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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO**

**PHYLLIS BRANNIN, VIRGINIA
GOMEZ and VENUS SAVAGE,
Individually and On Behalf of All Others
Similarly Situated,**

Plaintiffs,

v.

**GOLDEN GRAIN COMPANY and DOES
1 through 100**

Defendants.

Case No. CGC-16-555084

**SECOND AMENDED SETTLEMENT
AGREEMENT AND RELEASE**

1 Plaintiffs Phyllis Brannin (“Brannin”), Virginia Gomez (“Gomez”) and Venus Savage
2 (“Savage”) (collectively, “Class Representatives”) and defendant Golden Grain Company
3 (“Golden Grain” or “Defendant”) (the Class Representatives and Defendant are referred to
4 together as the “Parties”), hereby enter into this Second Amended Settlement Agreement (the
5 “Agreement” or the “Settlement”) to resolve this certified class action. This Agreement shall
6 supersede all prior agreements between the Parties.

7 **I. BACKGROUND TO THIS SETTLEMENT**

8 1. On October 28, 2016, Jackie Arcala (“Arcala”) and Debra Tuitele (“Tuitele”) filed
9 this class action in the Superior Court for the City and County of San Francisco on behalf of
10 purchasers of certain Near East brand products (the “Near East Products”) in California (the
11 “Class”) during the period October 28, 2012 to the present. They claimed that Golden Grain
12 engaged in an unlawful and deceptive business practice of packaging and distributing the Near
13 East Products in packaging containing a substantial amount of nonfunctional slack fill, thereby
14 violating Cal. Bus. & Prof. Code § 17200 *et seq.*, and sought restitution and injunctive relief on
15 behalf of themselves and the Class.

16 2. On March 1, 2017, Golden Grain demurred to plaintiffs’ claims. The demurrer
17 was overruled on April 5, 2017, and Golden Grain answered the complaint on May 11, 2017.

18 3. On September 14, 2017, plaintiffs filed an Amended Complaint, adding Brannin,
19 Gomez and Savage as putative class representatives, and subsequently dismissed Arcala and
20 Tuitele from the case.

21 4. On October 2, 2017, Brannin, Gomez and Savage filed a motion for certification
22 of the Class, appointment of themselves as Class Representatives, and appointment of Schubert
23 Jonckheer & Kolbe LLP as Class Counsel.

24 5. After the class certification motion was fully briefed, the Parties attended a full
25 day mediation with Hon. Richard Kramer (ret.) on September 18, 2018, and a second mediation
26 session on September 28, 2018. The Parties did not reach a settlement.

27 6. The Court heard plaintiffs’ motion for class certification on November 1, 2018.
28 Following that hearing, the Court ordered the Parties to file supplemental briefing related to the

1 motion.

2 7. On January 24, 2019, after the supplemental briefing had been completed, the
3 Court held a second hearing on plaintiffs' motion.

4 8. On January 25, 2019, the Court entered an order granting the motion for class
5 certification, appointing Brannin, Gomez and Savage as Class Representatives, and appointing
6 Schubert Jonckheer & Kolbe LLP as Class Counsel (the "Class Certification Order").

7 9. On January 25, 2019, the Court reassigned this case, and on March 8, 2019, again
8 reassigned it, this time to Hon. Charlene Padovani Kiesselbach.

9 10. Following entry of the Class Certification Order, the Parties again engaged in
10 extensive settlement negotiations. On August 30, 2019, those negotiations culminated in a
11 binding memorandum of understanding, which set forth the basic terms that are memorialized in
12 this Settlement Agreement.

13 11. Prior to reaching agreement to settle this case, the Parties engaged in substantial
14 discovery related to the motion for class certification as well as the underlying merits of
15 plaintiffs' claims. Plaintiffs served Defendant with document requests, special and form
16 interrogatories, and requests for admission. In addition, plaintiffs inspected Golden Grain's
17 packaging facility and deposed one of its managers responsible for packaging the Near East
18 Products. Plaintiffs also subpoenaed several retailers who sold Near East Products in California.
19 Defendant took the depositions of plaintiffs Brannin, Gomez and Savage, and of three of
20 plaintiffs' expert witnesses.

21 12. Based upon their experience and an informed evaluation of the Class Members'
22 claims, including the potential damages and injunctive relief that could be available were this case
23 to proceed to trial, and the substantial risks of continued litigation and delay, including the risk
24 that the claims, if not settled now, might result in a less substantial recovery or no recovery at all,
25 Plaintiffs and Class Counsel determined that this Settlement is fair and reasonable and in the best
26 interests of the Class as a whole.

