas P. Thrash, Esq.

11. “Nut-Thins Class Counsel” means, subject to Court approval: Chant & Company A Professional Law Corporation, through Chant Yedalian, Esq.; The Cooper Law Firm, P.C., through Scott B. Cooper, Esq.; and Aegis Law Firm, P.C., through Samuel A. Wong, Esq.

12. “Almond Breeze Class Representatives” means, subject to Court approval, plaintiffs Kara Townsend, Ashley Melvin, Taline Keshishian, Claire Harlam, Casley Vass, and Levon Tchayelian.

13. “Nut-Thins Class Representatives” means, subject to Court approval,

plaintiffs Larry Tran, Linda Willason, and Daniel Mitchell.

14. “Class Notice” means the long form notice substantially in the form attached hereto as Exhibit B to be published on the Settlement Website, or available by request from the Class Action Settlement Administrator.

15. “Court” means the Circuit Court of Washington County, Arkansas.

16. “Defendant” means Blue Diamond Growers.

17. “Defendant’s Counsel” means Hanson Bridgett LLP, through Lawrence M. Cirelli, Esq., Megan Oliver Thompson, Esq., and Geoffrey R. Pittman, Esq.; and Friday, Eldredge & Clark, LLP, through Marshall Ney, Esq.

18. “Effective Date” means the date on which all of the conditions of settlement have been satisfied, as discussed in Section IX of this Stipulation, appellate rights with respect to the Final Judgment have expired or have been exhausted in such a manner as to affirm the Final Judgment, and when no further appeals of the Final Judgment are possible, including review by the United States Supreme Court.

19. “Final Judgment” means the “Final Judgment and Order of Dismissal” to be entered by the Court, which, among other things, fully and finally approves the settlement and dismisses the Arkansas Litigation with prejudice, and retains continuing jurisdiction over the interpretation, implementation, and enforcement of the settlement. Plaintiffs will submit a proposed Final Judgment and Order of Dismissal as an exhibit to their motion for final approval.

20. “Household” means all Persons residing at the same physical address.

21. “Incentive Award” means any award sought by application to and approval by the Court that is payable to each of the Almond Breeze Class Representatives and each of the Nut-Thins Class Representatives, from the Settlement Amount, up to a maximum of Five Thousand and No/100 Dollars (\$5,000) each for Almond Breeze Class Representatives, Ashley Melvin and Taline Keshishian, and Three Thousand and No/100 Dollars (\$3,000) each

for all other Almond Breeze Class Representatives and Nut-Thins Class Representatives to compensate them for their efforts in bringing the respective Lawsuits and achieving the benefits of this settlement on behalf of the Settlement Class.

22. “Labeling” means the display of written, printed, or graphic matter upon the packaging of the Product, as well as written, printed, or graphic matter designed for use in the distribution or sale of the Product, including all advertising and marketing, whether in printed form, video, or audio, and information found on Blue Diamond’s websites supplementing, describing, explaining, and/or promoting the Products.

23. “Arkansas Litigation” means the lawsuit captioned *Townsend v. Blue Diamond Growers*, Case No. CV-14-958-4 (Circuit Court of Washington County, Arkansas), consisting of the original Complaint, First Amended Complaint, Second Amended Complaint, the forthcoming Third Amended Complaint, and all claims and defenses raised, or that could have been raised, by the pleadings.

24. “Notice Date” means the date on which the Class Action Settlement Administrator disseminates the Class Notice consistent with the Preliminary Approval Order. The Notice Date shall commence ten (10) days after the Court’s entry of the Preliminary Approval Order.

25. “Party” or “Parties” means the Plaintiffs and Defendant in the Lawsuits.

26. “Person” means a natural person, individual, corporation, partnership, association, government agency, or any other type of legal entity, whatsoever.

27. “Plaintiffs” means Kara Townsend, Ashley Melvin, Taline Keshishian, Claire Harlam, Casley Vass, Levon Tchayelian, Larry Tran, Linda Willason, and Daniel Mitchell.

28. “Preliminary Approval Order” means the “Order Preliminarily Approving Class Action Settlement, Conditionally Certifying the Settlement Class, Providing for Notice and

Scheduling Order,” which the Plaintiffs shall submit in the proposed form as an exhibit to their motion for the Preliminary Approval Order. The proposed Preliminary Approval Order will, among other things, preliminarily approve this Stipulation, certify the settlement-only class, describe how notice will be provided to the Settlement Class, and set a schedule for the Settlement Hearing.

29. “Products” means all Blue Diamond Almond Breeze and/or Blue Diamond Nut-Thins products manufactured, advertised, or sold by Defendant containing the Challenged Ingredients; bearing the labeling statements, “All Natural” or “Natural,” on any portion of the packaging other than the ingredients list (Defendant is not precluded from using the term “natural” in the ingredient lists for the Products); containing an endorsement from the American Heart Association; and/or which did not specifically disclose the amount or percentage of almonds in the product from May 28, 2009 up to and including the date of entry of the Preliminary Approval Order. The singular “Product” means any of the “Products.” For clarity, the Products will be referred to as “Almond Breeze Products” and “Nut-Thins Products” where a more specific reference is necessary to distinguish between the two product lines.

30. “Proof of Purchase” means a receipt, UPC code, picture of an opened Product showing UPC code, or other documentation from a third-party commercial source reasonably establishing the fact and date of purchase of the Product during the Settlement Class Period in the United States.

31. “Released Claims” means any and all actions, claims, demands, rights, suits, damages, costs, expenses, penalties, attorneys’ fees, and causes of action of whatever kind or nature, known or unknown, suspected or unsuspected, in law or equity, against the Released Persons that arose during the Settlement Class Period and arise, in any manner whatsoever, out of any facts alleged by Plaintiffs in the Lawsuits and that: (a) are based on any act, omission, inadequacy, misstatement, representation, harm, matter, cause or event, (b) involve legal claims

that have been asserted or could have been asserted in any of the Lawsuits, or (c) involve legal claims about the Products or the marketing, advertising, promoting, packaging, or Labeling of the Products. The Parties acknowledge and agree that personal injury claims are not part of any of the facts alleged by Plaintiffs in any of the Lawsuits and that personal injury claims are not included within the Released Claims.

32. "Released Persons" means and includes Defendant, its owners, subsidiaries, affiliates, joint-ventures, partners, members, divisions, distributors, wholesalers, retailers, re-sellers, licensors, licensees, suppliers, officers, directors, employees, shareholders, agents, attorneys, administrators, successors, predecessors, insurers, spokespersons, public relations firms, advertising agencies, co-packers, packagers, and assigns of all such persons or entities.

