UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:14-cv-80005

DEENA KLACKO, individually and on behalf of all others similarly situated,	:
Plaintiff,	:
v.	:
DIAMOND FOODS, INC., a California Corporation	:
Defendant.	:

STIPULATION OF CLASS ACTION SETTLEMENT

The undersigned parties (collectively, the "Parties," and each separately a "Party"), by and through their attorneys, have entered into the following Stipulation of Class Action Settlement (the "Agreement"), subject to approval of this Court.

I. RECITALS

This Agreement is made and entered into by Deena Klacko ("Klacko"), Dominika Surzyn ("Surzyn"), and Richard Hall ("Hall"), on behalf of themselves and each of the Settlement Class Members (collectively, "Plaintiffs" or the "Settlement Class"), and Defendant Diamond Foods, Inc. ("Diamond Foods" or "Defendant"). Capitalized terms used herein are defined in Section II herein or indicated in parentheses elsewhere in the Agreement. Subject to Court approval as required by applicable Federal Rules of Civil Procedure, and as provided herein, the Parties stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

A. Diamond Foods is a food company engaged in processing, marketing, and

distributing food products under the Kettle Brand® name.

B. On January 3, 2014, Plaintiff filed a putative class action in the United States District Court for the Southern District of Florida, entitled *Deena Klacko v. Diamond Foods, Inc.*, Case No. 9:14-cv-80005-KAM (the "Action").

C. Other cases arising out of at least some of the same facts and circumstances as alleged in the Action also were filed and include *Dominika Surzyn v. Diamond Foods, Inc.*, No. 4:14-cv-136, filed in the United States District Court for the Northern District of California on January 9, 2014 (the "*Surzyn* Action"); and *Richard Hall v. Diamond Foods, Inc.*, No. GCG-14-538387, filed in the San Francisco County, California Superior Court on April 2, 2014, removed to the United States District Court for the Northern District of California on May 9, 2014 and assigned Case No. 3:14-cv-02148 ("the *Hall* Action").

D. The Parties have engaged in motion practice in the Action, the *Surzyn* Action, and the *Hall* Action.

E. On June 27, 2014, Klacko, Surzyn, and Diamond Foods participated in a full-day mediation with David H. Lichter but were unable to reach an agreement at that time. Since then, the Parties have continued to engage in extensive settlement negotiations, including through telephone calls with the mediator. At all times, the Parties' negotiations were adversarial, non-collusive, and at arms' length. Ultimately, and with the mediator's assistance, the Parties reached a settlement in principle, which settlement is now fully memorialized in this Agreement.

F. Plaintiffs are members of the Settlement Class.

G. Klacko is represented by Benjamin M. Lopatin, Esq. of The Law Offices of Howard W. Rubinstein, P.A., with Howard W. Rubenstein serving as local counsel, and L. DeWayne Layfield, Esq. of the Law Office of L. DeWayne Layfield, PLLC. Surzyn is represented by Benjamin M. Lopatin, Esq. and Hall is represented by Anthony J. Orshansky

and Justin Kachadoorian of CounselOne, P.C., 9301 Wilshire Boulevard, Suite 650, Beverly Hills, CA 90210. Lopatin, Layfield, Orshansky, and Kachadoorian are referred to as "Class Counsel." Class Counsel have conducted a thorough investigation into the facts and law relating to the Action, the *Surzyn* Action, and the *Hall* Action (collectively, the "Kettle Actions") and have analyzed and evaluated the merits of the Parties' contentions. Class Counsel also have evaluated the risks, delay, and difficulties involved in establishing liability, and in the event of liability, a right to recovery in excess of that offered by this settlement and the likelihood that the Kettle Actions could be further protracted and expensive. Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Kettle Actions is in the best interests of the Settlement Class.

H. Diamond Foods denies any and all wrongdoing of any kind whatsoever, and denies any liability to Klacko, Surzyn, Hall, or to the Settlement Class. In no event shall this Agreement, or any part thereof, be construed or deemed to be evidence of an admission or concession on the part of Diamond Foods of any fault or wrongdoing of any kind, nor an admission or concession of liability of any kind, whether for damages or equitable or declaratory relief or any other form of legal remedy, or a concession of any infirmity in any of the defenses that have been asserted or could have been asserted in the Kettle Actions. Diamond Foods, however, considers it desirable that all claims against it be settled on the terms hereinafter set forth in order to avoid further expense, inconvenience, and delay, to dispose of the Kettle Actions and to put to rest all controversy concerning the claims which have been or could have been asserted in the Kettle Actions. Therefore, for settlement purposes only, Diamond Foods, while continuing to deny any and all allegations of liability, has agreed to settle and terminate the Kettle Actions against it as set forth herein.

I. It is the intention and desire of Klacko, Surzyn, Hall, and Diamond Foods to

compromise, resolve, dismiss, and release all allegations and claims for damages or other relief, except for personal injury, concerning the Products that have been or could have been brought against Diamond Foods or the Released Parties, or any of them, in the Kettle Actions and in any action filed, litigation pending, or claim pursued by any Person or entity who is a member of the Settlement Class, related to the Labeling, sale, marketing, or advertising of the Products.

J. This Agreement is entered into by and among the Parties, by and through their respective attorneys and representatives, and the Parties agree that (1) upon approval of the Court after the hearing(s) provided for in the Agreement, the Kettle Actions and all Released Claims shall be settled and compromised as between Klacko, Surzyn, Hall, and the Settlement Class on the one hand, and Diamond Foods on the other hand; (2) upon Court approval of the Agreement, the [Proposed] Final Judgment and [Proposed] Order Approving Settlement, substantially in the form to be agreed upon by the Parties, shall be entered dismissing the Action with prejudice and releasing all Released Claims, as defined herein, against Diamond Foods and all Released Parties, all on the following terms and conditions:

II. DEFINITIONS

A. As used in this Agreement, the following capitalized terms have the meanings specified below:

1. "Action" means *Deena Klacko v. Diamond Foods, Inc.*, filed January 3, 2014 in the United States District Court for the Southern District of Florida and assigned Case No. 9:14-cv-80005.

2. "Agreement" means this Stipulation of Class Action Settlement.

3. "Approved Claim" means a claim approved by the Claims Administrator according to the claims criteria in the Claim Administration Protocols that will be agreed upon Parties and submitted to the Court in connection with the

Motion for Preliminary Approval of Settlement.

4. "Award" means the monetary relief obtained by Settlement Class Members pursuant to Section IV.C. of the Agreement.

5. "Claim" means a request for relief pursuant to Sections IV.C. and V.B. of this Agreement submitted by or on behalf of a Settlement Class Member on a Claim Form filed with the Claims Administrator in accordance with the terms of this Agreement.

6. "Claimant" means a Settlement Class Member who submits a claim for benefits as described in Sections IV.C. and V.B. of this Agreement.

7. "Claim Form" means the document to be submitted by Claimants seeking benefits pursuant to this Agreement, substantially in the form to be agreed upon by the Parties and submitted to the Court in connection with the Motion for Preliminary Approval of Settlement, and that is discussed in Section V.B. of this Agreement.

8. "Claims Administrator" means the independent company agreed by the Parties and approved by the Court to provide the Class Notice and to administer the claims process.