27 13. Defendant denies that it has engaged in any wrongdoing, but agreed to this
28 Settlement because of the substantial expense of litigation, the length of time necessary to resolve

the issues presented, the inconvenience involved, and the disruption to its business operations.

II. DEFINITIONS

14. As used herein, the following terms have the meaning set forth below, and the plural of any defined term includes the singular thereof and the singular of any defined term includes the plural thereof.

15. Benefit means the cash available to a Claimant who files a Valid Claim under this Agreement. The specific Benefit received is subject to review, validation, and adjustments by the Settlement Administrator in accordance with the terms and conditions of this Agreement.

16. Benefit Payments are the form of payment issued for Valid Claims as determined by the Settlement Administrator and in accordance with the terms and conditions of this Agreement.

17. Claim means a request for a Benefit pursuant to this Agreement submitted by a Settlement Class Member on a Claim Form filed with the Settlement Administrator in accordance with the terms and conditions of this Agreement.

18. Claimant means a Settlement Class Member who files a Claim seeking a Benefit in accordance with the terms and conditions of this Agreement

19. Claim Form means a form, substantially similar to Exhibit A, which Settlement Class Members must submit either online or by U.S. mail to claim the settlement benefits described below. The Settlement Administrator may track Claim Forms with unique security identifiers or control numbers.

20. Claim Form Deadline means 11:59 p.m. Pacific time on the date that falls forty-five (45) days after the deadline for completing dissemination of Class Notice has passed.¹

21. Claims Period means a time period commencing on the date that Class Notice is initiated and terminating forty-five (45) days after the deadline for completing dissemination of Class Notice has passed..

¹ As an example, if Preliminary Approval were granted on May 8, 2020, the Parties proposed deadlines would be as follows: Class Notice would be disseminated during the period June 8, 2020 to July 8, 2020, and the Claim Form deadline would be forty-five (45) days after dissemination of Class Notice was completed, i.e., August 22, 2020.

1 22. Class or Class Members means all persons or entities who purchased in the State
2 of California at least one of the following Near East brand products from October 28, 2012 to the
3 date of preliminary approval of this Settlement

4 Couscous products: Broccoli & Cheese, Mediterranean Curry, Herbed Chicken,
5 Parmesan, Roasted Garlic & Olive Oil Wheat Couscous, Toasted Pine Nut, Wild
6 Mushroom & Herb, Roasted Garlic & Olive Oil Pearled Couscous, and Basil & Herb
7 Pearled Couscous.

8 Rice pilaf products: Original Rice Pilaf, Brown Rice Pilaf, Lentil Rice Pilaf, Chicken
9 Rice Pilaf, Spanish Rice Pilaf, Garlic & Herb Rice Pilaf, Roasted Chicken and Garlic Rice
10 Pilaf, Original Long Grain and Wild Rice, Garlic and Herb Long Grain and Wild Rice,
11 Roasted Vegetable & Chicken Long Grain & Wild Rice, Sesame Ginger Rice, Toasted
12 Almond Rice Pilaf, and Wild Mushroom & Herb Rice Pilaf.

13 Quinoa products: Roasted Red Pepper & Basil, Rosemary & Olive Oil, Zesty Lemon and
14 Mediterranean Medley.

15 Whole grain and tabbouleh products: Roasted Pecan & Garlic and Tabbouleh Mix.
16 (the “Near East Products”). Excluded from the Class are any purchases made for the purposes of
17 resale as well as Golden Grain, its officers, directors, management, employees, subsidiaries, and
18 affiliates, and any judges or justices involved in this action and any members of their immediate
19 families or their staff.

20 23. Class Counsel means the law firm Schubert Jonckheer & Kolbe LLP, located at
21 Three Embarcadero Center, Suite 1650, San Francisco, CA 94111. Class Counsel can be
22 contacted by phone at 415-788-4220 or by email at kmccauley@sjk.law.

23 24. Class Notice means the Court-approved form of notice to the Class Members,
24 substantially similar to Exhibit B hereto. The Settlement Administrator will initiate Class Notice
25 within thirty (30) days of the date of Preliminary Approval and will complete Class Notice within
26 sixty (60) days of the date of Preliminary Approval. Class Notice will notify the Class of, among
27 other things, the certification of the Class, preliminary approval of the Settlement, and scheduling
28 of the Final Approval Hearing.