33. "Settlement Amount" means the Defendant's total and maximum monetary liability under this Stipulation, not to exceed Seven Million, Five-Hundred Thousand and No/100 Dollars (\$7,500,000.00) for the Almond Breeze Products and One Million, Four-Hundred and Ninety-Five Thousand and No/100 Dollars (\$1,495,000.00) for the Nut-Thins Products. The Settlement Amount will be paid out in the following manner: (1) Administrative Costs; (2) Valid Claims; (3) any award of Attorneys' Fees and Costs to Almond Breeze Class Counsel and Nut-Thins Class Counsel; and (4) any Incentive Awards to the Almond Breeze Class Representatives and Nut-Thins Class Representatives. All common Administrative Costs will be shared equally between the separate settlement funds for the Almond Breeze Products and the Nut-Thins Products. All Administrative Costs attributable solely to the Almond Breeze Products will be deducted from the settlement funds for the Almond Breeze Products. All Administrative Costs attributable solely to the Nut-Thins Products will be deducted from the settlement funds for the Nut-Thins Products. In the event that the total of (1) Administrative Costs; (2) Valid Claims as calculated in Section IV below; (3) any award of Attorneys' Fees and

Costs to Almond Breeze Class Counsel; and (4) any Incentive Awards to the Almond Breeze Class Representatives exceeds \$7,500,000.00 for Almond Breeze Products, then the benefit paid for Valid Claims submitted for Almond Breeze Products shall be reduced pro rata. In the event that the total of (1) Administrative Costs; (2) Valid Claims as calculated below in Section IV below; (3) any award of Attorneys' Fees and Costs to Nut-Thins Class Counsel; and (4) any Incentive Awards to the Nut-Thins Class Representatives exceeds \$1,495,000.00 for Nut-Thins Products, then the benefit paid for Valid Claims submitted for Nut-Thins Products shall be reduced pro rata. Furthermore, Defendant's total and maximum monetary liability shall not exceed \$7,500,000.00 for Almond Breeze Products; \$1,495,000.00 for Nut-Thins Products; and \$8,995,000.00 in the aggregate.

34. "Settlement Class" means: all Persons who purchased in the United States, from May 28, 2009 up to and including the date of entry of the Preliminary Approval Order, Blue Diamond Almond Breeze and/or Blue Diamond Nut-Thins Products which were manufactured, advertised, or sold by Defendant Blue Diamond Growers and which (1) bore the labeling statement "All Natural" or "Natural" on any portion of the packaging other than the ingredients list; (2) contained the ingredient statement Evaporated Cane Juice; (3) contained an endorsement from the American Heart Association; and/or (4) did not specifically disclose the amount or percentage of almonds in the product. The following Persons are expressly excluded from the Settlement Class: (a) all Persons who purchased or acquired the at issue Blue Diamond Almond Breeze and/or Blue Diamond Nut-Thins Products for resale; (b) Blue Diamond Growers and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely request for exclusion ("Opt Out"); (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); and (e) the judges to whom is assigned any lawsuit concerning any of the at issue Blue Diamond Almond Breeze and/or Blue Diamond Nut-Thins Products, and any members of their

immediate families.

35. “Settlement Class Member(s)” or “Member(s) of the Settlement Class” means a member of the Class who has not been properly excluded from the Class.

36. “Settlement Class Period” means the period from May 28, 2009, up to and including the date of entry of the Preliminary Approval Order.

37. “Settlement Hearing” means the hearing(s) to be held by the Court to consider and determine whether the proposed settlement as contained in this Stipulation should be finally approved as fair, reasonable, and adequate, and whether the Final Judgment approving the settlement contained in this Stipulation should be entered. The Parties will ask the Court to schedule the Settlement Hearing approximately 85 days after the Court enters the Preliminary Approval Order.

38. “Settlement Website” means the website to be created for this settlement that will include information about the Lawsuits and the settlement, relevant documents, and electronic and printable forms relating to the settlement. The Settlement Website shall be activated no later than ten (10) days after the Court enters the Preliminary Approval Order.

39. “Stipulation” means this Stipulation of Settlement, including its attached exhibits, which are incorporated herein by reference, duly executed by the Almond Breeze Class Representatives, the Nut-Thins Class Representatives, Almond Breeze Class Counsel, Nut-Thins Class Counsel, Defendant, and Defendant’s Counsel.

40. “Valid Claim” means a Claim Form submitted by a Settlement Class Member for one or more Product units that: (a) is submitted in accordance with the directions accompanying the Claim Form and the provisions of Section IV.C of this Stipulation; (b) is, on the initial submission, accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) is signed physically or by e-signature by a Settlement Class Member or Person with authority to sign for and bind a

Settlement Class Member, subject to the penalty of perjury; (d) is returned electronically or via mail and post-marked by the Claim Deadline, and (e) is determined to be valid by the Class Action Settlement Administrator.

B. Other capitalized terms in this Stipulation but not defined above shall have the meaning ascribed to them in this Stipulation and the exhibits attached hereto.

III. CERTIFICATION OF THE SETTLEMENT CLASS

Defendant hereby consents, solely for the purposes of settlement set forth herein, to the certification of the Settlement Class, to the appointment of Almond Breeze Class Counsel as counsel for those members of the Settlement Class that purchased Almond Breeze Products in the United States during the Settlement Class Period, to the appointment of Nut-Thins Class Counsel as counsel for those members of the Settlement Class that purchased Nut-Thin Products in the United States during the Settlement Class Period, to the appointment of Almond Breeze Class Representatives as suitable class representatives for those members of the Settlement Class that purchased Almond Breeze Products in the United States during the Settlement Class Period, and to the appointment of the Nut-Thins Class Representatives as suitable class representatives for those members of the Settlement Class that purchased Nut-Thins Products in the United States during the Settlement Class Period; provided, however, that if this Stipulation fails to receive Court approval or otherwise fails to be executed, including, but not limited to, the Judgment not becoming final as provided in Section X of this Stipulation, then Defendant retains all rights it had immediately preceding the execution of this Stipulation to object to the maintenance of each and all of the Lawsuits as a class action, and in that event, nothing in this Stipulation or other papers or proceedings related to the settlement shall be used as evidence or argument by any Party concerning whether any of the Lawsuits may properly be maintained as a class action, whether the class is ascertainable, or whether class counsel or the Plaintiffs can

adequately represent the Settlement Class Members under applicable law, or on any other point relevant to class certification proceedings.