9. "Claims Administration Expenses" means the expenses incurred by the Claims Administrator in administering the Notice Plan and processing all Claims made by Settlement Class Members, in an amount not to exceed $300,000.00.

10. "Claims Deadline" means the date by which all Claim Forms must be postmarked or received by the Claims Administrator to be considered timely. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, the Final Approval Order, the Class Notice, on the Settlement Website, and on the front of the Claim Form, and shall be fourteen (14) calendar days following the Final

Approval Hearing.

11. "Class Counsel" means the following attorneys of record for Klacko, Surzyn, and/or Hall:

Benjamin M. Lopatin, Esq.
lopatin@hwrlawoffice.com
One Embarcadero Center, Suite 500
San Francisco, CA 94111

L. DeWayne Layfield, Esq.
dewayne@layfieldlaw.com
Law Office of L. DeWayne Layfield, PLLC
P.O. Box 3829
Beaumont, TX 77704

Anthony J. Orshansky
anthony@counselonegroup.com
Justin Kachadoorian
justin@counselonegroup.com
CounselOne, P.C.
9301 Wilshire Boulevard, Suite 650
Beverly Hills, CA 90210

12. "Class Notice" means, collectively, the "Notice of Class Action Settlement" and the "Publication Notice," substantially in the forms to be agreed upon by the Parties and that will be submitted to the Court in connection with the Motion for Preliminary Approval of Settlement, and that is discussed in SectionVI.

13. "Class Representatives" means Deena Klacko, Dominika Surzyn, and Richard Hall.

14. "Common Fund" means the Three Million and No/100 Dollars ($3,000,000.00) set aside as part of the Settlement Consideration, which is described more fully in Section IV.

15. "Complaint" means the First Amended Class Action Complaint filed in the Action by Klacko on May 8, 2014.

16. "Court" means the United States District Court for the Southern District of Florida.

17. "Defendant" means Diamond Foods, Inc., and includes, without limitation, all related entities including but not limited to parents, subsidiaries, agents, employees and assigns, predecessors, successors, and affiliates.

18. Defendant's Counsel means the following attorneys of record for Defendant:

Amanda L. Groves, Esq.
agroves@winston.com
Sean D. Meenan, Esq.
smeenan@winston.com
Winston & Strawn LLP
101 California Street, 35th Floor
San Francisco, CA 94111

Joanna C. Wade, Esq.
jwade@winston.com
Winston & Strawn LLP
100 North Tryon Street, 29th Floor
Charlotte, NC 28202

19. "Effective Date" means either: (a) the date thirty-five (35) calendar days after the entry of the Final Judgment and Order Approving Settlement, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other effort to obtain review has been initiated, the date thirty-five (35) calendar days after such appeal or other review has been finally concluded and is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise.

20. "Fee Award" means the amount of attorneys' fees and reimbursement of costs, from the Common Fund, awarded by the Court to Class Counsel for all of the past, present, and future attorneys' fees, costs (including court costs), expenses, and disbursements incurred by them and their experts, staff, and consultants in connection with the Kettle Actions, up to a maximum of Seven Hundred Seventy-Five Thousand

and No/100 Dollars ($775,000.00).

21. "Final Approval Hearing" means the hearing to be conducted by the Court on such date as the Court may order to determine of the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence and to determine the Fee Award and any Incentive Award. The Parties shall request the Court set the Final Approval Hearing no earlier than sixty-five (65) calendar days after the Notice Date or one hundred (100) calendar days after Preliminary Approval.

22. "Final Judgment and Order Approving Settlement" means an order and judgment entered by the Court:

a. Giving final approval to the terms of this Agreement as fair, adequate, and reasonable;

b. Providing for the orderly performance and enforcement of the terms and conditions of the Stipulation;

c. Dismissing the Action with prejudice;

d. Discharging the Released Parties of and from all further liability for the Released Claims to the Releasing Parties; and

e. Permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any action in any state court, any federal court, before any regulatory authority, or in any other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims.

f. The actual form of the Final Judgment and Order Approving Settlement entered by the Court may include additional provisions as the

Court may direct that are not inconsistent with this Agreement, and will be substantially in the form to be agreed upon by the Parties.

23. "Hall" means the plaintiff in the *Hall* Action, Richard Hall.

24. "*Hall* Action" means *Richard Hall v. Diamond Foods, Inc.*, No. GCG-14-538387, filed in the San Francisco County, California Superior Court on April 2, 2014, and removed to the United States District Court for the Northern District of California on May 9, 2014 and assigned Case No. 3:14-cv-02148.

25. "Incentive Award" means any award sought by application to and approved by the Court that is payable to the Class Representatives, Klacko, Surzyn, and Hall, from the Common Fund, up to a maximum, total amount of Seven Thousand Five Hundred and No/100 Dollars ($7,500.00) from the Common Fund, to compensate them for their efforts in bringing the Kettle Actions and achieving the benefits of this Agreement on behalf of the Settlement Class.

26. "Kettle Actions" means *Deena Klacko v. Diamond Foods, Inc.*, filed January 3, 2014 in the United States District Court for the Southern District of Florida and assigned Case No. 9:14-cv-80005; *Dominika Surzyn v. Diamond Foods, Inc.*, No. 4:14-cv-136, filed in the United States District Court for the Northern District of California on January 9, 2014; and *Richard Hall v. Diamond Foods, Inc.*, No. GCG-14-538387, filed in the San Francisco County, California Superior Court on April 2, 2014, and removed to the United States District Court for the Northern District of California on May 9, 2014 and assigned Case No. 3:14-cv-02148.

27. "Labeling" means the display of written, printed, or graphic matter upon the packaging of the Products, as well as written, printed, or graphic matter designed for use in the distribution or sale of the Products, including information found on Diamond Foods' or its customers' or affiliates' websites supplementing,

describing, explaining, and/or promoting the Products.

28. "Motion for Preliminary Approval of Settlement" means the motion, to be filed by Plaintiff, for Preliminary Approval of this Agreement and includes all supporting papers.

29. "Notice Date" means the last date, set by the Court, on which notice is published in a magazine or newspaper pursuant to the Notice Plan described in Section VI. The Notice Date shall be no later than ninety (90) calendar days after the Court enters the Preliminary Approval Order or such other date as the Court may order.

30. "Notice Plan" means the plan for dissemination of the Class Notice to be agreed upon by the Parties and that will be submitted to the Court in connection with the Motion for Preliminary Approval of Settlement.

31. "Objection Deadline" means the date by which Settlement Class Members must file objections, if any, to the Settlement in accordance with Section VIII.A.

32. "Opt-Out Deadline" means the date, to be set by the Court, by which a Request For Exclusion must be filed with the Claims Administrator in order for a Settlement Class Member to be excluded from the Settlement Class in accordance with Section VIII.C.

33. "Other Counsel" means all attorneys representing any Settlement Class Member.

34. "Party" or "Parties," unless otherwise specified, means Plaintiff, Surzyn, and/or Diamond Foods.

35. "Payment Distribution Date" means the date on which the Claims Administrator mails checks to Settlement Class Members as payment for Approved

Claims, as set forth in Section V.B.7.

36. "Person" means a natural person, individual, corporation, partnership, association, or any other type of legal entity.

37. "Plaintiff" means Deena Klacko.