 25. Class Representatives means the individuals Phyllis Brannin, Virginia Gomez and
Venus Savage.

 26. Complaint means the Amended Complaint filed in this case on September 14,
2017.

1 27. Court means the Superior Court of the State of California, City and County of San
2 Francisco.

3 28. Defendant or Golden Grain means the defendant Golden Grain Company.

4 29. Defense Counsel means the law firm, Greenberg Traurig, LLP, located at 1840
5 Century Park East, Suite 1900, Los Angeles, CA 90067, tel. (310) 586-7700.

6 30. Effective Date means the later of the deadline for filing an appeal of the Final
7 Approval Order entered in this case, or the date upon which any appeals of the Final Approval
8 Order have been finally resolved.

9 31. Final Approval Hearing means a hearing held before the Superior Court, City and
10 County of San Francisco, 400 McAllister Street, San Francisco, California to consider final
11 approval of the Settlement, whether and in what amount attorneys' fees and expenses should be
12 awarded to Class Counsel, and the merits of any objections to the Settlement.

13 32. Final Approval Order means an order issued by the Court finding that the terms of
14 this Settlement are fair, reasonable and adequate to the Class, ordering that the settlement relief
15 set forth in Section III be provided to the Settlement Class, and approving the releases as set forth
16 in Section V below.

17 33. Household means any number of persons cohabitating and related by blood or
18 marriage in the same dwelling unit or physical address as of the date such Persons submit a
19 Claim.

20 34. Judgment means issuance by the Court of a judgment substantially similar to
21 Exhibit D, following entry of a Final Approval Order, which constitutes a judgment within the
22 meaning and for the purposes of Code of Civil Procedure §§ 577 and 904.1(a) and Rule 3.769(h)
23 of the California Rules of Court.

24 35. Preliminary Approval of this Settlement means that the Court has entered an order
25 (the "Preliminary Approval Order") preliminarily approving the terms and conditions of this
26 Settlement, including the form and manner of providing Class Notice.

27 36. Proof of Purchase means a receipt or other documentation from a third-party
28 commercial source that, in the sole discretion of the Settlement Administrator, reasonably

1 establishes (i) the Near East Products at issue, (ii) the quantity of Near East Products at issue
2 purchased, and (iii) that the Near East Products at issue were purchased in California during the
3 Class Period.

4 37. Settlement or Agreement means this Settlement Agreement and Release and the
5 terms and conditions contained herein.

6 38. Settlement Administrator means Heffler Claims Group, which is responsible for
7 disseminating Class Notice and administering the Settlement, including processing, validating,
8 and paying Valid Claims to the Settlement Class Members.

9 39. Settlement Class Members means those Class Members who have not excluded
10 themselves from the Settlement by utilizing the opt-out procedure specified below.

11 40. Settlement Website means a website dedicated to this Settlement, which shall
12 contain the Class Notice, Claim Form, Settlement Agreement, the Court's Order Granting
13 Preliminary Approval, and all motions filed in support of the Settlement or the proposed award of
14 attorneys' fees and expenses. The Settlement Website will be created and controlled by the
15 Settlement Administrator.

16 41. Valid Claim means a Claim Form submitted by a Settlement Class Member that is:
17 (i) submitted in accordance with the directions accompanying the Claim Form and the provisions
18 of this Agreement; (ii) accurately, fully, and truthfully completed and executed, with all of the
19 information requested in the Claim Form, by a Settlement Class Member; (iii) signed physically
20 or by e-signature by a Settlement Class Member personally; (iv) returned via mail and
21 postmarked by the Claim Form Deadline, or, if submitted online, is submitted by 11:59 p.m.
22 Pacific time on the Claim Form Deadline; and (v) determined to be valid by the Settlement
23 Administrator. The Claims Administrator may require additional information from the
24 Settlement Class Member to validate the Claim.

25 **III. CONSIDERATION FOR SETTLEMENT**

26 42. In full and complete settlement of all claims in this case, the Parties agree to the
27 following terms.

