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6 GOLDEN GRAIN COMPANY

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN FRANCISCO**  
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11 PHYLLIS BRANNIN, VIRGINIA  
12 GOMEZ and VENUS SAVAGE,  
Individually and On Behalf of All Others  
13 Similarly Situated,

14 Plaintiffs,

15 vs.

16 GOLDEN GRAIN COMPANY and DOES  
1 through 100,

17 Defendants.  
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CASE NO. CGC 16-555084

*[Honorable Charlene Padovani Kisselbach]*

**DECLARATION OF DANIEL TINNEY**

ACTION FILED: October 28, 2016  
TRIAL DATE: None Set

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**DECLARATION OF DANIEL TINNEY**

I, Daniel Tinney, an officer of Defendant Golden Grain Company (“Golden Grain”), declare and state:

1. I am over eighteen years of age. Unless stated on information and belief, I have personal knowledge of the facts stated herein or personal knowledge of the relevant business records reflecting those facts. I am competent to make this Declaration and could testify competently with respect to these facts.

2. I am currently employed as a Vice President and Chief Financial Officer for Defendant Golden Grain. I have held this position since February 2019.

3. As part of my job responsibilities, I am familiar with Golden Grain’s wholesale sales and customers. I make this declaration in order to answer the Court’s question regarding the number of boxes of Near East products that were sold to consumers at retail in California during the Class Period as part of the Court’s evaluation of the fairness of the remedy provided in connection with a class settlement. This question is much easier to pose than to answer, principally because Golden Grain does not sell directly to consumers in California, or anywhere else. Golden Grain sells at wholesale to customers in multiple channels of trade, including traditional grocery stores, discount grocery stores, club stores, mass stores and convenience stores. In the overwhelming majority of cases, Golden Grain ships to warehouses or distribution centers owned by its customers, not to individual retail outlets. Sometimes those warehouses or distribution centers are located in California, but not always. For example, a given customer might locate a distribution center in Nevada or Arizona, but supply its stores in California from that distribution center. By the same token, customers may have warehouses or distribution centers in California, but supply stores in Oregon or elsewhere from those facilities. By at least the time the products arrive at the distribution center, they are the property of the customer, not Golden Grain, so the customer distributes the products according to its business needs, and Golden Grain has no visibility into that. In short, there is no necessary correlation with the state to which products are shipped and where they actually end up on retail store shelves.

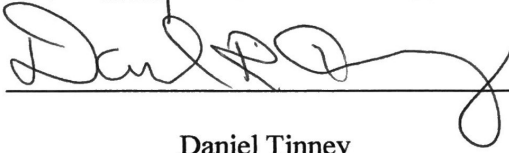
4. Similarly, Golden Grain does not set prices for the Near East products that retailers charge to consumers. The last price Golden Grain controls is the wholesale price it charges to its

1 customers. So Golden Grain likewise has no control over average retail prices charged to consumers. I  
2 can say, however, that Golden Grain's wholesale prices are driven by the quantity of product actually  
3 being sold, not any hypothetical volume determined by the theoretical maximum volume of its boxes. If  
4 Golden Grain included more product in its boxes, then Golden Grain's costs would increase in  
5 numerous ways. The cost of food is the most obvious, but more food in the boxes means more weight,  
6 which translates to higher shipping and transport costs, greater wear and tear on plant and equipment,  
7 and higher costs due to waste. These additional costs would, in some part, be reflected over time in  
8 higher wholesale prices, and doubtless would be passed on to consumers. The notion that consumers are  
9 somehow "cheated" because they did not get extra food in Golden Grain's boxes is completely  
10 unrealistic, at least at the wholesale level, because Golden Grain does not charge for food it does not  
11 provide.

12 5. My best estimate of boxes of the Near East products at issue shipped to California in the  
13 Class Period (October 28, 2012 to date) is approximately 36.5 million units, at an annualized average of  
14 just less than 5 million units. This number does not account for returns to Golden Grain for whatever  
15 reason, and is subject to the caveats above that Golden Grain does not know the number of boxes sold at  
16 retail in California. It should be further noted that industry data reflects an annual repeat purchase rate  
17 of near 50% for this applicable time period. Accordingly, it stands to reason that in factoring the repeat  
18 purchase rate and the average purchase basket, materially more than 50% of the above units sold would  
19 have been purchased by repeat purchasers of Near East products. Put another way, this purchase pattern  
20 would mean that the number of individual purchasers was less than one-half the number of boxes sold.  
21 Moreover, Industry data indicate, that consumers tend to buy more than one box at a time, so the  
22 number of actual, individual purchasers in California is undoubtedly much lower than the number of  
23 boxes sold.

24 6. Golden Grain has begun scoping and implementing changes to its boxes in conformance  
25 with the settlement agreement, and to ensure we meet the required timing upon final approval. There  
26 have not been other material changes to boxes or package configurations since this case was filed.  
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1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed this 1<sup>st</sup> day of May 2020, at Will County, Illinois.

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