38. "Preliminary Approval Order" means the order to be entered by the Court, substantially in the form to be agreed upon by the Parties, conditionally certifying the Settlement Class, preliminarily approving the Settlement, setting the date of the Final Approval Hearing, appointing Class Counsel as counsel for the Settlement Class, approving the Notice Plan, Class Notice, and Claim Form, and setting dates for the Claims Deadline, Opt-Out Deadline, Objection Deadline, and Notice Date.

39. "Products" means Diamond Foods Kettle Brand® products labeled as "All Natural," "Natural," "Naturally," "Made with All Natural Ingredients," "Natural Promise," or any other derivation of "natural," "nothing artificial," "no preservatives," "non-GMO," "non-GMO ingredients," "only natural colors and flavors," "natural flavors," "A Natural Obsession," "real food ingredients," "Reduced Fat," and/or "__% Less Fat."

40. "Proof of Purchase" means a receipt or other documentation from a third-party commercial source reasonably establishing the fact and date of purchase of a Product during the Class Period in the United States.

41. "Release" means the release set forth in Section IX of this Agreement.

42. "Released Claims" means any individual, class, representative, group or collective action, claim, liability, right, demand, suit, matter, obligation, damage, loss, action, or cause of action, of every kind and description that a Releasing Party has or may have, including assigned claims, whether known or Unknown, asserted or

un-asserted, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted under any body of law by the Releasing Party either in a court or any other judicial or other forum, regardless of legal theory or relief claimed, and regardless of the type of relief or amount of damages claimed, against any of the Released Parties arising from, or in any way relating to Labeling, sales, marketing, or advertising, regardless of medium, of any of the Products, including but not limited to any claim that the Labeling is false or misleading in any way. For purposes of this Agreement, the term "Unknown Claim" means any all Released Claims that any member of the Settlement Class, or anyone acting on behalf of or in their interest, does not know or suspect to exist against any of the Released Parties which, if known, might have affected his or her decision regarding the settlement of the Action. Notwithstanding the provisions of this paragraph or of any other paragraph in this Agreement, this Agreement shall not be deemed to release any claim that a Releasing Party has or may have for personal injury.

43. "Released Party" means Diamond Foods and to the maximum extent permitted by law any entity that manufactured, tested, inspected, audited, certified, purchased, distributed, licensed, transported, marketed, advertised, donated, promoted, sold, or offered for sale at wholesale or retail any Products, or contributed to any Labeling, advertising packaging, ingredient, or component thereof, including all of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees, and assigns. It is expressly understood that, to the extent a Released Party is not a Party to the Agreement, all such Released Parties are intended third-party beneficiaries of the

Agreement.

44. "Releasing Party" means Klacko, Surzyn, Hall, and each Settlement Class Member and any Person claiming by or through each Settlement Class Member, including but not limited to, spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents, administrators, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, or affiliates.

45. "Request For Exclusion" means the written communication that must be filed with the Claims Administrator and postmarked on or before the Opt-Out Deadline by a Settlement Class Member who wishes to be excluded from the Settlement Class.

46. "Residual Amount" means the amount, if any, calculated by subtracting from $3,000,000.00 (a) total Claims Administration Expenses; (b) the Fee Award; (c) the Incentive Award; and (d) the total compensation paid to Settlement Class Members in satisfaction of Approved Claims.

47. "Settlement" means the terms, transactions, rights, obligations, conditions, Release, and other matters contemplated by, described in, or provided by this Agreement.

48. "Settlement Class" and "Settlement Class Member(s)" each means all Persons who, for personal or household use, purchased the Products in the United States from January 3, 2010 through and including the Notice Date. Excluded from the Settlement Class are: (a) all Persons who purchased or acquired the Products for resale; (b) Diamond Foods and its employees, principals, affiliated entities, legal representatives, successors, and assigns; (c) any Person who files a valid, timely Request for Exclusion; (d) federal, state, and local governments (including all agencies

and subdivisions thereof, but excluding employees thereof); and (e) the judges to whom the Kettle Actions are assigned and any members of their immediate families.

49. "Settlement Class Period" means the period January 3, 2010 through and including the Notice Date.

50. "Settlement Consideration" means the consideration exchanged by and between Diamond Foods and the Settlement Class as set forth in this Agreement.

51. "Settlement Website" means the website to be created for this Settlement that will include information about the Action, the Settlement, and relevant documents and electronic and printable forms relating to the Settlement, including the Claim Form which can be submitted online or printed and mailed. The Settlement Website shall be activated no later than ten (10) calendar days after the entry of the Preliminary Approval Order and shall remain active until the Effective Date or such later date as may be agreed to by Class Counsel and Defendant's Counsel.

52. "Surzyn" means the plaintiff in the *Surzyn* Action, Dominika Surzyn.

53. "*Surzyn* Action" means *Dominika Surzyn v. Diamond Foods, Inc.*, No. 4:14-cv-136, filed in the United States District Court for the Northern District of California on January 9, 2014.

B. All references herein to sections and paragraphs refer to sections and paragraphs of this Agreement, unless otherwise expressly stated in the reference.

C. Capitalized terms used in this Agreement, but not defined above, shall have the meaning ascribed to them in this Agreement.

III. CONDITIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY.

A. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute,

be construed as, or be admissible in evidence as an admission of: (1) the validity of any claim or allegation by Klacko, Surzyn, Hall, or any Settlement Class Member, or of any defense asserted by Diamond Foods, in the Kettle Actions or any other action or proceeding; (2) any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, Released Party, Settlement Class Member or their respective counsel; or (3) the propriety of class certification in the Kettle Actions or any other action or proceeding.

B. For the sole and limited purpose of Settlement only, the Parties stipulate to and request that the Court certify the Settlement Class, which stipulation is contingent upon the occurrence of the Effective Date. Should the Effective Date not occur, this Agreement shall be void and will not constitute, be construed as, or be admissible in evidence as, an admission of any kind or be used for any purpose in the Kettle Actions or in any other pending or future action. Moreover, the Court's certification of the Settlement Class shall not be deemed to be an adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Agreement, and shall not be considered the law of the case, *res judicata*, or collateral estoppel in the Kettle Actions or any other proceeding unless and until the Court enters a Final Judgment and Order Approving Settlement, and regardless of whether the Effective Date occurs, the Parties' agreement to class certification for settlement purposes only (and any statements or submissions made by the Parties in connection with seeking the Court's approval of this Agreement) shall not be deemed to be a stipulation as to the propriety of class certification, or any admission of fact or law regarding any request for class certification, in any other action or proceeding, whether or not involving the same or similar claims. In the event the Court does not enter a Final Judgment and Order Approving Settlement, or the Effective Date does not occur, or the Agreement is otherwise terminated or rendered null and void, the Parties' agreement to certification of the Settlement Class for settlement purposes shall be null and void and the Court's certification order shall be vacated,

and thereafter no class or classes will remain certified; provided, however, that Klacko, Surzyn, Hall, and Class Counsel may thereafter seek certification of the same or a new class or classes before this Court and the courts in the *Surzyn* Action and *Hall* Action, and Diamond Foods may oppose such certification on any available grounds. Nothing in this Agreement shall be argued as support for, or admissible in, an effort to certify any class in this Court or any other court if the Court does not enter a Final Judgment and Order Approving Settlement, or the Effective Date does not occur, nor shall anything herein be admissible in any proceeding to certify this or any other classes in any other court under any circumstances.