28 43. Injunctive Relief: Within one hundred and twenty (120) days of the Effective Date

1 of this Settlement and continuing for a period of five (5) years, and without any requirement that
2 Defendant withdraw or destroy any labels in market or existence as of such time (including
3 inventory), Defendant will change the Near East Products' packaging to include one or both of
4 the following:

- 5 a. A disclosure (the "Disclosure") on the Near East Products boxes, stating as
6 follows: "Package contains empty space to accommodate grain to
7 seasoning ratio. This package is sold by weight, not by volume. Contents
8 may settle during shipping and handling." The Disclosure shall be
9 displayed on the Near East Products' boxes in a prominent manner,
10 including bold, prominent type at least the same font size and type face as
11 "For questions and comments" currently displayed on the Near East
12 Products' boxes.
- 13 b. A line or graphic that represents the product fill line and a statement
14 communicating that the line or graphic represents the product fill line such
15 as "Fill Line," both of which will be clearly and conspicuously depicted on
16 the exterior packaging of the Near East Products, in conformance with Cal.
17 Bus. & Prof. Code § 12606.2(c)(7)(C).
- 18 c. Notwithstanding the foregoing, the parties acknowledge and agree that the
19 injunctive relief provided in this paragraph 43 shall no longer apply in the
20 event there is a material change in package for the Near East Products (as
21 defined in this Agreement) or a material change in California laws
22 regarding non-functional slack fill and Defendant's products are in
23 compliance with applicable law.

24 44. Restitution:

- 25 a. Subject to the rights and limitations set forth in this Agreement, every
26 Settlement Class Member shall have the right to submit a Claim for a
27 Benefit. A Claim shall be a Valid Claim only if submitted on the Claim
28 Form, which may be accessed online using the unique Settlement Class

1 Member identifier provided by the Settlement Administrator, pursuant to
2 and in compliance with the procedures set forth herein. Submission of a
3 Claim, regardless of whether it is determined to be a Valid Claim, shall
4 confer no rights or obligations on any Party, any Settlement Class Member,
5 or any other person, except as expressly provided herein.

6 b. At the election of the Settlement Class Member, a Claim Form may be
7 submitted in paper via first class mail or online at the Settlement Website.
8 A Claim Form must be postmarked or submitted online no later than the
9 Claim Form Deadline. A Claim Form received by or submitted online after
10 the Claim Form Deadline will not be a Valid Claim. The Settlement
11 Administrator may track Claim Forms with unique security identifiers or
12 control numbers. For Claim Forms that are submitted online, the
13 Settlement Class Member shall have the opportunity to upload Proof of
14 Purchase image files (e.g., jpeg, tif, pdf).

15 c. Each Settlement Class Member who timely submits a valid Claim Form
16 either online at the Settlement Website or by mailing a completed Claim
17 Form to the Settlement Administrator during the Claims Period will be
18 eligible for payment as set forth below:

19 i. Settlement Class Members who submit Proof of Purchase(s) with
20 their Valid Claim during the Claims Period shall be entitled to
21 payment of \$1.25 per box for each box of Near East Products that
22 they purchased in California during the Class Period.

23 ii. Settlement Class Members who do not submit Proof of Purchase(s)
24 with their Valid Claim during the Claims Period shall be entitled to
25 payment of \$1.25 per box for up to six (6) boxes of Near East
26 Products purchased in California during the Class Period.

27 Settlement Class Members who do not submit Proof of Purchase(s)
28 with their Claims are limited to one (1) Valid Claim per Household.

1 iii. For the avoidance of doubt, a Settlement Class Member may file
2 only a single Claim electing either a Benefit with Proof of Purchase
3 or a Benefit without a Proof of Purchase, but not both.

4 45. Costs of Class Notice and Settlement Administration: Defendant will pay all costs
5 of Class Notice and settlement administration to the Settlement Administrator.

6 46. The Settlement Administrator shall be responsible for, among other things,
7 providing notice as set forth in the declaration of Jeanne Finegan, administering the Settlement
8 Website and the Settlement Benefit Claims process described herein (including receiving and
9 maintaining on behalf of the Court and the Parties documentation regarding all Claims deemed
10 valid or invalid). To prevent the payment of fraudulent Claims and to pay only Valid Claims, the
11 Settlement Administrator will use adequate and customary procedures and standards, including,
12 without limitation: (i) tracking claim forms with unique security identifiers or control numbers
13 issued to persons who seek to file a Claim Form; (ii) screening that each Claim Form has a valid
14 security code or control number; (iii) screening for duplicate Claims or Settlement Class
15 Members seeking more than the maximum cash payment permitted by this Agreement; (iv)
16 ensuring that each Settlement Class Member has provided complete, truthful, and accurate
17 information on the initial submission of the Claim Form; and (v) reviewing Claims for evidence
18 of fraud. The Settlement Administrator and Parties shall have the right to verify Claims and the
19 Settlement Administrator may request additional information from Claimants necessary to
20 validate Claims and/or reject a Claim Form where—in the Settlement Administrator’s sole
21 discretion and judgment—there is evidence or suspicion of fraud. If any fraud is detected or
22 reasonably suspected, the Settlement Administrator and Parties can require information from the
23 Settlement Class Members or deny claims, subject to the supervision of the Parties and ultimate
24 oversight by the Court.