IV. SETTLEMENT RELIEF

The settlement includes cash payments and non-monetary relief. Defendant will provide cash benefits up to the Settlement Amount to Settlement Class Members who submit Valid Claims during the Claims Period prior to the expiration of the Claim Deadline, and who also provide all required Proof of Purchase information to the Class Action Settlement Administrator and comply with all other conditions and requirements of the applicable Claim Form and this Stipulation as set forth below:

A. Cash Payments to Settlement Class Members

Cash payments will be made to claimants with Valid Claims as follows:

1. Settlement Class Members who submit a Valid Claim under penalty of perjury may recover \$1.00 per unit of Almond Breeze Products purchased up to a maximum of five (5) units total (\$5.00) per Household.

2. Settlement Class Members who submit a Valid Claim under penalty of perjury may recover \$1.00 per unit of Blue Diamond Nut-Thins Products purchased up to a maximum of five (5) units total (\$5.00) per Household.

3. Settlement Class Members who submit a valid Claim Form along with Proof of Purchase may recover a cash payment of \$1.00 per unit of Almond Breeze Products purchased up to a maximum of ten (10) units total (\$10.00) per Household.

4. Settlement Class Members who submit a valid Claim Form along with Proof of Purchase may recover a cash payment of \$1.00 per unit of Blue Diamond Nut-Thins Products purchased up to a maximum of ten (10) units total (\$10.00) per Household.

5. Claimants may seek payment by submitting a Claim Form either electronically or by mail. Each Claim Form will be signed under penalty of perjury. The actual

amount paid to individual Claimants may depend upon the number of Valid Claims made and the type of claim submitted. For the avoidance of doubt, a Settlement Class Member shall be eligible for one payment per Household.

6. The Class Action Administrator will mail payments (in check form) directly to the eligible Settlement Class Members no later than 45 days after the Effective Date or 45 days after the Claim Deadline, whichever is later (the "Claims Payment Date"). Checks that (1) remain un-cashed or (2) are returned through the mail as undelivered can be cancelled by the Class Action Administrator or Defendant 120 days or more after the date when they were mailed.

7. To be timely, Claim Forms must be submitted during the Claims Period and must be postmarked or received electronically by the Claim Deadline.

8. If the total amount of money required to pay Valid Claims exceeds the Settlement Amount, then each Settlement Class Member's award shall be proportionately reduced as set forth in Section II.A.33, *supra*.

B. Settlement Amount

1. Defendant agrees to satisfy all Valid Claims up to a maximum Settlement Amount of Seven Million, Five-Hundred Thousand and No/100 Dollars (\$7,500,000.00) for the Almond Breeze Products and for a maximum Settlement Amount of One Million, Four-Hundred and Ninety-Five Thousand and No/100 Dollars (\$1,495,000.00) for the Nut-Thins Products. The Settlement Amount shall be used to pay: (1) Administrative Costs; (2) Valid Claims; (3) any award of Attorneys' Fees and Costs to the Almond Breeze Class Counsel and Nut-Thins Class Counsel; and (4) any Incentive Awards to the Almond Breeze Class Representatives and Nut-Thins Class Representatives. For the avoidance of doubt, the common Administrative Costs will first be deducted in equal shares from the Almond Breeze maximum settlement fund of \$7,500,000.00 and from the Nut-Thins maximum settlement fund of \$1,495,000.00. Then, Class

Counsel's Attorneys' Fees and Costs shall be deducted in the amount approved for the Almond Breeze Class Counsel and Nut-Thins Class Counsel from the applicable Almond Breeze or Nut-Thins settlement fund. Then, payments of Incentive Awards, if any, shall be deducted in the amount approved for each of the Almond Breeze Class Representatives and Nut-Thins Class Representatives from the applicable Almond Breeze or Nut-Thins settlement fund. Lastly, the Valid Claims will be paid from the applicable Almond Breeze or Nut-Thins settlement fund after deducting Administrative Costs that are attributable solely to the Almond Breeze Products or Nut-Thins Products. Defendant's total and maximum monetary liability shall not exceed \$7,500,000.00 for Almond Breeze Products; \$1,495,000.00 for Nut-Thins Products; and \$8,995,000.00 in the aggregate.

2. If after payment of all Administrative Costs, Attorneys' Fees and Costs, and the Incentive Awards, the total amount of Valid Claims for Almond Breeze Products exceeds the maximum settlement fund for Almond Breeze Products or the total amount of Valid Claims for Nut-Thins Products exceeds the maximum settlement fund for Nut-Thins Products, then each respective Claimant's award shall be proportionately reduced (so that the maximum settlement fund for Almond Breeze Products and maximum settlement fund for Nut-Thins Products is not exceeded).

3. Defendant is obligated to pay Valid Claims, Administrative Costs, Attorneys' Fees and Costs, and Incentive Awards as set forth in this agreement. There are no unclaimed property rights or interest by Settlement Class Members who do not file Valid Claims.

C. Eligibility for Cash Payment

1. To be eligible for cash payment, the Settlement Class Member must timely submit a signed and completed Claim Form. A claim shall not be eligible for payment unless (1) the Claim Form is submitted during the Claims Period and is received on or before the Claim Deadline, (2) the Claim Form contains a complete, legible name and mailing address for the

Claimant, and (3) the Claim Form is signed under penalty of perjury.

2. The Class Action Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims and to pay only Valid Claims. Such procedures include, without limitation: (1) requiring manual entry of a security code to access the Claim Form via the Settlement Website, (2) screening for duplicate claims or Settlement Class Members seeking more than the maximum cash payment permitted by this Stipulation, and (3) reviewing Claims for evidence of waste, fraud, and abuse.

3. The Claim Form will also request an e-mail address for each Claimant, but an e-mail address will not be required to be eligible for a cash payment via mail. The determination of the Class Action Settlement Administrator concerning the eligibility and amount of payment shall be final and non-appealable.

4. The Class Action Settlement Administrator shall employ reasonable procedures to screen Claims for waste, fraud, and abuse. The Class Action Settlement Administrator may request additional information necessary to validate Claims and/or reject a Claim Form where there is evidence of abuse or fraud. The Settlement Administrator may also reject a Claim Form that does not contain all requested information necessary to screen the claim for fraud or abuse. Finally, the Class Action Settlement Administrator's decision as to whether the Class Member submitted a Valid Claim shall be non-appealable, final, and binding upon the Parties and the Claimants.

D. Injunctive Relief

Defendant agrees to a stipulated injunction for as long as the Products contain any of the Challenged Ingredients or unless and until the United States Food and Drug Administration ("FDA") issues binding regulations, or an appellate court issues a binding decision, that each of the Challenged Ingredients can be described as "natural" and/or that the term "evaporated cane juice" is the common or usual name for the ingredient. The terms of the injunction shall be that:

1. Defendant shall effect relabeling of all Products so that they do not describe the Products as “all natural” or “natural” on packaging or other advertising; however, Defendant is not precluded from using the term “natural” in the ingredient lists for the Products in accordance with FDA regulations;

2. Defendant shall effect changes on its website pages so that they do not describe the Products as “all natural” or “natural;” however, as stated above, Defendant is not precluded from using the term “natural” in the ingredient lists for the Products in accordance with FDA regulations;

3. Defendant shall effect relabeling of all Products so that they do not include the ingredient statement, “evaporated cane juice”;

4. Defendant agrees to continue not using the American Heart Association’s (“AHA”) “heart check-mark” symbol on any of the Products unless and until a future certification is obtained from the AHA;

5. Defendant shall effect relabeling of its Almond Breeze Products to remove the image of two hands holding almonds from the packaging;

6. Defendant shall effect relabeling of its Almond Breeze Products to change the phrase “Made from Real Almonds” to “Made with Real Almonds;” and

7. Defendant shall effectuate the changes set forth in Section IV.D.(1)-(6) by November 30, 2016 and provide Plaintiffs with a declaration setting forth compliance with the above obligations and shall maintain records necessary to demonstrate compliance with the same. Defendant is not required to remove or recall any of the Products in the market, inventory, or elsewhere; nor is Defendant required to discontinue the use of, or destroy, any packaging inventory that was in existence prior to final judicial approval of this agreement. Instead, Defendant shall not order any Product labels after November 30, 2016 that do not comply with Paragraphs IV.D.(1)-(6), above. However, Defendant may now, or after November 30, 2016 ,

exhaust all existing packaging inventory and thereafter sell and distribute Products bearing labeling printed on or before the final approval date of this agreement, without violating the terms of this Stipulation.

8. If Plaintiffs or Class Counsel object to any of the changes made to Defendant's website in connection with this Stipulation or any future website changes, Plaintiffs must provide Defendant with written notice of the specific issue(s) and must provide Defendant a 60-day opportunity to cure before any enforcement or litigation action is taken.

9. Plaintiffs and all members of the Settlement Class shall be forever enjoined from filing any action seeking injunctive relief for as long as the stipulated injunction remains in effect against Defendant prohibiting it from labeling the Products containing the Challenged Ingredients as "natural" or "all natural" (except in the ingredients list as permitted by FDA regulations), as containing the ingredient statement "evaporated cane juice," as containing the American Heart Association's "heart check-mark" symbol (except if new certification is obtained), as containing carrageenan or gellan gum, and any claims related to allegations that Defendant has not properly declared the almond content in any of the challenged Products.

V. NOTICE TO THE CLASS, COMMUNICATIONS WITH SETTLEMENT CLASS MEMBERS, AND REDEMPTION OF SETTLEMENT RELIEF

A. Class Notice

The Class Notice (Exhibit B) shall conform to all applicable requirements of the Arkansas Rules of Civil Procedure and the United States Constitution (including the Due Process Clause). The Class Notice shall set forth the following information:

1. General Terms. The Class Notice shall:
 - a) inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive relief under the proposed settlement;
 - b) contain a short, plain statement of the background of the Lawsuits,

the Settlement Class certification for settlement purposes, and the proposed settlement;

- c) describe the proposed settlement relief outlined in this Stipulation;

and

- d) state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement.

2. Notice of Exclusion, Objection, and Other Rights. The Class Notice shall inform Settlement Class Members:

- a) that they may exclude themselves from the Settlement Class by submitting a written exclusion request postmarked no later than forty five (45) days after the date when Class Notice is first published, or such other deadline as may be ordered by the Court;

- b) that any Settlement Class Member who has not submitted a written request for exclusion may, if he or she desires, object to the proposed settlement by filing and serving a written statement of objection along with proof of membership in the Class no later than forty five (45) days after the date when the Class Notice is first published, or such other deadline as may be ordered by the Court;

- c) that any Settlement Class Member, if he or she so requests, may enter an appearance at the Settlement Hearing;

- d) that any Judgment entered in the Litigation, whether favorable or unfavorable to the Settlement Class, shall include, and be binding on, all Settlement Class Members who have not been excluded from the Class, even if they have objected to the proposed settlement and even if they have any other claim, lawsuit, or proceeding pending against Defendant;

- e) that any Settlement Class Member who has not submitted a timely written request for exclusion may submit a completed and signed Claim Form seeking a cash payment under this settlement that must be postmarked or submitted via the Settlement Website

no later than the Claim Deadline;

f) that Claimants who receive cash payments must cash their checks within 120 days of the date when the check was mailed; and

g) of the terms of the release.

B. Publication

No later than ten (10) days after the Court enters the Preliminary Approval Order, the Class Administrator shall commence the notice plan agreed to by the Parties and post the Class Notice on the Settlement Website. The Parties agree that this Class Notice and notice plan are reasonable, appropriate, and meet the requirements of Rule 23 of the Arkansas Rules of Civil Procedure.

C. Retention of Class Action Settlement Administrator

Subject to Court approval, Heffler Claims Administration shall be retained as the Class Action Settlement Administrator to help implement the terms of the proposed Stipulation.

1. The Class Action Settlement Administrator shall assist with various administrative tasks, including, without limitation, (a) arranging for publication in accordance with the plan attached as Exhibit C, (b) handling returned mail not delivered to Claimants, (c) answering inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or their designee, (d) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion to the settlement, (e) establishing and maintaining the Settlement Website through the Claim Deadline, (f) receiving and processing claims and distributing payments to Settlement Class Members, and (g) otherwise assisting with administration of the Stipulation.

2. The Defendant's contract with the Class Action Settlement Administrator shall obligate the Class Action Settlement Administrator to abide by the following performance standards:

a) The Class Action Settlement Administrator shall accurately and objectively describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Stipulation in communications with Settlement Class Members;

b) The Class Action Settlement Administrator shall provide prompt, accurate, and objective responses to inquiries from Almond Breeze Class Counsel or their designee, Nut-Thins Class Counsel or their designee, Defendant, and/or Defendant's Counsel.

c) The proposal received from the Class Action Settlement Administrator describing anticipated Administration Costs is attached hereto as Exhibit D.

VI. APPROVAL PROCEDURES AND RELATED PROCEEDINGS

A. Preliminary Approval and Settlement Hearing

Promptly after execution of this Stipulation, the Parties shall submit this Stipulation to the Court and Plaintiffs shall move for entry of a Preliminary Approval Order preliminarily approving this Stipulation, providing for the dissemination of the Class Notice, and scheduling a Settlement Hearing. Defendant will not object to Plaintiffs' motion for entry of a Preliminary Approval Order.

B. Requests for Exclusion

1. Settlement Class Members will have until forty five (45) days after the date when Class Notice is first published to exclude themselves from the Settlement Class (the "Opt-Out Deadline"). Settlement Class Members may opt out by timely sending a written request postmarked no later than the Opt-Out Deadline to the Class Action Settlement Administrator. Settlement Class Members who timely opt out of the settlement: (a) will not be a part of the settlement, (b) will have no right to receive any benefits under the settlement, (c) will not be bound by the terms of the settlement, and (d) will not have any right to object to the terms of the settlement at the Settlement Hearing. The written request for exclusion must state the title

and case number of the Arkansas Litigation, request exclusion from the Settlement Class, provide the name, address, and telephone number of the requestor, must be signed by the requestor, and include a statement indicating that the requestor is a member of the Settlement Class. A list reflecting all requests for exclusion which have actually been received and logged shall be provided by the Class Action Administrator to Almond Breeze Class Counsel and Nut-Thins Class Counsel and Defendant's counsel at least ten (10) days before the Settlement Hearing.

2. Any Settlement Class Member who does not file a timely written request for exclusion as provided in the preceding paragraph shall be bound by all subsequent proceedings, orders, and the Judgment in the Arkansas Litigation relating to this Stipulation, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Defendant concerning the Released Claims.

C. Objections to the Settlement or to the Fee Motion

1. Any Settlement Class Member, on his or her own, or through an attorney hired at his or her own expense, may object to the terms of the settlement or to any of the terms of this Stipulation. Any such objection must be filed with the Court and also served on Almond Breeze Class Counsel, Nut-Thins Class Counsel, and Defendant's Counsel. To be effective, any such objection must be in writing and include the contents described in Paragraph VI.C.3, below, and must be filed and served no later than forty five (45) days after the date the Class Notice is first published, or as the Court otherwise directs. Any objections not raised properly and timely will be waived.

2. Any Settlement Class Member, on his or her own, or through an attorney hired at his or her own expense, may object to Almond Breeze Class Counsel's or Nut-Thins Class Counsel's motion for an award of Attorneys' Fees and Costs and/or the Incentive Awards. Any objection must be filed with the Court and also served on Almond Breeze Class Counsel,

Nut-Thins Class Counsel, and Defendant's Counsel. To be effective, any such objection must be in writing and include the contents described in Paragraph VI.C.3, below, and must be filed and served no later than forty five (45) days after the first date of the dissemination of the Class Notice or the posting of the Class Notice. Any objections not raised properly and timely are waived.

3. To be effective, any objection described in Paragraph VI.C.1 or VI.C.2 must contain all of the following information:

- a) A reference at the beginning to this case, *Townsend v. Blue Diamond Growers*, Case No. CV-14-958-4 (Circuit Court of Washington County, Arkansas);
- b) The objector's full name, address, and telephone number;
- c) A written statement of all grounds for the objection, accompanied by any legal support for such objection;
- d) Copies of any papers, briefs, or other documents upon which the objection is based;
- e) A list of all persons who will be called to testify in support of the objection;
- f) A statement of whether the objector intends to appear at the Settlement Hearing. If the objector intends to appear at the Settlement Hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the Settlement Hearing;
- g) A statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and
- h) A detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or

his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this settlement.

4. Any Settlement Class Member who fails to file and serve timely a written objection containing all of the information listed in the items listed above in the previous paragraph, including notice of his/her intent to appear at the final approval hearing, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Stipulation by any means, including but not limited to an appeal. Further, any Settlement Class Member who submits a timely written objection shall consent to deposition by Class Counsel prior to the Settlement Hearing.

VII. RELEASES

As of the Effective Date, and except as to such rights or claims created by the settlement, Plaintiffs and each Settlement Class Member, and each of their heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons.

In connection with the Released Claims, the release specifically extends to claims that Plaintiffs and Settlement Class Members do not know or expect to exist in their favor as of the date of entry of the Preliminary Approval Order and each Settlement Class Member shall be deemed to have forever waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code and any statute, rule, or legal doctrine similar, comparable, or equivalent to California Civil Code § 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time

of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Final Judgment shall further provide for and effect the release of all actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorneys' fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, that Blue Diamond Growers now has against Plaintiffs, Settlement Class Members, or Almond Breeze Class Counsel or Nut-Thins Class Counsel by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or settlement of any of the Lawsuits or the claims and defenses asserted in any of the Lawsuits.

Notwithstanding the above, the Court shall retain continuing jurisdiction over the Parties and the Stipulation with respect to the future performance of the terms of the Stipulation, and to assure that all payments and other actions required of any of the Parties by the settlement are properly made or taken. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreements embodied in this Stipulation.

VIII. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS AND CLASS REPRESENTATIVE INCENTIVE AWARDS

A. Almond Breeze Class Counsel may apply to the Court for an award of reasonable attorneys' fees in an amount not to exceed Two Million, Four-Hundred Ten Thousand and Nine-Hundred Eighty-One Dollars (\$2,410,981.00) and costs not to exceed \$31,000.00, both to be paid from the Almond Breeze settlement fund. Nut-Thins Class Counsel may apply to the Court for an award of reasonable attorneys' fees in an amount not to exceed Four-Hundred and Eighty Thousand, Five-Hundred and Eighty-Nine Dollars (\$480,589.00) and costs not to exceed \$11,000.00, both to be paid from the Nut-Thins settlement fund. Defendant will not object to, oppose, or otherwise contest Almond Breeze Class Counsel receiving an award of attorneys' fees and costs of up to \$2,441,981.00 to be paid from the Almond Breeze settlement fund, or Nut-

Thins Class Counsel receiving an award of attorneys' fees and costs of up to \$491,589.00 to be paid from the Nut-Thins settlement fund.

B. Almond Breeze Class Counsel and Nut-Thins Class Counsel may apply to the Court for an Incentive Award for each of the Plaintiffs in an amount not to exceed Five Thousand and No/100 Dollars (\$5,000) each for Almond Breeze Class Representatives, Ashley Melvin and Taline Keshishian, and Three Thousand and No/100 Dollars (\$3,000) each for all other Almond Breeze Class Representatives and Nut-Thins Class Representatives. Defendant will not object to, oppose, or otherwise contest each of the Almond Breeze Class Representatives and each of the Nut-Thins Class Representatives receiving an Incentive Award up to the amounts specified above. The Incentive Awards, if issued by the Court, will be paid from the Almond Breeze settlement fund for plaintiffs Kara Townsend, Ashley Melvin, Taline Keshishian, Claire Harlam, Casley Vass, and Levon Tchayelian, and from the Nut-Thins settlement fund for plaintiffs Larry Tran, Linda Willason, and Daniel Mitchell. Any Incentive Awards ordered by the Court shall be in addition to any money the Almond Breeze Class Representatives and Nut-Thins Class Representatives will receive from the Settlement Amount as a result of being deemed to have submitted a Valid Claim.

**IX. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,
CANCELLATION OR TERMINATION**

A. The Effective Date of this Stipulation shall be the first date after which all of the following events and conditions have been met or have occurred:

1. The Court has preliminarily approved this Stipulation and entered the Preliminary Approval Order;
2. The Court has entered the Final Judgment approving this Stipulation; and
3. Unless the Parties otherwise agree in writing to waive all or any portion of the following provision, there has occurred: (i) in the event there is a properly and timely filed

objection to entry of the Final Judgment, the expiration (without the filing or noticing of an appeal) of the time to appeal from the Final Judgment; (ii) in the event there is an appeal, the final dismissal of all appeals from the Final Judgment; (iii) in the event there is an appeal, affirmance on appeal of the Final Judgment in substantial form; (iv) in the event there is an appeal and if a ruling or decision is entered by an appellate court with respect to affirmance of the Final Judgment, the time to petition for rehearing or re-argument, and petitions for certiorari and or any other form of review with respect to such ruling or decision has expired; or (v) in the event there is an appeal and if a petition for rehearing or re-argument, petitions for certiorari or any other form of review with respect to the Final Judgment is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Judgment in substantial form.

B. If all of the conditions specified in Section IX.A of this Stipulation are not met, then this Stipulation shall be canceled and terminated unless Almond Breeze Class Counsel and Nut-Thins Class Counsel and Defendant mutually agree in writing to proceed with this Stipulation.

C. In the event that this Stipulation is not approved by the Court or the settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the Parties shall be restored to their respective pre-settlement positions in the Lawsuits, and this entire Stipulation shall become null and void. The Third Amended Complaint that is contemplated by this Stipulation shall be filed for settlement purposes only and shall be withdrawn in the event that this Stipulation fails to become effective for any reason and, in that event, the Parties shall be returned to their pre-settlement positions in the Lawsuits and Arkansas Litigation.

X. MISCELLANEOUS PROVISIONS

A. Conditional Nature of Settlement and Termination

Defendant and Plaintiffs shall each have the right to terminate the settlement by providing written notice of their election to do so to the other within thirty (30) days of: (a) the Court's declining to enter the Preliminary Approval Order; (b) the Court's refusal to approve this Stipulation or any part of it; (c) the Court's declining to enter the Final Judgment; (d) the date upon which the Final Judgment is modified or reversed in any respect by the Court of Appeals or the Supreme Court; (e) in the event that the Court enters an order and Final Judgment in a form other than that provided above ("Alternative Judgment") and none of the Parties hereto elect to terminate this settlement, the date that such Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (f) more than 10,000 Settlement Class Members opt out of the settlement pursuant to Section VI.B above.

B. Evidentiary Preclusion

The Parties agree that, to the fullest extent permitted by law, neither this Stipulation nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Stipulation or the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Parties or their counsel or the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Parties or their counsel or the Released Persons or the appropriateness of class certification in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In addition, any failure of the Court to approve the settlement and/or any objections or interventions may not be used as evidence in the Arkansas Litigation or any other proceeding for any purpose whatsoever. However, the Released Persons may file the Stipulation and/or the Final Approval Order in any action or proceeding that may be brought against them in order to support a defense or

counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

C. Effect of Non-Approval

In the event that this Stipulation is not approved by the Court in substantially its present form, or the settlement does not become final for any reason, the terms and provisions of this Stipulation shall have no further force and effect with respect to the Parties or the Settlement Class Members, and shall not be used in this Arkansas Litigation or in any other action or proceeding for any purpose, and any order or judgment entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, nunc pro tunc. In such event, this Stipulation and all negotiations, proceedings, documents prepared, and statements made in connection with this Stipulation shall be without prejudice to any Party or Settlement Class Member and shall not be admissible or offered into evidence in any action or proceeding as an admission or confession by any Party or any other Person or entity of any fact, matter, or proposition of law, and shall not be used or asserted in any other manner or for any other purpose, and all Parties and Settlement Class Members shall stand in the same position as if this Stipulation and settlement had not been negotiated, made, or submitted to the Court (except that nothing herein precludes Plaintiffs' counsel from stating or pursuing the amount of time spent on such matters as part of any fees related issue).

D. Effectiveness, Amendments, and Binding Nature

This Stipulation may be amended only in writing signed by the Parties. Except as otherwise stated above, each Party, including Plaintiffs on behalf of themselves and the Settlement Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Stipulation are hereafter found to be other than as now believed or assumed by that party to be true or applicable, this Stipulation shall nevertheless remain effective. However,

as set forth above, Defendant agrees to a stipulated injunction for as long as the Products contain any of the Challenged Ingredients or unless and until the United States Food and Drug Administration (“FDA”) issues binding regulations, or an appellate court issues a binding decision, that each of the Challenged Ingredients can be described as “natural” and/or that the term “evaporated cane juice” is the common or usual name for the ingredient.

This Stipulation is binding on, and shall inure to the benefit of, the Parties and their respective heirs, agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors, administrators, insurers, and successors in interest. All Released Persons other than Defendant, which is a Party, are intended to be third-party beneficiaries of this Stipulation.

E. Cooperation in Implementation

Defendant, Plaintiffs, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Stipulation.

F. Governing Law

This Stipulation shall be construed and governed in accordance with the laws of the State of Arkansas, without regard to Arkansas’ conflict-of-laws principles.

G. Stay Pending Court Approval

Class Counsel and Defendant’s Counsel agree to stay all proceedings, other than those proceedings necessary to carry out or enforce the terms and conditions of the settlement, until the Effective Date of the settlement has occurred. If, despite the Parties’ best efforts, this Stipulation should fail to become effective, the Parties will return to their prior positions in the Lawsuits, in accordance with Section III of this Stipulation.