C. Subject to Court approval and for settlement purposes only, Diamond Foods consents to the appointment of Klacko, Surzyn, and Hall as Class Representatives of the Settlement Class and to the appointment of Benjamin M. Lopatin, Esq. of The Law Offices of Howard W. Rubinstein, P.A.; L. DeWayne Layfield, Esq. of the Law Office of L. DeWayne Layfield, PLLC; and Anthony J. Orshansky and Justin Kachadoorian of CounselOne, P.C. as Class Counsel.

D. Upon final approval of the Settlement by the Court, the Final Judgment and Order Approving Settlement, substantially in the form agreed by the Parties, will be entered by the Court, providing for the dismissal of the Action with prejudice. The Parties in the *Surzyn* Action and the *Hall* Action agree to request that until that time those cases be stayed. Surzyn also agrees to file a motion for dismissal with prejudice of the *Surzyn* Action within five (5) calendar days after the Effective Date, and Hall agrees to file a motion for dismissal with prejudice of the *Hall* Action within five (5) calendar days after the Effective Date.

IV. SETTLEMENT CONSIDERATION

A. Injunctive Relief. Diamond Foods will implement the following changes with respect to the Products within one (1) calendar year after entry of the Final Judgment and

Order Approving Settlement:

1. Diamond Foods will provide its "Natural Promise" criteria to its ingredient suppliers and require those suppliers to verify that their ingredients comply with the "Natural Promise";

2. Diamond Foods will create and maintain a database to track ingredients and ingredient supplier verifications;

3. Diamond Foods will conduct audits of its ingredient suppliers at least annually to confirm their compliance with the "Natural Promise";

4. For Products labeled "Reduced Fat" or "Less Fat," Diamond Foods will place the comparison statement at the location on the packaging where the "Reduced Fat" or "Less Fat" claim is most prominently displayed; and

5. Diamond Foods will agree to employ reasonable efforts to obtain Non-GMO Project approval for Products that are practically eligible for Non-GMO Project consideration.

6. Diamond Foods will provide reports to the Court (a) at the end of the six (6) month period following entry of the Final Judgment and Order Approving Settlement and (b) one (1) calendar year following Final Judgment and Order Approving Settlement, regarding its compliance with the injunctive relief provisions contained in this Section IX.A. of this Agreement.

B. Nothing in this Agreement shall preclude Diamond Foods from making further changes to any of its product labels or marketing: (1) that Diamond Foods reasonably believes are necessary to comply with any statute, regulation, or other law of any kind; (2) that are necessitated by product changes and/or to ensure that Diamond Foods provides accurate product descriptions; or (3) that are more detailed than those required by this Agreement.

C. Monetary Relief for Settlement Class Members. In addition to all Settlement Consideration set forth in this Agreement, Settlement Class Members who timely file Claims by the Claims Deadline and who provide all required proof or documentation and comply with all other conditions and requirements specified herein shall have the right to obtain relief as detailed below:

1. WITHOUT PROOF OF PURCHASE REQUIRED. Settlement Class Members who, in accordance with the terms of this Agreement, submit a Claim Form for up to and including ten (10) Products purchased per household during the Settlement Class Period shall be entitled, as of the Effective Date, to a check in the amount of One and No/100 Dollars ($1.00) per Product. The maximum amount that will be paid to any one Claimant household without Proof of Purchase will be Ten and No/100 Dollars ($10.00).

2. WITH PROOF OF PURCHASE REQUIRED. Settlement Class Members who, in accordance with the terms of this Agreement, submit a Claim Form for more than ten (10) Products purchased per household during the Settlement Class Period must provide valid Proof of Purchase for all Products claimed that exceed ten (10). Diamond Foods shall have the right, but not the obligation, to inspect submitted Proofs of Purchase and evaluate their adequacy and trustworthiness. The maximum number of Products for which any Settlement Class Member may claim with Proof of Purchase is twenty (20). The maximum amount that will be paid to any one Claimant household with Proof of Purchase will be Twenty and No/100 Dollars ($20.00).

3. Guarantee and Cap. Diamond Foods guarantees to satisfy all valid Claims made, with a cap on cash payments to the Settlement Class of Two Million Seven Hundred Fifty Thousand and No/100 Dollars ($2,750,000.00). If the total of Approved Claims exceeds this guaranteed cap, then the Claims Administrator shall

calculate and pay a pro rata reduction of the amount due each Settlement Class Member, such that $2,750,000.00 will satisfy all Approved Claims. For the avoidance of doubt, as an example, if Claims Administration Expenses total $300,000.00, the Fee Award is $775,000.00, Incentive Awards total $7,500.00, and Approved Claims are $2,800,000, then Diamond Foods' cash payments for this Settlement would be $300,000+775,000+7,500+2,750,000, or $3,832,500.00. As another example, if Claims Administration Expenses total $300,000.00, the Fee Award is $775,000.00, Incentive Awards total $7,500.00, and Approved Claims are $1,500,000.00, then Diamond Foods' cash payments for this Settlement would be $300,000+775,000+7,500+1,500,000, or $2,582,500.00.

4. Residual Amount. Once Claims Administration Expenses, the Fee Award, the Incentive Award, and all Approved Claims are paid, the Claims Administrator shall calculate the Residual Amount, if any. Diamond Foods shall distribute to Feeding America free Diamond Foods products with a retail value equaling any Residual Amount. Such distribution, if any, shall be made within eighteen (18) months following the Payment Distribution Date. Upon the request of Class Counsel, Diamond Foods will provide Class Counsel with updates on the status and progress of the donations referenced in this Section. In addition, if requested by the Court, Diamond Foods shall submit a declaration to the Court sufficiently detailing any donations that have been made pursuant to this Section and how those donations met the Residual Amount.

V. CLAIMS DEADLINE, CLAIM FORMS, AND CLAIMS ADMINISTRATION

A. Retention of Claims Administrator. Diamond Foods shall, subject to the approval of Class Counsel and the Court, retain a Claims Administrator to help implement the terms and conditions of the Agreement. The Parties agree that the

Claims Administrator shall be approved by the Court, shall be an agent of the Court, and shall be subject to the Court's supervision as circumstances may require. Diamond Foods will pay Claims Administration Expenses, up to a maximum of Three Hundred Thousand and No/100 Dollars ($300,000.00), regardless of whether the Settlement is finally approved. In no event shall Diamond Foods pay any Claims Administration Expenses that exceed $300,000.00. The Claims Administrator shall assist with various administrative tasks, including, without limitation:

1. Arranging for the dissemination of the Class Notice pursuant to the Notice Plan agreed to by the Parties and approved by the Court;

2. Handling returned mail not delivered to Settlement Class Members;

3. Making any additional mailings required under the terms of this Agreement or by law;

4. Answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel;

5. Receiving and maintaining Requests for Exclusion;

6. Establishing the Settlement Website;

7. Establishing the toll-free informational telephone number described in Section V.D.

8. Receiving and processing Claims and distributing payments to Settlement Class Members in accordance with the Claims Protocol to be agreed upon by the Parties and approved by the Court; and

9. Otherwise assisting with administration of the Agreement.

B. Claims Process.

1. All Claims must be submitted with a Claim Form and received by the Claims Administrator or postmarked by the Claims Deadline. The Claims Deadline

shall be fourteen (14) calendar days following the Final Approval Hearing. The Claims Deadline shall be clearly set forth in the Class Notice, the Settlement Website, and on the Claim Form. Settlement Class Members who fail to submit a Claim Form by the Claims Deadline shall not be eligible for an Award.