25 47. The Settlement Administrator will process and pay all Claims within thirty (30)
26 days of the Effective Date. The Settlement Administrator shall approve or deny all Claims, and
27 its decision shall be final and binding, except that Class Counsel and Defendants shall have the
28 right to verify Claims and to challenge the Settlement Administrator’s decision by motion to the

1 Court.

2 48. Defendants' choice not to challenge the validity of any one or more Claim Form
3 shall not constitute or be construed as a waiver or relinquishment of any audit or other rights as to
4 any other Claim Form, individually or as a group, and similarly shall not be construed as a waiver
5 or relinquishment by the Party as to any of its rights under this Agreement. Nothing in this
6 Agreement or claims process creates a claim by any Person against Class Representatives, Class
7 Counsel, Defendants, Defense Counsel, or the Settlement Administrator based on any
8 determination of a Valid Claim, distributions, or awards made in accordance with this Agreement
9 and the Exhibits hereto, and all relief shall be solely as provided in this Agreement and by its
10 Claims process. Neither Plaintiffs nor Defendants, nor their respective counsel, shall have any
11 liability whatsoever for any act or omission of the Settlement Administrator.

12 49. All Benefit Payments shall be subject to a one hundred twenty (120)-day period,
13 after which the checks shall no longer be negotiable. If a Benefit is not negotiated, the Settlement
14 Class Member shall not be entitled to any further payment under this Agreement. If the Benefit
15 Payment is returned as undeliverable, the Settlement Administrator shall send an email to the
16 Claimant, if an email address was provided with the Claim, to attempt to obtain a better address,
17 and if obtained, shall mail the Benefit Payment to the new address, but shall have no other
18 obligation to skip-trace or obtain an updated address; if such Claimant did not provide an email
19 address with the Claim, the Settlement Administrator shall perform skip-tracing and re-mail the
20 Benefit Payment to any new address discovered through the skip-tracing process. The return of
21 failure-to-cash checks shall have no effect on a Settlement Class Member's release of claims,
22 obligations, representations, or warranties as provided herein, which shall remain in full effect.

23 50. Attorneys' Fees and Expenses and Class Representatives' Incentive Awards:
24 Class Counsel may apply to the Court for an award of reasonable attorneys' fees and expenses
25 incurred in this litigation not to exceed \$500,000, and for incentive awards to each of the Class
26 Representatives of \$5,000 each. Defendant shall not object to such awards not to exceed said
27 amount, and Class Counsel shall not request or accept an award in excess of said amount.
28 Defendant shall pay Class Counsel's fees and expenses and the Class Representatives' incentive

awards within thirty (30) days of the Court's order granting Final Approval of the terms of this Agreement.

IV. CLASS NOTICE, OBJECTIONS, OPT OUTS AND SETTLEMENT ADMINISTRATION.

51. Class Notice.

- a. Within thirty (30) days of entry of a Preliminary Approval Order, the Settlement Administrator will initiate Class Notice in a form substantially similar to that set forth in Exhibit B hereto, and will complete such dissemination within sixty (60) days of entry of Preliminary Approval.
- b. The Class Notice will be designed to reach an estimated 77% of Class Members an average of 3.1 times, or such alternate manner of Class Notice as approved by the Court in its Preliminary Approval Order, as follows:
 - i. Print Publications. The Settlement Administrator will cause a Summary Notice, substantially in the form attached hereto as Exhibit C, to be published to Class Members on or before the date specified in the Preliminary Approval Order via a full page ad in the California edition of *People Magazine*. The Summary Notice will include reference to the Settlement Website, where Class Members can view the Class Notice approved by the Court, substantially similar to Exhibit B.
 - ii. Online Display and Social Media. The Settlement Administrator will purchase nearly 23 million online display and social media impressions targeting the Class Members. The display and social media advertising will be placed in Google search results, Facebook, Instagram, Twitter and YouTube. Each online advertisement will contain a link to the Class Notice approved by the Court, substantially similar to Exhibit B.
 - iii. Press Release. The Settlement Administrator will disseminate a press release regarding the Settlement over PR Newswire's US1

1 Newslines.

2 iv. Website Notice. The Settlement Administrator will establish a
3 Settlement Website for the purposes of disseminating the Class
4 Notice approved by the Court, and information regarding filing a
5 claim, and opting out of or objecting to the Settlement, and case-
6 related pleadings including the Preliminary Approval motion and
7 memorandum and the operative Complaint in this case.

