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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 SECURITIES AND EXCHANGE COMMISSION,
16
17 Plaintiff,
18 v.
19 DIAMOND FOODS, INC.
20
21 Defendant.

Case No.

~~PROPOSED~~ FINAL JUDGMENT AS
TO DEFENDANT DIAMOND FOODS,
INC.

22 The Securities and Exchange Commission having filed a Complaint and Defendant
23 Diamond Foods, Inc. ("Defendant" or "Diamond") having entered a general appearance;
24 consented to the Court's jurisdiction over Defendant and the subject matter of this action;
25 consented to entry of this Final Judgment without admitting or denying the allegations of the
26 Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived
27 any right to appeal from this Final Judgment:

28 I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
Defendant's agents, servants, employees, attorneys, and all persons in active concert or
participation with them who receive actual notice of this Final Judgment by personal service or
otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and
Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

1 instrumentality of interstate commerce, or of the mails, or of any facility of any national
2 securities exchange, in connection with the purchase or sale of any security:

- 3 (a) to employ any device, scheme, or artifice to defraud;
- 4 (b) to make any untrue statement of a material fact or to omit to state a material fact
5 necessary in order to make the statements made, in the light of the circumstances
6 under which they were made, not misleading; or
- 7 (c) to engage in any act, practice, or course of business which operates or would
8 operate as a fraud or deceit upon any person.

9 II.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
11 Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active
12 concert or participation with them who receive actual notice of this Final Judgment by personal
13 service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the
14 Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any
15 security by the use of any means or instruments of transportation or communication in interstate
16 commerce or by use of the mails, directly or indirectly:

- 17 (a) to employ any device, scheme, or artifice to defraud;
- 18 (b) to obtain money or property by means of any untrue statement of a material fact
19 or any omission of a material fact necessary in order to make the statements
20 made, in light of the circumstances under which they were made, not misleading;
21 or
- 22 (c) to engage in any transaction, practice, or course of business which operates or
23 would operate as a fraud or deceit upon the purchaser.

24 III.

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
26 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
27 participation with them who receive actual notice of this Final Judgment by personal service or
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1 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
2 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13
3 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] by
4 failing to file, or by filing or causing to be filed, with the Commission any report required to be
5 filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and
6 regulations promulgated thereunder, which filed report omits to disclose any information
7 required to be disclosed or such further information, if any, as may be necessary to make the
8 statements, in light of the circumstances under which they were made not misleading.

9 IV.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
11 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
12 participation with them who receive actual notice of this Final Judgment by personal service or
13 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
14 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], by failing to make and keep
15 books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the
16 expenses and transactions of Defendant.

17 V.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
19 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
20 participation with them who receive actual notice of this Final Judgment by personal service or
21 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
22 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], by failing to devise and maintain a
23 system of internal accounting controls sufficient to provide reasonable assurances that
24 transactions are recorded as necessary to permit preparation of financial statements in conformity
25 with generally accepted accounting principles or any other criteria applicable to such statements,
26 and to maintain accountability for such assets.

27 VI.

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
2 shall pay a civil penalty in the amount of \$5,000,000 to the Securities and Exchange Commission
3 pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d) of the
4 Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall satisfy this obligation by paying
5 \$5,000,000 to the Securities and Exchange Commission within 14 days after entry of this Final
6 Judgment.

7 Defendant may transmit payment electronically to the Commission, which will provide
8 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly
9 from a bank account via Pay.gov through the SEC website at
10 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank
11 cashier's check, or United States postal money order payable to the Securities and Exchange
12 Commission, which shall be delivered or mailed to:

13 Enterprise Services Center
14 Accounts Receivable Branch
15 6500 South MacArthur Boulevard
Oklahoma City, OK 73169

16 and shall be accompanied by a letter identifying the case title, civil action number, and name of
17 this Court; Diamond Foods, Inc. as a defendant in this action; and specifying that payment is
18 made pursuant to this Final Judgment.

19 Defendant shall simultaneously transmit photocopies of evidence of payment and case
20 identifying information to the Commission's counsel in this action. By making this payment,
21 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part
22 of the funds shall be returned to Defendant.

23 The Commission shall hold the funds, together with any interest and income earned
24 thereon (collectively, the "Fund"), pending further order of the Court. Defendant shall pay post-
25 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

26 The Commission may propose a plan to distribute the Fund subject to the Court's
27 approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund
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1 provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain
 2 jurisdiction over the administration of any distribution of the Fund. If the Commission staff
 3 determines that the Fund will not be distributed, the Commission shall send the funds paid
 4 pursuant to this Final Judgment to the United States Treasury.

5 Regardless of whether any such Fair Fund distribution is made, amounts ordered to be
 6 paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the
 7 government for all purposes, including all tax purposes. To preserve the deterrent effect of the
 8 civil penalty, Defendant shall not argue that it is entitled to, nor shall it further benefit by, offset
 9 or reduction of any compensatory damages award in any Related Investor Action by the amount
 10 of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the
 11 court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30
 12 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in
 13 this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair
 14 Fund, as the Commission directs. Such a payment shall not be deemed an additional civil
 15 penalty and shall not be deemed to change the amount of the civil penalty imposed in this
 16 Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages
 17 action brought against Defendant by or on behalf of one or more investors based on substantially
 18 the same facts as alleged in the Complaint in this action.

19 VII.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
 21 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant
 22 shall comply with all of the undertakings and agreements set forth therein.

23 VIII.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
 25 jurisdiction of this matter for ~~the purposes of enforcing the terms of this Final Judgment.~~
 three years for the purposes of enforcing the terms of this Final Judgment.

26 IX.

27 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil
 28

1 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

2

3 Dated: January 21, 2014.


4


UNITED STATES DISTRICT JUDGE

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6 Approved as to form:

7


8 Susan Muck, Esq.
Fenwick & West LLP

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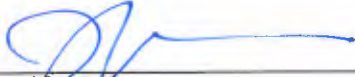
Attorneys for Defendant Diamond Foods, Inc.

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Submitted by:

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SECURITIES AND EXCHANGE COMMISSION

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