2. The Claim Form will be available on the Settlement Website. The Claim Form will be mailed to Settlement Class Members upon request by calling or writing to the Claims Administrator. Settlement Class Members may submit their completed and signed Claim Forms to the Claims Administrator by mail or online, postmarked or submitted online, on or before the Claims Deadline.

3. Claim Forms must be signed by the Claimant by hand or electronically under penalty of perjury. Such Claim Form shall be approved by the Court and will be substantially in the form to be agreed upon by the Parties and must include the following information and/or affirmations:

a. Settlement Class Member name, address, and telephone number;

b. Identification of the quantity and type of Product for which the Claim is made;

c. Affirmation that the Products were purchased in the United States during the Settlement Class Period for personal or household use, including the identify of the merchant from which the Products were purchased; and

d. Proof of Purchase for all Products claimed that exceed ten (10).

4. Claims submitted for more than ten (10) Products shall include Proof of Purchase and the Claim Form shall conspicuously notify Settlement Class Members that failure to include Proof of Purchase for such Claims will result in the

Claim being rejected for Products in excess of ten (10), and that submission of false or fraudulent Claims will result in the Claim being rejected in its entirety. Submission of multiple Claim Forms from the same household or by the same Settlement Class Member or Claimant will be subject to audit by the Claims Administrator for validity, as will any other Claims the Claims Administrator so chooses, in accordance with standard and reasonable claims administration procedures.

5. The Claims Administrator shall administer the monetary relief for Settlement Class Members provided by this Agreement by resolving Claims in cost-effective and timely manner consistent with the terms of this Agreement and the orders of the Court. The Claims Administrator shall maintain records of all Claims submitted until at least three hundred sixty-five (365) calendar days after the last of the Claims payment checks to Settlement Class Members is issued and such records will be made available upon request to Class Counsel and Defendant's Counsel. Upon request by Class Counsel or Defendant's Counsel, the Claims Administrator shall provide reports totaling: (a) number of Claims submitted; (b) number of Products claimed; (c) number of Claims for more than ten (10) Products; and (d) number of Claims for more than ten (10) products for which Proofs of Purchase have been submitted, and such other information as reasonably required for Diamond Foods or Class Counsel to exercise their rights under this Agreement. Claim Forms and supporting documentation will be kept confidential by the Claims Administrator and will be provided only to the Court upon request, and to Class Counsel and Defendant's Counsel to the extent necessary to resolve issues relating to this Agreement. The Claims Administrator also shall provide such reports and such other information as the Court may require.

6. The Claims Administrator will use adequate and customary standards

to prevent the payment of fraudulent Claims and to pay only legitimate Claims. The Claims Administrator shall make all determinations concerning the eligibility and amount of payment for submitted Claims, and mail notice of rejection to Settlement Class Members whose Claims have been rejected in whole or in part. In the event a Settlement Class Member disagrees with the determination, the Settlement Class Member may send a letter to the Claims Administrator requesting reconsideration of the rejection and the Claims Administrator shall reconsider such determination, which reconsideration shall include consultation with Class Counsel and Defendant's Counsel. The Parties shall meet and confer regarding resolution of those Claims and, if unable to agree, shall submit those Claims to the Court for determination. As to any Claims being determined by the Court pursuant to this paragraph, the Claims Administrator shall send payment or a letter explaining the Court's rejection of the Claim, within thirty-five (35) days of the Court's determination.

7. Payment of Claims. Approved Claims will be paid directly to Settlement Class Members by first class mail. All checks issued to Settlement Class Members under this Agreement shall issue within thirty-five (35) calendar days of the Effective Date (the "Payment Distribution Date") and will state that they must be cashed within one hundred twenty (120) calendar days from the date issued or they will become void. The amount of any checks that are not cashed within 120 calendar days from the date of issue or that are returned to the Claims Administrator as undeliverable after mailing to the Settlement Class Member at the address provided by the Settlement Class Member on the Claim Form, will cease to be the property of those Settlement Class Members and shall be added to the Residual Amount. The Claims Administrator shall provide Defendant's Counsel and Class Counsel with an identification of the checks returned as undeliverable or not cashed within 120 days of

the date issued.

C. Settlement Website. The Claims Administrator shall cause the Settlement Website to be created. The Settlement Website shall contain Claims information and relevant documents, including but not limited to, the Claims Deadline, the Opt-Out Deadline, and the Objection Deadline; the Class Notice; a downloadable Claim Form; orders of the Court pertaining to the Settlement; this Agreement; and a toll-free telephone number and address to contact the Claims Administrator by email and U.S. Mail. The Settlement Website shall also provide the facility for Settlement Class Members to submit Claims online. The Settlement Website shall be rendered inactive after the Claims Deadline and the time to terminate this Agreement as set forth in Section X.IV. have passed. The Parties shall use reasonable efforts to agree on all information and documents to be posted on the Settlement Website.

D. Toll-Free Informational Number. The Claims Administrator shall cause a toll-free telephone number to be created for Settlement Class Members to receive information about the Settlement. The Parties shall meet and confer regarding a set of frequently asked questions and answers to be used by the Claims Administrator when answering Settlement Class Members' questions. Any disputes between the Parties as to those FAQs shall be resolved by the Claims Administrator.

VI. NOTICE TO THE SETTLEMENT CLASS

A. No later than ninety (90) calendar days after entry of the Preliminary Approval Order or such other date as the Court may order, the Claims Administrator shall cause the Class Notice to be disseminated to Settlement Class Members in accordance with the Notice Plan to be agreed upon by the Parties. The Parties acknowledge and agree that notice pursuant to the Notice Plan is the best notice that is practicable under the circumstances of this case to effect notice to the Settlement Class Members and that the Notice Plan comports with the requirements of due process.

B. Long-Form Notice. The Long-Form Notice shall be substantially in the form to be agreed upon by the Parties and approved by the Court, and shall be posted on the Settlement Website and shall remain available until the Effective Date or such later date as may agreed to by Class Counsel and Defendant's Counsel. The Long-Form Notice shall set forth the following information:

1. Inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive the relief under the proposed Settlement;

2. Contain a short, plain statement of the background of the Kettle Actions and the Settlement;

3. Describe the Settlement Consideration outlined by this Agreement;

4. Explain the impact of the Settlement on any existing litigation, arbitration, or other proceeding;

5. State that any relief to Settlement Class Members is contingent upon the Court's final approval of the Settlement;

6. Inform Settlement Class Members that they may exclude themselves from the Settlement Class by submitting a Request for Exclusion postmarked no later than the Opt-Out Deadline;

7. State that any Settlement Class Member who has not submitted a Request for Exclusion by the Opt-Out Deadline may, if he or she desires, object to the proposed Settlement by filing and serving a written statement of objection postmarked no later than the Objection Deadline;

8. State that any Settlement Class Member who has filed and served written objections to the proposed Settlement may, if he or so requests, appear at the Final Approval Hearing, either personally or through counsel;

9. State that any Final Judgment and Order Approving Settlement entered in the Action shall include, and be binding on, all Settlement Class Members who have not timely submitted a Request for Exclusion, even if they have objected to the proposed Settlement and even if they have any other claim, lawsuit, or proceeding pending against Diamond Foods;

10. Explain the terms of the Release; and

11. Provide other information necessary or judicially required for Settlement Class Members to exercise or choose not to exercise their due process rights.