8 52. Objections to Settlement. Any Settlement Class Member who wishes to object to
9 this Settlement and/or to be heard must serve a written objection upon Class Counsel within forty-
10 five (45) days after the deadline for completing dissemination of Class Notice has passed, or
11 within such deadline as has been ordered by the Court in its Preliminary Approval Order. Any
12 such objection shall establish membership in the Settlement Class (i.e., shall include a statement
13 that the person objecting purchased at least one Near East Product in California during the Class
14 Period), state the name, address and telephone number of the Settlement Class Member, and the
15 reason why the Settlement Class Member objects to the Settlement. Objectors may attend the
16 Final Approval Hearing and may obtain their own attorney at their own expense, but are not
17 required to. Objectors may also seek to intervene in the action, but are not required to.

18 53. Opt Outs. Any Class Member who submits a valid opt out request, as described in
19 the Class Notice, to Class Counsel within forty-five (45) days after the deadline for completing
20 dissemination of Class Notice has passed, or within such deadline as has been ordered by the
21 Court in its Preliminary Approval Order, shall be excluded from the Settlement Class. Class
22 Members who opt out of this Settlement shall not be permitted to object to this Settlement.

23 54. Final Approval Order and Judgment. Following Preliminary Approval and
24 dissemination of Class Notice, the Class Representatives shall move for entry of a Final Approval
25 Order approving this Settlement, finding it to be fair, reasonable, adequate and binding on all
26 Settlement Class Members, and ordering the settlement relief provided for in Section III of this
27 Settlement Agreement to be provided. In conjunction with its papers filed in support of Final
28 Approval of this Settlement, Class Counsel shall file a list of those Class Members who, pursuant

1 to the method for opting out described herein, have excluded themselves from the Settlement
2 Class in a valid and timely manner, and shall file a declaration attaching all timely objections
3 received by Class Counsel. Upon entry of a Final Approval Order, a Judgment, substantially in
4 the form of Exhibit D hereto, shall be entered approving the releases as set forth herein.

5 **V. RELEASE OF CLAIMS**

6 55. Release of Claims. Upon the Effective Date, the Parties and each Settlement Class
7 Member and their respective agents, successors, heirs or assigns, shall be deemed to have, and by
8 operation of the Final Judgment and Approval Order, shall have fully, finally, and forever
9 irrevocably released, relinquished and discharged with prejudice all debts, claims, obligations,
10 damages, liabilities, demands, costs, expenses (including attorneys' fees), indebtedness and
11 causes of action of every kind and nature whatsoever, whether now known or unknown,
12 suspected or unsuspected, fixed, conditional or contingent, which they ever had, may now have,
13 or may hereafter have, against each other for any injury, damage, loss or expense, arising or
14 accruing from the claims that have been made in this Litigation or that could have been asserted
15 based on the facts alleged in this Litigation at any time up until the date of the Preliminary
16 Approval Order.

17 56. Section 1542 Waiver – Each of the Parties to this Agreement expressly waives the
18 protection of Section 1542 of the California Civil Code and expressly waives and releases any
19 rights or benefits arising thereunder. California Civil Code section 1542 states:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
21 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE
22 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

23 Each of the Parties hereto acknowledge that she/ it is aware that the parties may hereafter
24 discover facts different from, or in addition to, those which she/it or her/its attorneys now know
25 or believe to be true with respect to the matters released in Paragraph 55 above, and agree that the
26 releases so given in Paragraph 55 above shall be and remain in effect as full and complete
27 releases of the respective claims, notwithstanding any such different or additional facts.

28 57. Enforcement of Agreement. None of the above releases include releases of claims
to enforce the terms of the Settlement. Further, notwithstanding the entry of Final Judgment, the

1 Court shall retain jurisdiction to enforce, interpret, and implement this Agreement.

2 **VI. ADDITIONAL TERMS**

3 58. Effect if Settlement Not Approved. This Settlement Agreement was entered into
4 only for purposes of settlement. Should this Settlement not receive final Court approval for any
5 reason, or if this Agreement is canceled or terminated or is overturned on appeal, or does not
6 become final for any reason, this Settlement shall be null and void and of no force and effect, and
7 nothing herein shall be deemed to prejudice the position of any of the Parties with respect to the
8 Litigation or otherwise, and no term or condition of this Settlement Agreement, or any draft
9 thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties'
10 settlement discussions shall have any effect, nor shall any such matter be admissible in evidence
11 for any purpose in the Litigation, or in any other proceeding.

12 59. Reasonable Efforts. The Parties' counsel shall use their reasonable efforts to cause
13 the Court to grant Preliminary Approval to this Settlement as promptly as practicable, to take the
14 steps contemplated by this Settlement Agreement to effectuate the Settlement on the stated terms
15 and conditions, and to obtain Final Approval of this Settlement.

16 60. Stay of Proceedings. The Parties agree that, except as necessary to consummate
17 the Settlement, all proceedings in the Litigation will be stayed, unless otherwise ordered by the
18 Court.

19 61. Change of Time Periods and Administrative Process. The time periods and/or
20 dates described in this Settlement Agreement with respect to the giving of notices and hearings,
21 as well as the administrative process of distributing the settlement benefits, are subject to
22 approval and change by the Court or by the written agreement of Class Counsel and Defense
23 Counsel without notice to the Class Members.

24 62. Time for Compliance. If the date for performance of any act required by or under
25 this Settlement falls on a Saturday, Sunday or Court holiday, that act may be performed on the
26 next business day with the same effect as if it had been performed on the day or within the period
27 of time specified by or under this Settlement Agreement. Further, the Parties reserve the right, by
28 agreement and subject to the Court's approval, to grant any reasonable extension of time that

1 might be needed to carry out any of the provisions of this Agreement.

2 63. No Admission of Liability. This Settlement reflects, among other things, the
3 compromise and settlement of disputed claims among the Parties hereto, and neither this
4 Settlement nor the releases given herein, nor any consideration therefor, nor any actions taken to
5 carry out this Settlement are intended to be, nor may they be deemed or construed to be, an
6 admission or concession of liability, or the validity of any claim, or defense, or of any point of
7 fact or law (including but not limited to matters respecting class certification) on the part of any
8 Party.

9 64. Successors and assigns. This Agreement shall inure to the benefit of and shall be
10 binding on the predecessors, successors and assigns of the parties hereto, and each of them. This
11 Agreement is not intended to constitute a third-party beneficiary contract.

12 65. Entire Agreement. The exhibits to this Settlement Agreement are integral parts of
13 this Settlement and are hereby incorporated. The terms and conditions set forth in this Settlement
14 and exhibits hereto constitute the complete and exclusive statement of the agreement between the
15 Parties hereto relating to the subject matter of this Settlement, superseding all previous
16 negotiations and understandings, and may not be contradicted by evidence of any prior or
17 contemporaneous agreement. The Parties further intend that this Settlement Agreement and
18 exhibits hereto constitute the complete and exclusive statement of its terms as between the Parties
19 hereto, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial
20 proceeding, if any, involving this Settlement Agreement. Any modification of the Settlement
21 Agreement must be in writing.

22 66. Severability. If any of the terms or provisions of this Agreement are found to be
23 legally unenforceable, then the remaining terms and conditions shall nevertheless be fully
24 enforceable without regard to any such provision or terms that are found to be legally
25 unenforceable.

26 67. Execution in Counterparts. The Parties may execute this Agreement in
27 counterparts and/or by electronic means, and execution of counterparts shall have the same force
28 and effect as if all Parties had signed the same instrument.

1 68. Voluntary Execution. This Agreement is executed voluntarily by each of the
2 Parties without any duress or undue influence on the part, or on behalf, of any of them. The
3 Parties represent and warrant to each other that they have read and fully understand the provisions
4 of this Agreement and have relied on the advice and representation of legal counsel of their own
5 choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement
6 and has been advised by counsel regarding the terms, effects and consequences of this
7 Agreement. Accordingly, in any construction to be made of this Agreement, this Agreement shall
8 not be construed as having been drafted solely by any one or more of the Parties.

9 69. Waiver, modification and amendment. No provision hereof may be waived unless
10 in writing signed by all parties hereto. Waiver of one provision herein shall not be deemed to be
11 a waiver of any other provision herein. This Agreement may be modified or amended only by a
12 written agreement executed by the parties affected thereby.

13 70. Notices. All notices to the Parties or counsel required by this Agreement, shall be
14 made in writing and communicated by email and first-class mail to the following addresses:

15 If to Class Representatives or Class Counsel:

16 Kathryn McCauley
17 Schubert Jonckheer & Kolbe LLP
18 Three Embarcadero Center, Suite 1650
19 San Francisco, CA 94111
20 Telephone: (415) 788-4220
21 kmmcauley@sjk.law

22 If to Defendant or Defense Counsel:

23 Rick L. Shackelford
24 Greenberg Traurig, LLP
25 1840 Century Park East, Suite 1900
26 Los Angeles, CA 90067
27 Ph. 310.586.7700
28 shackelfordr@gtlaw.com

71. Governing Law. This Settlement is intended to and shall be governed by the laws
of the State of California.

1 IN WITNESS HEREOF the undersigned, being duly authorized, have caused this
2 Settlement Agreement to be executed on the dates shown below and agree that it shall take effect
3 upon the last date of execution of any of the undersigned.

4 **CLASS REPRESENTATIVES**

5 Dated: _____

6 By: _____
Phyllis Brannin

7
8 Dated: _____

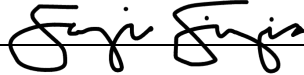
9 By: _____
Virginia Gomez

10
11 Dated: _____

12 By: _____
Venus Savage

13 **DEFENDANT GOLDEN GRAIN COMPANY**

14 Dated: 5/1/2020

15 By:  _____
16 Its: Vice President and Assistant Secretary

17 **APPROVED AS TO FORM**

18
19 Dated: _____

20 By: _____
Robert C. Schubert
21 SCHUBERT JONCKHEER & KOLBE LLP
Three Embarcadero Center, Suite 1650
San Francisco, CA 94111

22 *Attorneys for Class Representatives and the*
23 *Class*

24 Dated: _____

25 By: _____
Rick L. Shackelford
26 GREENBERG TRAURIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067

27 *Attorneys for Defendant Golden Grain*
28 *Company*

2 Settlement Agreement to be executed on the dates shown below and agree that it shall take effect
3 upon the last date of execution of any of the undersigned.

4 **CLASS REPRESENTATIVES**

5 Dated: _____

6 By: _____

Phyllis Brannin

7
8 Dated: 4/30/2020

9 By: _____

Virginia Gomez

10 Dated: _____

11 By: _____

Venus Savage

12
13 **DEFENDANT GOLDEN GRAIN COMPANY**

14 Dated: _____

15 By: _____

16 Its:

17 **APPROVED AS TO FORM**

18 Dated: _____

19 By: _____

20 Robert C. Schubert

SCHUBERT JONCKHEER & KOLBE LLP

21 Three Embarcadero Center, Suite 1650

San Francisco, CA 94111

22 *Attorneys for Class Representatives and the*
23 *Class*

24 Dated: _____

25 By: _____

Rick L. Shackelford

26 GREENBERG TRAURIG, LLP

1840 Century Park East, Suite 1900

27 Los Angeles, CA 90067

28 *Attorneys for Defendant Golden Grain*
Company

1 IN WITNESS HEREOF the undersigned, being duly authorized, have caused this
2 Settlement Agreement to be executed on the dates shown below and agree that it shall take effect
3 upon the last date of execution of any of the undersigned.

4 **CLASS REPRESENTATIVES**

5 Dated: _____

6 By: _____
Phyllis Brannin

7
8 Dated: _____

9 By: _____
Virginia Gomez

10 Dated: April 30, 2020

11 By: Venus Savage
Venus Savage

12
13 **DEFENDANT GOLDEN GRAIN COMPANY**

14 Dated: _____

15 By: _____
16 Its:

17 **APPROVED AS TO FORM**

18 Dated: 5/1/2020

19 By: Robert Schubert (by mpt w/ permission)
Robert C. Schubert
SCHUBERT JONCKHEER & KOLBE LLP
Three Embarcadero Center, Suite 1650
San Francisco, CA 94111

22 *Attorneys for Class Representatives and the Class*

23
24 Dated: 5/1/2020

25 By: Rick Shadelford (by mpt w/ permission)
Rick L. Shackelford
GREENBERG TRAURIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067

27 *Attorneys for Defendant Golden Grain Company*
28

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EXHIBITS

Exhibit A – Claim Form

Exhibit B – Long Form Class Notice

Exhibit C – Summary Notice

Exhibit D – [Proposed] Judgment