The Parties also agree to stay all other pending litigation against Defendant regarding its Almond Breeze and Nut-Thins Products that is presently being litigated by Almond Breeze Class

Counsel and/or Nut-Thins Class Counsel. The Parties further agree to cooperate in opposing entry of any interim or final relief in favor of any Settlement Class Member in any other proceedings against any of the Released Persons which challenges the settlement or otherwise asserts or involves, directly or indirectly, a Released Claim. The Plaintiffs further agree to seek the dismissal of their other pending actions against Defendant immediately following the Effective Date.

H. Signatures

This Stipulation may be executed in counterparts, and, when so executed, shall constitute a binding original, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures sent by email shall be deemed original signatures and shall be binding.

I. Notices

Whenever this Stipulation requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class US Mail and email to:

1. If to Plaintiffs, then to both:

Chant Yedalian, Esq.
CHANT & COMPANY
A Professional Law Corporation
1010 N. Central Ave.
Glendale, CA 91202
Phone: 877.574.7100
Fax: 877.574.9411
chant@chant.mobi

Pierce Gore, Esq.
PRATT & ASSOCIATES
1871 The Alameda, Suite 425
San Jose, CA 95126
Phone: 408.369.0800
Fax: 408.369.0752

2. If to Defendant, then to:

Lawrence M. Cirelli
HANSON BRIDGETT LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Phone: 415.995.5003
Fax: 415.995.3497
lcirelli@hansonbridgett.com

J. Good Faith

The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Stipulation. To that end, the Parties further agree to implement the terms of this Stipulation in good faith and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Stipulation. The Parties also agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Stipulation.

K. Protective Orders

All orders, settlement agreements, and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of “Confidential” documents.

L. Arms-Length Negotiations

The determination of the terms and conditions contained herein and the drafting of the provisions of this Stipulation have been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel. This Stipulation shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Stipulation and the Parties agree that the drafting of this Stipulation has been a mutual undertaking.

M. Waiver

The waiver by one Party of any provision or breach of the Stipulation shall not be deemed a waiver of any other provision or breach of the Stipulation.

N. Variance

In the event of any variance between the terms of this Stipulation and any of the Exhibits hereto, the terms of this Stipulation shall control and supersede the Exhibits.

O. Exhibits

All Exhibits to this Stipulation are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

P. Taxes

No opinion concerning the tax consequences of the Stipulation to any Settlement Class Member is given or will be given by Blue Diamond Growers, Blue Diamond Growers' counsel, or Almond Breeze Class Counsel or Nut-Thins Class Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Stipulation as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Stipulation, if any.

Q. Support From The Parties

After a full investigation, discovery and arms-length negotiations, the Parties and their counsel agree that they: (i) have independently determined that this settlement is in the best interest of the Settlement Class; (ii) shall not oppose Plaintiffs' motions for entry of the Preliminary Approval Order and Final Judgment; and (iii) will not encourage any Persons to opt out or object to the settlement or this Stipulation. Once approved, the Class Notice attached as Exhibit B will be provided to the Settlement Class. The Parties and their counsel agree that the Class Notice is reasonable and appropriate. To avoid contradictory, incomplete, or confusing information about the settlement during the Claims Period, the Parties agree that if they make

any written press releases about the settlement before the conclusion of the Claims Period, such will be approved by the Parties in advance and made jointly.

R. Entire Agreement

This Stipulation contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings between them. Except for Section I, all terms of this Stipulation are contractual and are not mere recitals and shall be construed as if drafted by all Parties.

S. Time Periods

All time periods set forth herein shall be computed in calendar days. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in Court, a day in which weather or other conditions have made the Office of the Clerk or the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days.

T. Amendment

This Stipulation may be amended or modified only by a written instrument signed by the Parties and Almond Breeze Class Counsel and Nut-Thins Class Counsel and Defendant and Defendant's Counsel. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

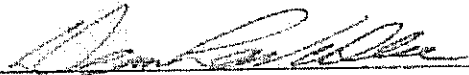
U. Date of Finalized Stipulation

This Stipulation shall be deemed to have been executed upon the last date of execution by all of the undersigned.

IN WITNESS THEREOF, the Parties hereto have caused this Stipulation to be executed
by their duly authorized representatives.

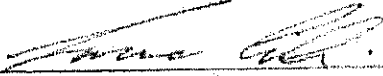
DATED: November 7, 2016

Defendant, BLUE DIAMOND GROWERS

By: 
Dean LaVallee
Senior Vice President, Chief Financial Officer,
Blue Diamond Growers

DATED: November 9, 2016

HANSON BRIDGETT LLP

By: 
Lawrence M. Cirelli
Megan Oliver Thompson
Geoffrey R. Pittman
Attorneys for Defendant Blue Diamond Growers
FRIDAY, ELDRIDGE & CLARK, LLP

DATED: November __, 2016

By: _____
Marshall Ney
Attorneys for Defendant Blue Diamond Growers

DATED: November __, 2016

Plaintiff and Class Representative, KARA
TOWNSEND

By: _____
Kara Townsend

DATED: November __, 2016

Plaintiff and Class Representative, LARRY
TRAN

By: _____
Larry Tran

DATED: November __, 2016

Plaintiff and Class Representative, DANIEL
MITCHELL

By: _____
Daniel Mitchell

DATED: November __, 2016

Defendant, BLUE DIAMOND GROWERS

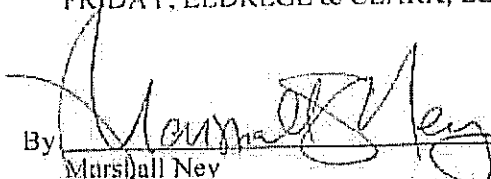
By: _____
Dean LaVallee
Senior Vice President, Chief Financial Officer,
Blue Diamond Growers

DATED: November __, 2016

HANSON BRIDGETT LLP

By: _____
Lawrence M. Cirelli
Megan Oliver Thompson
Geoffrey R. Pittman
Attorneys for Defendant Blue Diamond Growers
FRIDAY, ELDREGE & CLARK, LLP

DATED: November 9, 2016

By:  _____
Marshall Ney
Attorneys for Defendant Blue Diamond Growers

DATED: November __, 2016

Plaintiff and Class Representative, KARA
TOWNSEND

By: _____
Kara Townsend

DATED: November __, 2016

Plaintiff and Class Representative, LARRY
TRAN

By: _____
Larry Tran

DATED: November __, 2016

Plaintiff and Class Representative, DANIEL
MITCHELL

By: _____
Daniel Mitchell

DATED: November __, 2016

Defendant, BLUE DIAMOND GROWERS

By: _____
Dean LaVallee
Senior Vice President, Chief Financial Officer,
Blue Diamond Growers

DATED: November __, 2016

HANSON BRIDGETT LLP

By: _____
Lawrence M. Cirelli
Megan Oliver Thompson
Geoffrey R. Pittman
Attorneys for Defendant Blue Diamond Growers
FRIDAY, ELDREGE & CLARK, LLP

DATED: November __, 2016

By: _____
Marshall Ney
Attorneys for Defendant Blue Diamond Growers

DATED: November ²__, 2016

Plaintiff and Class Representative, KARA
TOWNSEND

By: Kara Townsend
Kara Townsend

DATED: November __, 2016

Plaintiff and Class Representative, LARRY
TRAN

By: _____
Larry Tran

DATED: November __, 2016

Plaintiff and Class Representative, DANIEL
MITCHELL

By: _____
Daniel Mitchell

DATED: November __, 2016

Defendant, BLUE DIAMOND GROWERS

By: _____
Dean LaVallee
Senior Vice President, Chief Financial Officer,
Blue Diamond Growers

DATED: November __, 2016

HANSON BRIDGETT LLP

By: _____
Lawrence M. Cirelli
Megan Oliver Thompson
Geoffrey R. Pittman
Attorneys for Defendant Blue Diamond Growers
FRIDAY, ELDREGE & CLARK, LLP

DATED: November __, 2016

By: _____
Marshall Ney
Attorneys for Defendant Blue Diamond Growers

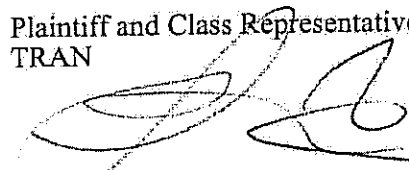
DATED: November __, 2016

Plaintiff and Class Representative, KARA
TOWNSEND

By: _____
Kara Townsend

DATED: November 4, 2016

Plaintiff and Class Representative, LARRY
TRAN

By: _____

Larry Tran

DATED: November __, 2016

Plaintiff and Class Representative, DANIEL
MITCHELL

By: _____
Daniel Mitchell

DATED: November __, 2016

Defendant, BLUE DIAMOND GROWERS

By: _____

Dean LaVallee
Senior Vice President, Chief Financial Officer,
Blue Diamond Growers

DATED: November __, 2016

HANSON BRIDGETT LLP

By: _____

Lawrence M. Cirelli
Megan Oliver Thompson
Geoffrey R. Pittman
Attorneys for Defendant Blue Diamond Growers
FRIDAY, ELDRIDGE & CLARK, LLP

DATED: November __, 2016

By: _____

Marshall Ney
Attorneys for Defendant Blue Diamond Growers

DATED: November __, 2016

Plaintiff and Class Representative, KARA
TOWNSEND

By: _____

Kara Townsend

DATED: November __, 2016

Plaintiff and Class Representative, LARRY
TRAN

By: _____

Larry Tran

DATED: November 2, 2016

Plaintiff and Class Representative, DANIEL
MITCHELL

By: _____


Daniel Mitchell

DATED: November 8, 2016

Plaintiff and Class Representative, ASHLEY
MELVIN

By: 
Ashley Melvin

DATED: November __, 2016

Plaintiff and Class Representative, TALINE
KESHISHIAN

By: _____
Taline Keshishian

DATED: November __, 2016

Plaintiff and Class Representative, CASLEY
VASS

By: _____
Casley Vass

DATED: November __, 2016

Plaintiff and Class Representative, CLAIRE
HARLAM

By: _____
Claire Harlam

DATED: November __, 2016

Plaintiff and Class Representative, LINDA
WILLASON

By: _____
Linda Willason

DATED: November __, 2016

Plaintiff and Class Representative, LEVON
TCHAYELIAN

By: _____
Levon Tchayelian

DATED: November __, 2016

Plaintiff and Class Representative, ASHLEY
MELVIN

By: _____
Ashley Melvin

DATED: November 4, 2016

Plaintiff and Class Representative, TALINE
KESHISHIAN

By: _____
Taline Keshishian

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Plaintiff and Class Representative, CASLEY
VASS

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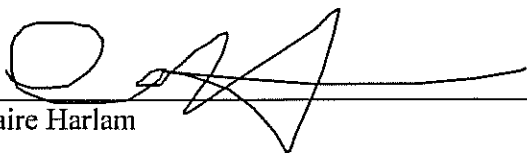
DATED: November __, 2016

Plaintiff and Class Representative, CASLEY
VASS

By: _____
Casley Vass

DATED: November 8, 2016

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Casley Vass

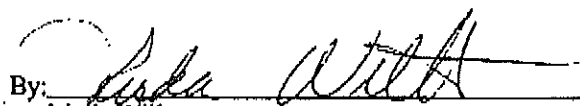
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DATED: November 8, 2016

CHANT & COMPANY
A Professional Law Corporation

By: 
Chant Yedalian

Almond Breeze Class Counsel and
Nut-Thins Class Counsel

DATED: November __, 2016

PRATT & ASSOCIATES

By: _____
Pierce Gore

Almond Breeze Class Counsel

DATED: November __, 2016

LOVELACE LAW FIRM, P.A.

By: _____
Dewitt M. Lovelace

Almond Breeze Class Counsel

DATED: November __, 2016

CUNEO GILBERT & LADUCA, LLP

By: _____
Charles J. LaDuca

Almond Breeze Class Counsel

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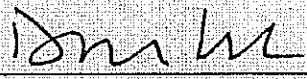
DATED: November __, 2016

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Pierce Gore
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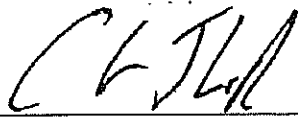
LOVELACE LAW FIRM, P.A.

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DATED: November 5, 2016


SHEMIN LAW FIRM, PLLC

By: 
Kenneth R. Shemin

Almond Breeze Class Counsel

DATED: November 8, 2016

THRASH LAW FIRM, P.A.

By: 
Thomas P. Thrash

Almond Breeze Class Counsel

DATED: November __, 2016

THE COOPER FIRM, P.C.

By: _____
Scott B. Cooper

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