C. Publication Notice. Not later than ninety (90) calendar days after entry of the Preliminary Approval Order, or such other date as the Court may order, the Claims Administrator shall cause the Publication Notice, substantially in the form to be agreed upon by the Parties and approved by the Court, to be published. The Publication Notice shall also be posted on the Settlement Website until the Effective Date, or such later date as may be agreed to by Class Counsel and Defendant's Counsel.

D. The Claims Administrator shall provide the Court with a declaration attesting that the Class Notice was disseminated pursuant to the Notice Plan.

VII. NOTICE UNDER THE CLASS ACTION FAIRNESS ACT

A. The Class Action Fairness Act of 2005 ("CAFA") requires Diamond Foods to inform certain federal and state officials about this Settlement. *See* 28 U.S.C. § 1715.1.

B. Under the provisions of CAFA, the Claims Administrator, on behalf of Diamond Foods, will serve notice upon the appropriate officials within ten (10) calendar days after the Parties file the proposed Settlement with the Court. *See* 28 U.S.C. § 1715(b).

C. The Parties agree that the Diamond Foods is permitted to provide CAFA notice as required by law and that any notice by Diamond Foods shall be done to effectuate

the Settlement and shall not be considered a breach of this Agreement or any other agreement of the Parties.

VIII. OBJECTIONS AND REQUESTS FOR EXCLUSION

A. Objections. Any Settlement Class Member who intends to object to the Settlement must do so no later than thirty (30) calendar days before the Final Approval Hearing (the Objection Deadline). In order to object, the Settlement Class Member must file with the Court, and provide a copy to Class Counsel and Defendant's Counsel, a document that includes:

1. The name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel;

2. Specifically and in writing, all objections;

3. Whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;

4. A statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and

5. 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.

B. Any Settlement Class Member who fails to file and serve timely a written objection and notice of his/her intent to appear at the Final Approval Hearing pursuant to this Section 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 Agreement by any means, including but not limited to an appeal.

C. Requests for Exclusion.

1. Any Settlement Class Member may request to be excluded (or "opt out") from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must do so no later than thirty (30) calendar days before the Final Approval Hearing (the Opt-Out Deadline). In order to opt out, a Settlement Class Member must complete and mail to the Claims Administrator a Request for Exclusion that is postmarked no later than the Opt-Out Deadline.

2. Requests for Exclusion that are postmarked after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who untimely submits a Request for Exclusion will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Judgment and Order Approving Settlement and the Release contemplated thereby. Except for those Persons who have properly and timely submitted Requests for Exclusion, all Settlement Class Members will be bound by this Agreement and the Final Judgment and Order Approving Settlement, including the Release contained herein, regardless of whether they file a Claim or receive any monetary relief.

3. Any Person who timely and properly submits a Request for Exclusion shall not (a) be bound by any orders or the Final Judgment and Order Approving Settlement nor by the Release contained herein; (b) be entitled to any relief under this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of this Agreement.

4. Each Person requesting exclusion from the Settlement Class must personally sign his or her own individual Request for Exclusion. No Person may opt-out of the Settlement Class any other Person, or be opted-out by any other Person, and no Person shall be deemed opted-out of the Settlement Class through any purported

"mass" or "class" opt-outs.

5. The Claims Administrator shall provide Class Counsel and Defendant's Counsel with a final list of any timely Requests for Exclusion received by the Claims Administrator within five (5) business days after the Opt-Out Date.

IX. RELEASE

A. The Agreement shall be the sole and exclusive remedy for any and all Released Claims of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability or expense of any kind to any Releasing Party with respect to any Released Claims. Upon entry of the Final Judgment and Order Approving Settlement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting, and/or prosecuting any Released Claim against any Released Party in any court or any forum whatsoever.

B. Upon entry of the Final Judgment and Order Approving Settlement, each Releasing Party shall be deemed to have released and forever discharged each Released Party of and from any and all liability for any and all Released Claims.

C. The Settlement Class Members acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Release, but nevertheless fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, may hereafter exist, or heretofore have existed based upon actions, conduct, events, or transactions occurring on or before the date of the Agreement, without regard to subsequent discovery or the existence of such different or additional facts concerning each of the Released Parties. Notwithstanding the above, the Release does not include claims for personal injury.

D. With respect to any and all Released Claims, and upon entry of the Final

Judgment and Order Approving Settlement without further action, for good and valuable consideration, Klacko, Surzyn, and Hall, on behalf of themselves and the Settlement Class and as the representatives of the Settlement Class, shall have expressly, and the Releasing Parties shall be deemed to have, and by operation of the Final Judgment and Order Approving Settlement shall have, to the fullest extent permitted by law, fully, finally, and forever expressly waived and relinquished with respect to the Released Claims, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar to, comparable to, or the equivalent of Section 1452 of the California Civil Code, which provides:

> 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.

E. On and after the Effective Date, each of the Releasing Parties shall be deemed to have fully, finally, and forever released, relinquished, and discharged the Released Parties, and their present and former parents, subsidiaries, divisions, affiliates, partners, employees, officers, directors, attorneys, accountants, experts, consultants, insurers, agents, predecessors, successors, heirs, and assigns, from all claims of every nature and description, including Unknown Claims, relating to the defense, settlement, and/or resolution of the Kettle Actions or the Released Claims.

F. The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties, Settlement Class Members, and the Claims Administrator to interpret and enforce the terms, conditions, and obligations under the Agreement.

X. COUNSEL FEES, INCENTIVE AWARD, AND COSTS

A. Class Counsel will apply to the Court for an award of attorneys' fees and costs in a total amount not to exceed Seven Hundred Seventy-Five Thousand and No/100 Dollars

($775,000.00), to be paid within five (5) calendar days of the later of (1) entry of an order of dismissal in the *Surzyn* Action; or (2) entry of an order of dismissal in the *Hall* Action. Class Counsel shall not request any additional fees or costs above this amount. Diamond Foods will not object to the request so long as it does not exceed $775,000.00, and Diamond Foods will pay the amount awarded by the Court, up to but not more than $775,000.00, to Class Counsel as compensation for attorneys' fees and costs. The Fee Award shall constitute complete consideration for all work performed and all expenses and costs incurred by Class Counsel to date, and for all work to be performed and all expenses and costs to be incurred through the completion of the Kettle Actions and this Settlement.

B. Class Counsel, in their sole discretion, shall allocate and distribute the Fee Award among Other Counsel. Upon payment of the Fee Award, Diamond Foods' obligations regarding fees and expenses shall be fully and forever discharged and, with the exception of the Incentive Award, neither Klacko, Surzyn, Hall, the Settlement Class Members, nor Other Counsel shall be entitled to seek or recover any further payment of fees and/or expenses from Diamond Foods. Class Counsel agree to indemnify and hold harmless Diamond Foods and the Released Parties from any and all claims for payment of attorneys' fees and/or expenses to any Person other than as set forth in paragraph A above.

C. Class Counsel will apply to the Court for an Incentive Award in a total amount not to exceed Seven Thousand Five Hundred and No/100 Dollars ($7,500.00). Class Counsel shall not request any incentive awards above this amount. Diamond Foods will not object to the request so long as it does not exceed $7,500.00. The application for the Incentive Award shall specify the allocation of the Incentive Award among Klacko, Surzyn, and Hall.

XI. PRELIMINARY APPROVAL

A. The Parties and their respective counsel agree that Plaintiff shall seek Preliminary and Final Approval of the Settlement as described herein. Within seven (7)

calendar days after execution of the Agreement, and in any event, no later than September __, 2014, Plaintiff shall submit a Motion for Preliminary Approval of Settlement, this Agreement, including all exhibits, and shall seek a Preliminary Approval Order from the Court, substantially in the form to be agreed upon by the Parties, which, by its terms shall:

1. Determine preliminarily that this Agreement and the Settlement set forth herein fall within the range of reasonableness meriting possible final approval and dissemination of Notice to the Settlement Class;

2. Determine preliminarily that Klacko, Surzyn, and Hall are members of the Settlement Class and that, for purposes of the Settlement, they satisfy the requirements of typicality, and that they adequately represent the interests of the Settlement Class Members, and appoint them as the representatives of the Settlement Class;

3. Determine preliminarily that the Settlement Class meets all applicable requirements of Fed. R. Civ. P. 23 ("Rule 23"), and conditionally certify the Settlement Class for purposes of the Agreement under Rule 23 for settlement purposes only;

4. Appoint Class Counsel as counsel for the Settlement Class pursuant to Rule 23(g);

5. Schedule the Final Approval Hearing to: (a) determine finally whether the Settlement Class satisfies the applicable requirements of Rule 23 and should be finally certified for settlement purposes only; (b) review objections, if any, regarding the Settlement; (c) consider the fairness, reasonableness, and adequacy of the Settlement; (d) consider Class Counsel's application for an award of attorneys' fees and reimbursement of expenses and incentive awards consistent with the stipulation of the Parties set forth herein; (e) determine the validity of Requests for Exclusion and

exclude from the Settlement Class those Persons who validly and timely opt out; and (f) consider whether the Court shall issue the Final Judgment and Order Approving Settlement approving the Settlement and dismissing the Action with prejudice;

6. Set a briefing schedule for the Final Approval Hearing;

7. Approve the Class Notice and Notice Plan;

8. Approve the designation of the Claims Administrator;

9. Direct Diamond Foods, the Claims Administrator, or their designee(s) to cause the Class Notice to be disseminated in the manner set forth in the Notice Plan on or before the Notice Date;

10. Determine that the Class Notice and Notice Plan (a) meets the requirements of Rule 23(c)(3) and due process; (b) is the best practicable notice under the circumstances; (c) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Kettle Actions and their right to object to the proposed Settlement or opt out of the Settlement Class; and (d) is reasonable and constitutes due, adequate, and sufficient notice to all those entitled to receive notice;

11. Require each Settlement Class Member who wishes to opt out of the Settlement Class to submit a timely written Request for Exclusion on or before the Opt-Out Deadline, as specified in Section VIII.C. herein;

12. Rule that any Settlement Class Member who does not submit a timely Request for Exclusion will be bound by all proceedings, orders, and judgments in the Action;

13. Require any Settlement Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement or to the award of attorneys' fees, costs, and expenses, to deliver to Class Counsel and Defendant's Counsel and to

file with the Court, by the Objection Deadline, all of the information described in Section VIII.A.; and

14. Require that any Settlement Class Member who wishes to submit a Claim pursuant to Sections IV.C. and V.B. herein submit such Claim in writing on or before the Claims Deadline in the manner set forth in Sections IV.C. and V.B. herein, or forever be barred from submitting a Claim under this Agreement.

XII. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT

A. This Agreement is subject to and conditioned upon (1) the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Settlement Class for purposes of settlement only, grants final approval of the Settlement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder; (2) the Effective Date; and (3) the Parties' performance of their continuing rights and obligations hereunder.

B. The Final Judgment and Order Approving Settlement shall be substantially in the form to be agreed upon by the Parties and shall:

1. Confirm the final certification, for settlement purposes only, of the Settlement Class;

2. Confirm the compliance of the Settlement Class with all requirements of Rule 23, including confirmation of the adequacy of the representation of Plaintiff as representative of the Settlement Class;

3. Confirm that the Notice Plan complied in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class;

4. Determine that the Agreement is entered into in good faith, is

reasonable, fair, and adequate, and is in the best interests of the Settlement Class;

5. Dismiss the Action with prejudice and without costs, other than as described herein, and order Class Counsel to effectuate the dismissal of the *Surzyn* Action and *Hall* Action with prejudice and without costs;

6. Decree that neither the Final Judgment and Order Approving Settlement nor this Agreement constitutes an admission by Diamond Foods of any liability or wrongdoing whatsoever;

7. Release each Released Party from the Released Claims that any Releasing Party has, had, or may have in the future against any Released Party;

8. Bar and enjoin all Releasing Parties from asserting against any Released Party any Released Claim and bar and enjoin all Settlement Class Members from initiating or pursuing any claim or action barred by the Release; and

9. Retain the Court's continuing and exclusive jurisdiction over the Parties to the Agreement, including all Settlement Class Members, to construe and enforce the Agreement in accordance with its terms for the mutual benefit of the Parties.

XIII. REPRESENTATIONS AND WARRANTIES

A. Diamond Foods represents and warrants: (1) that it has the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (2) that the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Diamond Foods; and (3) that the Agreement has been duly and validly executed and delivered by Diamond Foods and constitutes its legal, valid, and binding obligation.

B. Klacko, Surzyn, and Hall represent and warrant that they are entering into this

Agreement on behalf of themselves individually and as representatives of the Settlement Class and the Releasing Parties, of their own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Klacko, Surzyn, and Hall represent and warrant that they have reviewed the terms of the Settlement in consultation with Class Counsel and believe those terms to be fair and reasonable, and covenant that they will not file a Request for Exclusion from the Settlement Class or object to the Settlement.

C. Class Counsel represent and warrant that they are fully authorized to execute this agreement on behalf of Klacko, Surzyn, and Hall, individually and as representatives of the Settlement Class Members and the Releasing Parties.

D. Except as set forth herein, the Parties represent and warrant that no other promise, inducement, or consideration for the Settlement has been made. No consideration, amount or sum paid, accredited, offered, or expended by Diamond Foods in its performance of this Agreement and the Settlement constitutes a fine, penalty, punitive damage, or other form of assessment for any claim against it.

XIV. TERMINATION OF THIS AGREEMENT

A. Either Party may terminate this Agreement by providing written notice to the other Party within ten (10) calendar days of the occurrence of any of the following:

1. The Court does not enter a Preliminary Approval Order conforming in all material respects to Section XI.A. and to the form agreed by the Parties;

2. The Court does not conditionally and finally certify the Settlement Class as defined herein or the Court's order certifying the Settlement Class is reversed, vacated, or modified in any material respect by another court; or

3. The Court does not enter the Final Judgment and Order Approving Settlement conforming in all material respects to Section XII.B. and to the form

agreed by the Parties or, if entered, such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material respect by another court before the Effective Date.

B. It is expressly agreed that neither the failure of the Court to enter the Fee Award, the Incentive Award, nor the amount of any attorneys' fees and costs or incentive awards that may be finally determined and awarded, shall provide a basis for termination of this Agreement.

C. Diamond Foods may unilaterally withdraw from and terminate this Agreement up to fifteen (15) calendar days before the Final Approval Hearing if any of the following events occur:

1. The Court does not approve the Notice Plan, or requires a plan of notice that will cause Claims Administration Expenses to exceed Three Hundred Thousand and No/100 Dollars ($300,000.00);

2. Any state attorney general, or any federal or state agency, regulator, or authority institutes a proceeding against any of the Released Parties arising out of or otherwise related to the Release, the Agreement, and/or the Settlement;

3. Any state attorney general, or any federal or state agency, regulator, or authority (a) objects to any aspect or term of the Agreement or Settlement; or (b) requires any modification to the Agreement or Settlement, including, without limitation, expansion of the scope of the contemplated relief that Diamond Foods in its sole discretion deems reasonably material; or

4. More than one thousand five hundred (1,500) Settlement Class Members have submitted valid and timely Requests for Exclusion;

If Diamond Foods elects to cancel the Agreement pursuant to this Section XIV.C., the Agreement and all related documents exchanged or signed by the Parties or submitted to the

Court shall be null and void and shall have no effect whatsoever upon the Kettle Actions or their adjudication.

D. In the event of termination, the terminating Party shall cause the Claims Administrator to post information regarding the termination on the Settlement Website.

E. In the event this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement. Upon termination, Sections III.A. III.B, and XV herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null and void.

XV. MEDIA COMMUNICATIONS

A. Klacko, Surzyn, Hall, Class Counsel, Diamond Foods, and Defendant's Counsel shall not cause any aspect of the Kettle Actions or the Settlement not available in the public record to be reported to the media or news reporting service. Any statement to the media or news reporting service shall be limited to what is available in the public record. Neither Party shall disparage the other. Notwithstanding these obligations, Diamond Foods may make such disclosures regarding the Kettle Actions and the terms of the Settlement as it deems necessary in its filings with the Securities and Exchange Commission, to its auditors, submissions to the FDA, or as otherwise required by state or federal law. Notwithstanding the foregoing, Klacko, Surzyn, Hall, Class Counsel, Diamond Foods, and Defendant's Counsel are permitted to file the required pleadings, exhibits, and briefing necessary to effectuate this Settlement and to comply with the Notice Plan ordered by the Court and such conduct does not violate this provision of this Agreement even if such conduct results in the details of this Settlement becoming part of the public record. Moreover, if any Party wishes documents to be filed under seal or to be reviewed by the Court *in camera* for privacy, competitive, or other reasons, the Parties will cooperate in filing such documents under seal prior to public disclosure.

XVI. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of the Agreement has been made or relied upon except as expressly set forth herein.

B. Execution by Counterparts. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by email shall be deemed original signatures and shall be binding.

C. Notices. All notices to the Parties or counsel required by this Agreement shall be made in writing and delivered personally, by UPS, Federal Express, or similar service, next business day delivery, or sent by certified mail, postage prepaid, to the following:

If to Plaintiff, Surzyn, Hall, or Class Counsel:

Benjamin M. Lopatin, Esq.
The Law Offices of Howard W. Rubinstein, P.A.
One Embarcadero Center, Suite 500
San Francisco, CA 94111

L. DeWayne Layfield, Esq.
Law Office of L. DeWayne Layfield, PLLC
P.O. Box 3829
Beaumont, Texas 77704

Anthony J. Orshansky
Justin Kachadoorian
CounselOne, P.C.
9301 Wilshire Boulevard, Suite 650
Beverly Hills, CA 90210

If to Diamond Foods or Defendant's Counsel:

General Counsel
Diamond Foods, Inc.

600 Montgomery Street, 13th Floor
San Francisco, CA 94111

Amanda L. Groves, Esq.
Winston & Strawn LLP
101 California Street, 35th Floor
San Francisco, CA 94111

D. Good Faith. The Parties acknowledge that each intends to implement the Settlement. The Parties have at all times acted in good faith and shall continue to, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement.

E. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of the Parties to the Agreement, Diamond Foods, and the Released Parties.

F. Arms-Length Negotiations. The determination of the terms of, and the drafting of, this Agreement, has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. Accordingly, the rule of construction that any ambiguities are to be construed against the drafter shall have no application. All Parties agree that this Agreement was drafted by Class Counsel and Defendant's Counsel at arms' length, and that no parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their attorneys, or the circumstances under which the Agreement was negotiated, made, or executed.

G. Waiver. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

H. Modification in Writing Only. This Agreement and any and all parts of it may be amended, modified, changed, or waived only by an express instrument in writing signed by the Parties.

I. Agreement Constitutes a Complete Defense. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

ON BEHALF OF DEENA KLACKO AND THE PROPOSED SETTLEMENT CLASS:

_____ 9-25-2014
Date:

ON BEHALF OF DOMINIKA SURZYN AND THE PROPOSED SETTLEMENT CLASS:

_____ _____
Date:

ON BEHALF OF RICHARD HALL AND THE PROPOSED SETTLEMENT CLASS:

_____ _____
Date:

ON BEHALF OF DIAMOND FOODS, INC.

_____ _____
Date:

I. Agreement Constitutes a Complete Defense. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

ON BEHALF OF DEENA KLACKO AND THE PROPOSED SETTLEMENT CLASS:

_____ _____

Date:

ON BEHALF OF DOMINIKA SURZYN AND THE PROPOSED SETTLEMENT CLASS:

[signature] 9/24/14

Date:

Benjamin M. Lopchin, ESQ.
The Law Offices of Howard W. Rubinstein, P.A.

ON BEHALF OF RICHARD HALL AND THE PROPOSED SETTLEMENT CLASS:

_____ _____

Date:

ON BEHALF OF DIAMOND FOODS, INC.

_____ _____

Date:

I. Agreement Constitutes a Complete Defense. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

ON BEHALF OF DEENA KLACKO AND THE PROPOSED SETTLEMENT CLASS:

_____ _____
Date:

ON BEHALF OF DOMINIKA SURZYN AND THE PROPOSED SETTLEMENT CLASS:

_____ _____
Date:

ON BEHALF OF RICHARD HALL AND THE PROPOSED SETTLEMENT CLASS:

_____ 9/25/14
Date:

ON BEHALF OF DIAMOND FOODS, INC.

_____ _____
Date:

I. Agreement Constitutes a Complete Defense. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

ON BEHALF OF DEENA KLACKO AND THE PROPOSED SETTLEMENT CLASS:

_____ _____
Date:

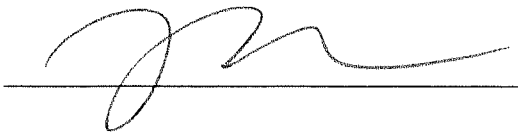
ON BEHALF OF DOMINIKA SURZYN AND THE PROPOSED SETTLEMENT CLASS:

_____ _____
Date:

ON BEHALF OF RICHARD HALL AND THE PROPOSED SETTLEMENT CLASS:

_____ _____
Date:

ON BEHALF OF DIAMOND FOODS, INC.



9/25/14
Date: