

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO.: 9:14-cv-80005-BB

DEENA KLACKO, individually and on behalf	:	
of all others similarly situated,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	Class Action
	:	
DIAMOND FOODS, INC., a California	:	
Corporation	:	
	:	
<i>Defendant.</i>	:	
	:	

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

I.	INTRODUCTION.....	4
II.	BACKGROUND	5
	A. Plaintiffs’ Allegations and the Litigation History.....	5
	B. The Settlement Achieves Meaningful Monetary and Non-Monetary Relief for the Settlement Class.....	7
III.	THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS.....	8
	A. The Settlement Class Satisfies Federal Rule of Civil Procedure 23(a).....	8
	1. Numerosity.....	9
	2. Commonality.....	9
	3. Typicality.....	10
	4. Adequacy of Representation.....	10
	5. In the context of this Settlement the ascertainability requirement is satisfied.....	11
	B. The Settlement Class Satisfies the Requirements of Federal Rule of Civil Procedure 23(b)(3).....	11
	1. Common Questions Predominate Over Individual Issues.....	12
	2. A Class Action Is the Superior Method to Settle This Controversy	12
IV.	THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT.....	13
	A. The Settlement Is the Product of Good Faith, Informed, and Arms’ Length Negotiations Among Experience Counsel.....	14
	B. The Issues Presented Were Complex and Settlement Approval Will Save the Class Years of Extremely Costly Litigation in this Court and on Appeal.....	15
	C. The Factual Record Was Sufficiently Developed to Enable Class Counsel to Make a Reasoned Judgment Regarding the Settlement.....	16
	D. Plaintiffs Would Have Faced Significant Obstacles to Obtaining Relief.....	17
	E. The Benefits Provided by the Settlement Are Fair, Reasonable, and Adequate When Considered Against the Possible Recovery Range	18
	F. The Opinions of Class Counsel, Class Representatives, and Absent Class Members Strongly Favor Settlement Approval.....	19
V.	CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases

<i>Amchem Products, Inc. v. Windsor</i> , 521 U.S. 591 (1997)	12, 13
<i>Appleyard v. Wallace</i> , 754 F.2d 955 (11 th Cir. 1985)	10
<i>Behrens v. Wometco Enters., Inc.</i> , 118 F.R.D. 534 (S.D. Fla. 1988)	13, 18
<i>Bohlke v. Shearer's Foods, Inc.</i> , No. 9:14-cv-80828, 2015 WL 249418 (S.D. Fla. Jan. 20, 2015)	18
<i>Busby v. JRHBW Realty, Inc.</i> , 513 F.3d 1314 (11th Cir. 2008)	10, 12
<i>Deposit Guaranty Nat'l Bank v. Roper</i> , 445 U.S. 326 (1980)	13
<i>Fabricant v. Sears Roebuck</i> , 202 F.R.D. 310 (S.D. Fla. 2001)	13
<i>Fitzpatrick v. Gen. Mills, Inc.</i> , 263 F.R.D. 687 (S.D. Fla. 2010)	9
<i>Hemphill v. San Diego Ass'n of Realtors, Inc.</i> , 225 F.R.D. 616 (S.D. Cal. 2004)	14
<i>In re Amerifirst Sec. Litig.</i> , 139 F.R.D. 423 (S.D. Fla. 1991)	9
<i>In re Disposable Contact Lens Antitrust Litig.</i> , 170 F.R.D. 524 (M.D. Fla. 1996)	10
<i>In re Domestic Air Transp. Antitrust Litig.</i> , 148 F.R.D. 297 (N.D. Ga. 1993)	17
<i>In re Gen. Motors Pick-up Truck Fuel Tank Prods. Liab. Litig.</i> , 55 F.3d 768 (3d Cir. 1995)	16
<i>In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mex., on April 20, 2010</i> , 910 F. Supp.2d 891 (E.D. La. 2012)	15
<i>In re Smith</i> , 926 F.2d 1027, 1028 (11th Cir. 1991)	14
<i>In re WorldCom, Inc. ERISA Litig.</i> , 2004 WL 2338151 (S.D.N.Y. 2004)	15
<i>Kirkpatrick v. J.C. Bradford & Co.</i> , 827 F.2d 718 (11th Cir. 1987)	10
<i>Klay v. Humana</i> , 382 F.3d 1241 (11 th Cir. 2004)	12
<i>Kunzelmann v. Wells Fargo Bank, N.A.</i> , Case No. 9:11-cv-81373 2013 WL 139913 (S.D. Fla. Jan. 10, 2013)	17
<i>Leverso v. SouthTrust Bank of Ala., N.A.</i> , 18 F.3d 1527 (11th Cir. 1994)	14
<i>Linney v. Cellular Alaska P'ship</i> , 151 F.3d 1234 (9th Cir. 1998)	19
<i>Lipuma v. Am. Express Co.</i> , 406 F. Supp.2d 12898 (S.D. Fla. 2005)	14
<i>Lobatz v. U.S. In re Educ. Testing Serv. Praxis Principles of Learning & Teaching Grades 7-12 Litig.</i> , 447 F. Supp. 2d 612 (E.D. La. 2006)	15
<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985)	13
<i>Ressler v. Jacobson</i> , 822 F. Supp. 1551 (M.D. Fla. 1992)	16, 17
<i>Rutstein v. Avis Rent-A-Car Sys.</i> , 211 F.3d 1228 (11th Cir. 2000)	12
<i>Saccoccio v. JP Morgan Chase Bank, N.A.</i> , 297 F.R.D. 683 (S.D. Fla. 2014)	14
<i>Turner v. Gen. Elec. Co.</i> , No. 2:05-CV-186-FTM-99DNF, 2006 WL 2620275 (M.D. Fla. Set. 13, 2006)	13
<i>Vega v. T-Mobile USA, Inc.</i> , 564 F.3d 1256 (11th Cir. 2009)	9
<i>Warren v. Tampa</i> , 693 F. Supp. 1051 (M.D. Fla. 1988)	19
<i>Weiner v. Dannon Co., Inc.</i> , 255 F.R.D. 658 (C.D. Cal. 2009)	12, 13
<i>Williams v. Mohawk Indus., Inc.</i> , 568 F.3d 1350 (11th Cir. 2009)	9

Rules

Fed. R. Civ. P. 23(a)	8, 9, 10, 11
Fed. R. Civ. P. 23(b)(3)	11, 12, 13

Plaintiffs, DEENA KLACKO, DOMINIKA SURZYN, and RICHARD HALL (collectively, the “Plaintiffs”), request the Court grant this, Motion for Final Approval of Class Action Settlement, and in support thereof state:

I. INTRODUCTION

Plaintiffs and Class Counsel urge this Court to finally approval the Kettle Brand® Class Action Settlement reached in this matter, which provides all Settlement Class Members with meaningful relief and addresses allegedly disputed ingredients in and advertising of consumer food products on a nationwide basis. This motion is made pursuant to the Kettle Brand® Class Action Settlement Agreement reached in this class action lawsuit (copy attached as Exhibit 1). The instant Settlement arises from litigation in which Plaintiffs challenged the advertising and labeling of Kettle Brand® products as deceptive and misleading. Specifically, Plaintiffs challenged Kettle Brand® products labeled as “All Natural,” “Natural,” “Naturally,” “Reduced Fat,” and/or “___% Less Fat” (collectively, the “Products”). Plaintiffs alleged that the advertising and labeling of the Products containing “natural” or similar labels are deceptive and misleading because those Products contain artificial, synthetic, and/or genetically modified ingredients, which Plaintiffs maintain are not natural within the common understanding of an objective consumer. Plaintiffs also contended that the Product advertising and labeling “Reduced Fat” and “___% Less Fat” are similarly deceptive and misleading because Defendant improperly references other non-comparable food in making such claims. Plaintiffs brought the actions to be dismissed pursuant to the proposed settlement to recover damages and obtain declaratory and injunctive relief. Defendant denies that it falsely advertised or marketed the Products, denies all claims made against it, denies that it violated any laws, denies that its

labeling is false or misleading, and denies that Plaintiffs or the Class Members have suffered damages or that they have been harmed in any way.

On October 30, 2014, the Court preliminarily certified the Settlement Class, appointed Class Representatives, appointed Class Counsel, and granted preliminary approval to the Settlement reached by the Parties. The Settlement was reached after over a year of litigation, a full day of mediation with an experienced mediator and subsequent lengthy and hard fought post-mediation negotiations, also facilitated by the mediator. The Settlement provides substantial and meaningful relief to the Settlement Class, including a multimillion dollar common fund and injunctive relief, all discussed in more detail below. The details of the Settlement are set out in the Settlement Agreement that is attached as Exhibit 1.

Approval of the proposed Settlement is all the more warranted because the Settlement involves the resolution of complex issues against a rising tide of decisions—from this Court and across this country—that are adverse to Plaintiffs’ position—decisions Class Counsel would certainly distinguish, but their opponents would just as vigorously assert. For the reasons set forth below, the Class Representative and Class Counsel are asking this Court to grant final approval of the Settlement.

II. BACKGROUND

A. Plaintiffs’ Allegations and the Litigation History

The instant action is the first filed of three related actions against Defendant. The other two actions are both pending in the United States District Court for the Northern District of California: *Dominika Surzyn v. Diamond Foods, Inc.*, Case No. 4:14-cv-136 (the “Surzyn Action”), and *Richard Hall v. Diamond Foods, Inc.*, Case No. 3:14-cv-02148 (the “Hall Action”). The Settlement reached by the Parties results in the final disposition of all three actions.

The instant action was commenced on January 3, 2014. *See* [Doc. 1] on this Court's docket. The *Surzyn* action was commenced on January 9, 2014. *See Surzyn* Action [Doc. 1], Docket Report for *Surzyn* attached as Exhibit 4. On April 2, 2014, the *Hall* action was commenced in the California Superior Court, County of San Francisco, and then subsequently removed by Defendant to the Northern District of California. *See Hall* action [Doc. 1], Docket Report for Hall attached as Exhibit 5.

These putative class actions all involve the sale of the Products, and overlapping alleged facts and legal theories. The actions faced motions to dismiss, responses, and replies to the responses. *See* [Docs. 9, 15, 31, 38]; *Hall* Action [Docs. 16, 22, 29], Exhibit 5; *Surzyn* Action [Docs. 15, 21], Exhibit 4. Ultimately, and after sometimes multiple rounds of pleading and briefing, Plaintiffs prevailed against the pleading-related motions.

While the motions to dismiss were pending, the Parties engaged in the exchange of informal discovery. Specifically, Defendant voluntarily provided Plaintiffs with confidential business information that aided in the resolution of these cases. Resolution required extensive negotiations, a full day of mediation with experienced mediator David Lichter, and then follow-up mediation assistance from Mr. Lichter before the Parties ultimately reached the Settlement that is before this Court.

As a result of the Settlement reached by the Parties, on October 22, 2014, Plaintiff Deena Klacko filed her Unopposed Motion for Preliminary Approval of Class Action Settlement [Doc. 44]. On October 30, 2014, this Court entered its Order Granting Motion for Preliminary Approval of Class Action Settlement. [Doc. 48], Exhibit 2.

B. The Settlement Achieves Meaningful Monetary and Non-Monetary Relief for the Settlement Class

The Settlement reached by the Parties involves both monetary and injunctive relief. Specifically, Defendant has agreed to pay claimants \$1.00 per Kettle Brand® product purchase, up to a maximum of \$10.00 per claimant without requiring proof of purchase, and up to a maximum of \$20.00 per claimant with proof of purchase. Defendant has agreed to satisfy all valid Claims made, up to \$2,750,000, plus up to \$300,000 for administration expenses, \$7,500 for incentive awards, and \$775,000 for attorneys' fees. If the total of Approved Claims (as that term is defined in the Settlement Agreement) exceeds \$2,750,000, the Approved Claims will be paid on a pro rata basis. For example, if Approved Claims are \$2,800,000, administration expenses are \$300,000, incentive awards are \$7,500, and attorneys' fees are \$775,000, Defendant's cash payments will total \$3,832,500 Any Residual Amount, as that term is defined in the Settlement Agreement, will be applied toward Diamond Foods, Inc. product, which Defendant will donate to charity, namely, Feeding America.

In addition to this monetary relief, Defendant has agreed that within one (1) calendar year after entry of the Final Judgment and Order Approving Settlement, it will provide "Natural Promise" criteria to its ingredient suppliers and will require those suppliers to verify that their ingredients comply with those criteria. Defendant will also create a database to track ingredients and ingredient suppliers, and will conduct audits at least once annually to confirm that Defendant's suppliers are in compliance with Defendant's "Natural Promise" criteria. Defendant further promises to employ reasonable efforts to seek Non-GMO Project approval for all Products where eligibility for non-GMO Project approval is practical.

Additionally, with regard to Defendant's "Reduced Fat" and "___% Fat Free" claims, Defendant agrees to place the requisite comparison statement at the location on the packaging where the applicable claim is most prominently displayed. Moreover, Defendant will provide reports to the Court (i) at the end of the six (6) month period following entry of the Final Judgment and Order Approving Settlement; and (ii) within one (1) calendar year following Final Judgment and Order Approving Settlement, regarding its compliance with these above-stated injunctive relief provisions.

Plaintiffs contend that in the context of food labeling class action settlements, this type of injunctive relief is unusual. This form of injunctive relief provides a lasting benefit to the Class years beyond the date of Settlement and distribution of monetary relief.

In exchange for the Settlement relief, members of the Settlement Class will release Defendant and its former and current subsidiaries, affiliates, divisions, parents, and other affiliated companies, among others, from all claims, obligations, or damages that were or could have been sought in this litigation against Defendant for damages related to Plaintiffs' claims during the Class Period.

III. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS

In its October 30, 2014, preliminary approval order, the Court preliminarily certified the settlement class. See Exhibit 2. The Court's findings in that Order were correct and, as explained below, should be made final.

A. The Settlement Class Satisfies Federal Rule of Civil Procedure 23(a)

Rule 23(a), *Federal Rules of Civil Procedure*, enumerates four prerequisites for class certification: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy. Each of the

requirements is met by the Settlement Class. Likewise the judicially recognized requirement of ascertainability of Settlement Class Members is satisfied.

1. Numerosity

Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is impractical.” FED. R. CIV. P. 23(a). The Kettle Brand® products are popular nationally with hundreds of thousands of customers; thus, the numerosity requirement is met.

2. Commonality

The commonality requirement is met if there is at least one question of law or fact common to the members of the Class. FED. R. CIV. P. 23(a)(2). The commonality requirement is a “relatively light burden” that “does not require that all questions of law and fact raised by the dispute be common.” *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1268 (11th Cir. 2009) (citations omitted). Rather, it “simply requires that there be at least one issue whose resolution will affect all or a significant number of the putative class members.” *Fitzpatrick v. Gen. Mills, Inc.*, 263 F.R.D. 687, 696 (S.D. Fla. 2010) *vacated on other grounds* (citing *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009)). Commonality is satisfied where questions of law refer to standardized conduct by the defendant toward members of the proposed class. *In re Amerifirst Sec. Litig.*, 139 F.R.D. 423, 428 (S.D. Fla. 1991).

Here, the case involves the labeling and advertising of Defendant’s Products. The labeling and advertising, although varying in some degree as to the precise language used, is similar enough such that Defendant’s conduct should be considered standardized. Further, because the Plaintiffs and the Class allege that they were deceived as a result of the similar language in substantially the same manner, *i.e.*, by purchasing the Products, it is clear that the commonality requirement has been met.

3. Typicality

The Rule 23(a) typicality requirement ensures that the class representative has the same interests as the class. That is, “typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large.” *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314 (11th Cir. 2008). The typicality requirement, like commonality, is not demanding. *See In re Disposable Contact Lens Antitrust Litig.*, 170 F.R.D. 524, 532 (M.D. Fla. 1996). Similarly, typicality does not require that all putative class members share identical claims. Rather, all that is required is that the claims of the named plaintiff have the same essential characteristics as the class at large. “[A] strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences.” *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985).

Here, the Kettle Action Plaintiffs’ and Settlement Class Members’ claims arise from the same course of conduct (Defendant’s allegedly misleading Product labels and advertising), which allegedly led to their purchases of the Products, and the resultant economic injury they allege to have suffered.

4. Adequacy of Representation

Finally, Rule 23(a) requires a showing that the representative party will fairly and adequately protect the interests of the class. The requirement has two components: (1) the proposed representative has interest in common with, and not antagonistic to, the interests of the class; and (2) the plaintiff’s attorneys are qualified, experienced, and generally able to conduct the litigation. *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718 (11th Cir. 1987).

Adequacy is plainly met in this case. The proposed Class Representatives’ claims and interests are not antagonistic to the claims of the Settlement Class Members, and Plaintiffs’

counsel are experienced in complex class actions similar to this one. Declarations of proposed class counsel were previously provided to the Court as Exhibits B-D to Plaintiffs' Motion for Preliminary Approval.

5. In the context of this Settlement the ascertainability requirement is satisfied

In the context of a class settlement, the class definition must be sufficiently precise and based on objective criteria such that a person reading the class definition as part of the nationwide notice campaign would be able to determine if that person is a member of the class. The settlement class definition is sufficiently precise and objective to permit that self-identification.

By agreeing to the Settlement before this Court, and solely for the purposes of settlement, Defendant has waived most of the due process rights intertwined with the ascertainability requirement. The Defendant's remaining due process rights (in res judicata enforcement of the release) are protected through the opt-out records maintained by the claims administrator. Thus, in the context of this Settlement Class, the proposed class definition is sufficiently ascertainable.

B. The Settlement Class Satisfies the Requirements of Federal Rule of Civil Procedure 23(b)(3)

In addition to the requirements set forth in Rule 23(a), *Federal Rules of Civil Procedure*, in the context of the proposed Settlement, the Settlement Class also satisfies the requirements set forth in Rule 23(b)(3), *Federal Rules of Civil Procedure*, which requires that common questions of law or fact predominate over individual questions, and that class action treatment is superior to other available methods of adjudication. As set forth below, the Settlement Class meets Rule 23(b)(3)'s requirements. Accordingly, this Court should finally certify the Settlement Class proposed by the Parties.

1. Common Questions Predominate Over Individual Issues

Common questions of law or fact predominate over individual questions when the issues in the class action are subject to generalized proof that applies to the case as a whole. *Rutstein v. Avis Rent-A-Car Sys.*, 211 F.3d 1228, 1233 (11th Cir. 2000); *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625 (1997) (“Predominance is a test readily met in certain cases alleging consumer or securities fraud”). Thus, in deciding whether common questions predominate under Rule 23(b)(3), the focus is generally on whether there are common liability issues that may be resolved on a class-wide basis. *See, e.g., Klay v. Humana*, 382 F.3d 1241, 1269 (11th Cir. 2004). “[I]t is not necessary that all questions of fact or law be common, but only that some questions are common and that they predominate over individual questions.” *Busby*, 513 F.3d at 1354.

Predominance exists here. The central issue for every Settlement Class Member is whether Defendant’s claims that the Products were “All Natural,” “Natural,” “Naturally,” “Reduced Fat,” or “Less Fat” were likely to deceive a reasonable consumer. Under these circumstances, the requirements of Rule 23(b)(3) are present. *See Weiner v. Dannon Co., Inc.*, 255 F.R.D. 658, 669 (C.D. Cal. 2009) (predominance satisfied when alleged misrepresentation of product’s health benefits were displayed on every package).

2. A Class Action Is the Superior Method to Settle This Controversy

Rule 23(b)(3), *Federal Rules of Civil Procedure*, lists four factors that the Court should consider when taking into account whether a class action is superior to other methods of adjudicating this action: (A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in a particular forum; and (D) the

likely difficulties in managing a class action. FED. R. CIV. P. 23(b)(3)(A)-(D). “[T]he improbability that large numbers of class members would possess the initiative to litigate individually” further compels a finding of superiority. *Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 318 (S.D. Fla. 2001); *Amchem*, 521 U.S. at 617 (same); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (same).

An assessment of the Rule 23(b)(3) “superiority” factors show that a class action is the preferred procedure in this case. The amount of damages allegedly suffered by the vast majority of Settlement Class Members is not large. *Weiner*, 255 F.R.D. at 671. It is neither economically feasible, nor judicially efficient, for the hundreds of thousands of Settlement Class Members to pursue their claims against Defendant on an individual basis. *Deposit Guaranty Nat’l Bank v. Roper*, 445 U.S. 326, 338-39 (1980). Additionally, the difficulties of managing a class action are vitiated by the fact of this Settlement. When “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620.

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

Settlement “has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice. . . .” *Turner v. Gen. Elec. Co.*, No. 2:05-CV-186-FTM-99DNF, 2006 WL 2620275, *2 (M.D. Fla. Set. 13, 2006) (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988) *aff’d* 899 F.2d 21 (11th Cir. 1990)). For these reasons, “there exists an overriding public interest in favor

of settlement, particularly in class actions that have the well-deserved reputation as being most complex.” *Lipuma v. Am. Express Co.*, 406 F. Supp.2d 12898, 1314 (S.D. Fla. 2005) (citation omitted); *accord Soccaccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683 (S.D. Fla. 2014).

Courts in this Circuit consider the following factors when approving a class action settlement: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and duration of litigation; (3) the stage of proceedings at which the settlement was achieved, and the amount of discovery completed at that stage; (4) the probability of the plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representative(s), and the substance and amount of opposition received. *See Soccaccio*, 297 F.R.D. at 691; *see also Leverso v. SouthTrust Bank of Ala., N.A.*, 18 F.3d 1527, 1530 n.6 (11th Cir. 1994). “In assessing these factors, the Court ‘should be hesitant to substitute . . . her own judgment for that of counsel.” *Lipuma*, 406 F. Supp.2d at 1315 (quoting *In re Smith*, 926 F.2d 1027, 1028 (11th Cir. 1991)). Analysis of these factors supports approval of the settlement reached in this case.

A. The Settlement Is the Product of Good Faith, Informed, and Arms’ Length Negotiations Among Experience Counsel.

The first factor for final approval requires the Court to consider whether the settlement was obtained by fraud or collusion among the parties and their counsel. Courts begin with a presumption of good faith in the negotiation process. *See Soccaccio*, 297 F.R.D. at 692 (“Where the parties have negotiated at arms’ length, the Court should find that the settlement is not the product of collusion”); *Hemphill v. San Diego Ass’n of Realtors, Inc.*, 225 F.R.D. 616, 621 (S.D. Cal. 2004) (“the courts respect the integrity of counsel and presume the absence of fraud or collusion in the settlement”).

The Settlement terms in this case are the product of significant give and take by the settling parties, and the settlement was negotiated at arms' length. Indeed, the Parties participated in a full-day mediation with the assistance of an experienced mediator, David Lichter. Furthermore, numerous telephonic negotiations were commenced, including a significant telephonic mediation with the assistance of Mr. Lichter. *See* Exhibit 3, Declaration of Class Counsel ("Declaration") at ¶¶ 13-15.

Moreover, the very fact of Mr. Lichter's involvement weighs in favor of approval. *See, e.g., Lobatz v. U.S. In re Educ. Testing Serv. Praxis Principles of Learning & Teaching Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 619-20 (E.D. La. 2006) (use of special master to oversee mediation evidenced procedural fairness of negotiating process); *In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, *6 (S.D.N.Y. 2004) (fact that "[a] respected and dedicated judicial officer presided over the lengthy discussions from which the settlement emerged" belied any suggestion of collusion).

B. The Issues Presented Were Complex and Settlement Approval Will Save the Class Years of Extremely Costly Litigation in this Court and on Appeal.

This case involves complex legal claims and defenses brought on behalf of millions of putative Class Members and included claims for complex common law and statutory unfair trade practices. Litigating these claims would have undoubtedly proven difficult and consumed significant time, money, and judicial resources. Even if Plaintiffs were ultimately to have prevailed in this litigation (which Defendant contests), that success would likely have borne fruit for the class only after years of trial and appellate proceedings and the expenditure of millions of dollars by both sides. (Decl. ¶¶ 8, 23); *see also In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mex., on April 20, 2010*, 910 F. Supp.2d 891, 932 (E.D. La. 2012) *aff'd* 2014 WL 103836

(5th Cir. Jan. 10, 2014) (“Even assuming litigation could obtain the results that this Settlement provides, years of litigation would stand between the class and any such recovery. Hence, this second . . . factor weighs strongly in favor of granting final approval of the Settlement Agreement”).

By contrast, the Settlement provides immediate and significant monetary and injunctive relief to the Settlement Class, with cash payments of up to \$10.00 per claimant without requiring any proof of purchase, and up to \$20.00 for claimants who do provide proof of purchase. These cash payments are on the basis of \$1.00 per product purchase. The Kettle Brand® snack foods cost, at most, a few dollars per product. A one dollar payment on each product amounts to a per product recovery in the range of 15% to 65% depending on the product purchased and the retail price paid by a particular consumer. This range is extremely favorable and constitutes an excellent result. *See Checking Account Overdraft Litig.*, 2010 WL 5873389, *10 (range of 9% to 45% of damages was an “exemplary” result). These benefits come without the expense, uncertainty, and delay of continued and indefinite litigation. In light of the costs, uncertainties, and delays of litigating through trial—to say nothing of appeal—“the benefits to the class of the present settlement become all the more apparent.” *See Ressler v. Jacobson*, 822 F. Supp. 1551, 1555 (M.D. Fla. 1992).

C. The Factual Record Was Sufficiently Developed to Enable Class Counsel to Make a Reasoned Judgment Regarding the Settlement

Courts consider “the degree of case development that class counsel have accomplished prior to settlement” to ensure that “counsel had an adequate appreciation of the merits of the case before negotiating.” *In re Gen. Motors Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 813 (3d Cir. 1995). At the same time, “[t]he law is clear that early settlements are to be

encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations.” *Ressler*, 822 F. Supp. At 1555.

Prior to Settlement, Class Counsel reviewed confidential business information related to the sale of the Products in order to ascertain the scope of potential damages. Decl. ¶ 12. The Parties engaged in significant merits briefing and motion practice and formal mediation prior to resolving this matter with the added assistance of the mediator. Decl. ¶ 13. The combination of the access to important data, briefing and the mediation process provided Class Counsel with ample information to evaluate the merits of Plaintiffs’ claims and the range of a fair, adequate, and reasonable settlement under the circumstances of this case.

D. Plaintiffs Would Have Faced Significant Obstacles to Obtaining Relief

“[T]he likelihood and extent of any recovery from the defendants absent . . . settlement” must be considered in assessing the reasonableness of a settlement. *See In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 314 (N.D. Ga. 1993); *see also Ressler*, 822, F. Supp. At 1555 (“a court is to consider the likelihood of the plaintiffs’ success on the merits of his claims against the amount and form of relief offered in the settlement before judging the fairness of the compromise”). Class Counsel and Plaintiffs believe they have a compelling case but also recognize that Defendant has raised significant defenses to all claims, in each of the subject actions, and additional obstacles remained which Defendant could have raised in later stages of the proceedings. *See* Decl. ¶ 23. Although Plaintiffs and Class Counsel maintain that these defenses lack merit, had litigation continued, Plaintiffs and the putative Class Members would have faced the risk of not prevailing on their claims. Decl. *Id.*; *Kunzelmann v. Wells Fargo Bank, N.A.*, Case No. 9:11-cv-81373 2013 WL 139913 (S.D. Fla. Jan. 10, 2013) (noting obstacles created by application of multistate law, among others).

Indeed, Plaintiffs' claims have been fraught with risk since their respective inception, as evidenced by the numerous motions to dismiss/strike Plaintiffs' complaints that met each action. Furthermore, claims related to other products, but that are similar to Plaintiffs' claims, are developing in the various federal and state courts and are still being met with vigorous opposition. *See e.g., Bohlke v. Shearer's Foods, Inc.*, No. 9:14-cv-80828, 2015 WL 249418 (S.D. Fla. Jan. 20, 2015) (order granting in part and denying in part defendant food producer's motion to dismiss plaintiff's claims related to similar "all natural" food labels on a multitude of grounds, including jurisdictional, preemption, and failure to state a claim). Should the case have proceeded to the certification and merits stage, the parties and their respective experts would have battled over the Rule 23 requirements. The results of those efforts, while unknown, would be fraught with risk, particularly in light of recent decisions from the relevant jurisdictions where these case have been pending. *Randolph v. Smucker*, No. 9:13-cv-80581 WL 7330430 (S.D. Fla. Dec. 23, 2014); *In re Clorox*, 301 F.R.D. 436 (N.D. Cal, 2014); *Bruton v. Gerber*, No. 5:12-cv-02412 WL 2860995 (N.D. Cal. June 23, 2014); *Allen v. Conagra*, No. 13-cv-01279-VC (N.D. Cal. Jan. 8, 2015).

E. The Benefits Provided by the Settlement Are Fair, Reasonable, and Adequate When Considered Against the Possible Recovery Range

As explained above, Defendant has agreed to pay all Approved Claims, up to \$2.75 million (in addition to paying up to \$300,000 in administration expenses, \$7,500 in incentive awards, and \$775,000 in attorneys' fees). These funds will provide substantial compensation to Settlement Class Members which far exceeds the standards set by other courts. *See, e.g., Behrens*, 118 F.R.D. at 542 ("the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair and inadequate. . . A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the

potential recovery. . . .”; *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“the very essence of settlement is . . . a yielding of absolutes and an abandoning of highest hopes”) (internal quotations and citations omitted).

In addition to the compensation, Settlement Class Members will benefit from the substantial injunctive relief that was obtained on their behalf. Specifically, Defendant will provide “Natural Promise” criteria to its ingredient suppliers and further will require those suppliers to verify that their ingredients comply with Defendant’s “Natural Promise” criteria. Defendant will also create and maintain a database to track ingredients and ingredient suppliers. Furthermore, Defendant will conduct audits, at least once annually, to confirm that its suppliers are in compliance with Defendant’s “Natural Promise.” Defendant will also employ reasonable efforts to obtain Non-GMO Project approval for all Products where eligibility for Non-GMO Project approval is practical.

F. The Opinions of Class Counsel, Class Representatives, and Absent Settlement Class Members Strongly Favor Settlement Approval

A court should give “great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation.” *Warren v. Tampa*, 693 F. Supp. 1051, 1060 (M.D. Fla. 1988).

Here, Class Counsel have substantial experience in consumer class actions and believe that, based on their experience, the Settlement is fair, adequate, and reasonable under the facts and circumstances of this case and that the Settlement should be approved. Decl. ¶ 9, 23.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the class action Settlement reached in this case, and award such further relief as the Court deems just and proper.

LOCAL RULE 7.1 (A)(3) CERTIFICATION

Pursuant to Local Rule 7.1(A)(3), on February 19, 2015, counsel for Plaintiff has conferred with counsel for Defendant, who agrees with the relief requested in this Motion.

Respectfully Submitted,

Dated: February 20, 2015

/s/ Howard W. Rubinstein

Howard W. Rubinstein (Fla. Bar No.: 104108)

THE LAW OFFICES OF

HOWARD W. RUBINSTEIN, P.A.

3507 Kyoto Gardens Drive, Suite 200

Palm Beach Gardens, FL 33401

(800) 436-6437

(415) 692-6607 (fax)

Email: *howardr@pdq.net*

Benjamin M. Lopatin (Cal. Bar No. 281730)

(Admitted *Pro Hac Vice*)

THE LAW OFFICES OF

HOWARD W. RUBINSTEIN, P.A.

One Embarcadero Center, Suite 500

San Francisco, CA 94111

(800) 436-6437

(415) 692-6607 (fax)

Email: *lopatin@hwrlawoffice.com*

L. DeWayne Layfield

Law Office of L. DeWayne Layfield PLLC

P.O. Box 3829

Beaumont, TX 77704

409-832-1891

Email: *dewayne@layfieldlaw.com*

(Admitted *Pro Hac Vice*)

Anthony J. Orshansky
Justin Kachadoorian
CounselOne, PC
9301 Wilshire Blvd., Suite 650
Beverly Hills, CA 90210
(310) 277-9945
(424) 277-3727 (fax)
Email: anthony@counselonegroup.com
justin@counselonegroup.com
(*Pro hac vice* application pending)

*Attorneys for Plaintiff Deena Klacko
and the Proposed Class*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 20, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing generated by CM/ECF.

/s/ Howard W. Rubinstein

Howard W. Rubinstein

SERVICE LIST

Klacko v Diamond Foods, Inc.

CASE NO. 14-cv-80005-BB

United States District Court, Southern District of Florida

Amanda L. Groves
Winston & Strawn LLP
100 North Tryon Street
Charlotte, NC 28202-1078
704-350-7700
Fax: 704-350-7800
Email: agroves@winston.com
(Admitted *Pro Hac Vice*)

Dora Faye Kaufman
Liebler, Gonzalez & Portuondo, P.A.
44 West Flagler Street
25th Floor
Miami, FL 33130
305-379-0400
Fax: 305-379-9626
Email: dfk@lgplaw.com

James Randolph Liebler
Liebler Gonzalez & Portuondo PA
44 W Flagler Street
25th Floor
Miami, FL 33130-4329

305-379-0400
Fax: 379-9626
Email: jrl@lgplaw.com

Joanna C. Wade
Winston & Strawn LLP
100 N Tryon Street
Charlotte, NC 28202-1078
704-350-7700
Fax: 704-350-7800
Email: jwade@winston.com
(Admitted *Pro Hac Vice*)

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:14-cv-80005

DEENA KLACKO, individually and on behalf of
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@counselonergroup.com
Justin Kachadoorian
justin@counselonergroup.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 Section VI.

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.
smeen@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:

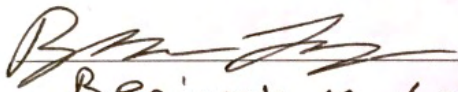
I. Agreement Constitutes a Complete Defense. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or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


Date: 9/24/14

BENJAMIN M. LOPERDIN, 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:

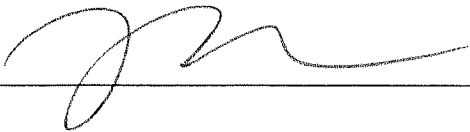
ON BEHALF OF DOMINIKA SURZYN AND THE PROPOSED SETTLEMENT CLASS:

Date:

ON BEHALF OF RICHARD HALL AND THE PROPOSED SETTLEMENT CLASS:

Date:

ON BEHALF OF DIAMOND FOODS, INC.



9/25/14
Date:

EXHIBIT 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 14-CIV-80005-BLOOM/Valle

DEENA KLACKO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

DIAMOND FOODS, INC., a California
corporation,

Defendants.

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

This matter is before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement, ECF No. [44] (the "Motion for Preliminary Approval"), and Defendant's Agreed Motion to Stay and Abate Proceedings, ECF No. [47] (the "Motion to Stay"). The parties to this litigation have entered into a Stipulation of Class Action Settlement (the "Agreement") dated September 25, 2014, ECF No. [44-1] Exh. A, that, if approved, would resolve this putative class action. Plaintiff Deena Klacko filed the Motion for Preliminary Approval. Defendant Diamond Foods, Inc. ("Diamond Foods") does not oppose the Motion for Preliminary Approval and supports the Court's granting of preliminary approval of the Agreement.

The definitions in the Agreement are hereby incorporated as though fully set forth in this Order, and capitalized terms shall have the meaning attributed to them in the Agreement.

The Court has read and considered the Motion for Preliminary Approval, the Agreement, and all exhibits thereto, including the proposed Class Notice and Claim Form, and finds there is sufficient basis for: (1) granting preliminary approval of the Agreement; (2) certifying the Settlement Class for settlement purposes; (3) appointing Plaintiff Deena Klacko, Dominika Surzyn, and Richard Hall as Class Representatives; (4) appointing 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 Orshansky and Justin Kachadoorian of CounselOne, P.C, as Class Counsel; (5) directing that Class Notice be disseminated to the Settlement Class as provided by the Notice Plan; and (6) setting a Final Approval Hearing at which the Court will consider whether to grant final approval of the Agreement.

It is accordingly it is **ORDERED** and **ADJUDGED** as follows:

A. The Motion for Preliminary Approval is **GRANTED** as set forth herein. The Court further makes the following findings and orders:

1. The Court preliminary certifies, for settlement purposes only, the following settlement class (the “Settlement Class”) pursuant to Rule 23 of the Federal Rules of Civil Procedure:

All Persons who, for personal or household use, purchased Diamond Foods, Inc. Kettle Brand® Products¹ from January 3, 2010 through and including February 24, 2015. Excluded from the Settlement Class are: (a) all Persons who purchased or acquired Diamond Kettle Brand® products for resale; (b) Diamond Foods, Inc. 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.

2. The Court approves Deena Klacko, Dominika Surzyn, and Richard Hall as Class Representatives.

3. The Court appoints the following to serve as Class Counsel: Benjamin M. Lopatin,

¹ 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.”

Esq. of The Law Offices of Howard Rubinstein, P.A., One Embarcadero Center, Suite 500, San Francisco, CA 94111; L. DeWayne Layfield, Esq. of the Law Office of L. DeWayne Layfield, PLLC, P.O. Box 3829, Beaumont, TX 77704; and Anthony Orshansky and Justin Kachadoorian of CounselOne, P.C., 9301 Wilshire Boulevard, Suite 650, Beverly Hills, CA 90210. For purposes of these settlement approval proceedings, the Court finds that these lawyers are competent and capable of exercising their responsibilities as Class Counsel.

4. The Court finds, for purposes of settlement only, and conditioned upon the entry of this Order and the Final Judgment and Order Approving Settlement and upon the occurrence of the Effective Date, that the requirements of Rule 23 of the Federal Rules of Civil Procedure are met by the Settlement Class: (a) joinder of all Settlement Class Members in a single proceeding would be impracticable, if not impossible, because of their numbers and dispersion; (b) there are questions of law and fact common to the Settlement Class; (c) Plaintiffs' claims are typical of the claims of the Settlement Class she seeks to represent for purposes of settlement; (d) Plaintiffs have fairly and adequately represented the interests of the Settlement Class and will continue to do so; (e) Plaintiffs and the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting class actions, including those involving the sort of practices alleged in the Complaint; (f) for purposes of settlement, the questions of law and fact common to the Settlement Class Members predominate over questions affecting any individual Settlement Class Member; (g) Diamond Foods has acted on grounds that apply generally to the Settlement Class, such that final injunctive relief is appropriate respecting the Settlement Class as a whole; and (h) a class settlement is superior to other available methods for a fair resolution of the controversy.

5. The Court preliminary approves the Agreement, finding that its terms appear

sufficient and fair, reasonable, and adequate to warrant dissemination of notice of the proposed settlement to the Settlement Class as provided by the Notice Plan. The Court finds that the Agreement contains no obvious deficiencies and that the parties entered into the Agreement in good faith, following arms-length negotiation between their respective counsel.

6. The Court approves, as to form and content, the Long-Form Notice and Publication Notice attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibit E. The Court also approves the procedure for disseminating notice of the proposed settlement to the Settlement Class as set forth in the Notice Plan attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibit E. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution.

7. Diamond Foods shall cause notice to be disseminated pursuant to the Notice Plan within 80 calendar days of this Order or February 24, 2015 whichever is later.

8. As set forth in the Agreement, Diamond Foods shall pay for the notice and administration expenses up to a maximum of \$300,000.00.

9. The Court authorizes and directs Diamond Foods to retain Kurtzman Carson Consultants as the Claims Administrator to implement the terms of the proposed Agreement, and authorizes and directs such Claims Administrator to (a) publish the Long-Form Notice and Publication Notice as provided by the Notice Plan; (b) establish the toll-free informational telephone number; (c) establish the Settlement Website; (d) receive and process Claims; and (e) carry out such other responsibilities as are provided for in the Agreement or may be agreed to by

the Parties in the Action.

10. At or before the Final Approval Hearing (defined below), the Claims Administrator shall provide the Court with a declaration showing that the Class Notice was disseminated in accordance with this Order and the Notice Plan.

11. A hearing on final approval of the Agreement, an award of attorneys' fees and expenses to Class Counsel, and incentive payments to Plaintiff (the "Final Approval Hearing") shall be held at on **July 17, 2015 at 9:00 a.m., before the undersigned in Courtroom 207A of the United States District Court for the Southern District of Florida, 299 East Broward Blvd., Fort Lauderdale, Florida 33301**. At the Final Approval Hearing, the Court will consider: (a) whether the Agreement should be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether a judgment granting approval of the Agreement and dismissing the Action with prejudice should be entered; and (c) whether Class Counsel's application for attorneys' fees and expenses and an incentive award for Plaintiff should be granted.

12. Objections. Any Settlement Class Member who complies with the requirements of this Paragraph may object to any aspect of the proposed Agreement either on his or her own or through an attorney hired at his or her expense. Any Settlement Class Member who wishes to object to the proposed Agreement must file with the Court, and serve on Class Counsel and Defendant's Counsel, at the addresses set forth below, a written statement of objection **no later than June 11, 2015** (the "Objection Deadline"). Such statement shall include (a) the name, address, telephone number and, if available, e-mail address of the Person objecting and, if represented by counsel, of his/her counsel; (b) specifically and in writing, all objections; (c) whether he/she intends to appear at the Final Approval Hearing, either with or without counsel; (d) a statement of his/her membership in the Settlement Class including all of the information required by the Claim

Form; and (e) 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.

Claims Administrator

Kurtzman Carson Consultants
75 Rowland Way, Suite 250,
Novato, CA 94945

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, TX 77704

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

Defendant's Counsel

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

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

13. Any Settlement Class Member who does not timely file and serve a written objection pursuant to the terms hereof shall be deemed to have waived, and shall be foreclosed from thereafter raising, any objection to the Agreement. Any objection that is not timely made shall be barred. The filing of an objection allows Class Counsel or Defendant's Counsel to notice such objecting person for and take his or her deposition consistent with the Federal Rules of Civil Procedure at an agreed-upon location, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an objector to make himself or herself available for a deposition or to comply with expedited discovery requests may result in the Court striking said objector's objection and otherwise denying that person the opportunity to make an objection or be further heard. The Court reserves the right to tax the costs of any such discovery to the objector or the objector's counsel should the Court determine that the objection is frivolous or is made for an improper purpose.

14. The procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Members' objection to the Agreement, in accordance with the due process rights of all Settlement Class Members.

15. Any Settlement Class Member who files and serves a timely written objection pursuant to the terms of this Order and complies with the requirements of this Paragraph may also appear at the Final Approval Hearing either in person or through counsel retained at the Settlement Class Member's expense. Settlement Class Members or their attorneys intending to appear at the Final Approval Hearing must serve on Class Counsel and Defendant's Counsel, and file with the Court, at the addresses specified in this Order, no later than 30 calendar days before the Final Approval Hearing, a notice of intention to appear, setting forth the case number, and the name,

address, telephone number, and, if available, email address of the Settlement Class Member (and, if applicable, the name, address, telephone number, and email address of the Settlement Class Member's attorney). Any Settlement Class Member who does not timely file and serve a notice of intention to appear pursuant to the terms of this Order shall not be permitted to appear, except for good cause shown.

16. Exclusions.

a) 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 complete and mail to the Claims Administrator a Request for Exclusion that is postmarked **no later than June 11, 2015** (the "Opt-Out Deadline"). The Request for Exclusion must be personally signed by the Class Member requesting exclusion and contain a statement that indicates a desire to be excluded from the Class. 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. So-called "mass" or "class" opt-outs shall not be allowed.

b) Except for those Persons who have properly and timely submitted Requests for Exclusion, all Settlement Class Members will be bound by the Agreement and the Final Judgment and Order Approving Settlement, including the Release contained therein, regardless of whether they file a Claim or receive any monetary relief.

c) Any Settlement Class Member who properly requests to be excluded from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the Agreement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Agreement.

17. Claims. The Claim Deadline shall be fourteen (14) calendar days following the Final Approval Hearing, or **August 1, 2015**, which is due, adequate, and sufficient time. 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 clearly set forth in the Class Notice, the Settlement Website, and on the Claim Form. Settlement Class Members who do not timely submit a signed, completed Claim Form in accordance with the procedures set forth in the Agreement shall not be eligible for an Award.

18. Supplemental Filing Deadlines.

a) The Motion for Final Approval of the Settlement and Certification of the Settlement Class, together with the supporting memorandum and papers, shall be filed no later than **February 20, 2015**.

b) Class Counsel's Motion for Attorneys' Fees, Expenses, and an Incentive Award, together with the supporting memorandum and papers, shall be filed no later than **February 20, 2015**.

c) The Parties may each file a supplemental brief no longer than twenty-five (25) pages in length to address any objections filed by Settlement Class Members. Said supplemental briefs shall be filed no later than seven (7) calendar days before the Final Approval Hearing.

19. If any deadline set forth in this Order falls on a Saturday, Sunday or federal holiday, then such deadline shall extend to the next Court business day.

20. Stay of Litigation. Pending the Final Approval Hearing, all proceedings in the Action, other than proceedings necessary to carry out and enforce the terms and conditions of the Agreement and this Order, are hereby stayed.

21. Termination. In the event the Court does not grant final approval of the Settlement,

or for any reason the Parties fail to obtain a Final Judgment and Order Approving Settlement as contemplated by the Agreement, or the Agreement is terminated pursuant to its terms for any reason or the Effective Date does not occur for any reason, then the following shall apply:

a) The Agreement and all orders and findings entered in connection with the Agreement and the Settlement shall become null and void and be of no further force and effect whatsoever, shall not be used or referred to for any purpose whatsoever, and shall not be admissible or discoverable in this or any other proceeding; and

b) The provisional certification of the Settlement Class pursuant to this Order shall be vacated automatically, the Action shall proceed as though the Settlement Class had never been provisionally certified pursuant to the Agreement, and provisional findings related to Rule 23 shall have no force or effect for the remainder of the Action.

22. This Order shall not be construed or used as an admission, concession, or declaration by or against Diamond Foods of any fault, wrongdoing, breach, or liability, and 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. Nor shall this Order be construed or used as an admission, concession, or declaration by or against Plaintiff or the other Settlement Class Members that their claims lack merit or that the relief requested is inappropriate, improper, or unavailable, or as a waiver by any Party of any defenses or claims he, she, or it may have in the Action or in any other proceeding.

23. The Court reserves the right to adjust the date of the Final Approval Hearing and related deadlines. In that event, the revised hearing date and/or deadlines shall be posted on the Settlement Website referred to in the Class Notice, and the Parties shall not be required to re-send

or re-publish the Class Notice.

It is Further **ORDERED and ADJUDGED** that:

1. The above-styled action is administratively **CLOSED**. The Clerk shall **CLOSE** this case for statistical purposes.
2. Plaintiff may request that the Court administratively reopen the case when filing the Motion for Final Approval of the Settlement and Certification of the Settlement Class. Either party or any Settlement Class Member may request that the Court reopen the case as necessary.
3. The Agreed Motion to Stay or Abate Proceedings, ECF No. [47] is **DENIED** as moot.

DONE AND ORDERED in Fort Lauderdale, Florida this 30th day of October, 2014.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO.: 9:14-cv-80005-BB

DEENA KLACKO, individually and on behalf :
of all others similarly situated, :

Plaintiff, :

v. :

DIAMOND FOODS, INC., a California :
Corporation :

Defendant. :

**DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Counsel for the proposed class, hereby submits this Declaration in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement:

1. Counsel is over the age of 18 years and makes this declaration with personal knowledge of the facts presented.

2. This matter initially involved three separate actions: the above-styled action, *Klacko v. Diamond Foods, Inc.*, Case No. 9:14-cv-80005-BB; *Dominika Surzyn v. Diamond Foods, Inc.*, Case No. 4:14-cv-136; and *Richard Hall v. Diamond Foods, Inc.*, Case No. 3:14-cv-02148.

3. The *Surzyn* and *Hall* actions are both currently pending in the United States District Court, Northern District of California, but for purposes of Settlement the resolution of the instant action will resolve all three matters.

4. The reason all three cases, *Klacko*, *Surzyn*, and *Hall* are consolidated for settlement purposes is because all three actions involve the same or similar food advertising and labeling practices of Defendant, DIAMOND FOODS, INC. (“Defendant”).

5. Specifically, all three actions involve Defendant’s Kettle Brand® food products labeled as “All Natural,” “Natural,” “Naturally,” “Reduced Fat,” and/or “_____ % Less Fat.”

6. Plaintiffs contention in the litigation is that the “natural” related labels and advertising are deceptive and misleading because those respective food products contain artificial, synthetic, and/or genetically modified ingredients.

7. Plaintiffs contention in the litigation is that the “Reduced Fat” and “_____ % Less Fat” food products are deceptive because Defendant improperly referenced other non-comparable food in making such claims.

8. Plaintiffs brought class actions under their respective state consumer protection statutes related to the above-described food labels on behalf of themselves and millions of similarly situated consumers of Defendant’s food products.

9. Counsel for Plaintiffs are experienced in consumer class actions, including claims involving similar claims on food products.

10. Since these cases’ inception, Counsel worked diligently to oppose motions to dismiss, ultimately prevailing with respect some causes of action.

11. Counsel have also engaged in numerous discussions with counsel for Defendant related to settlement of these actions.

12. Specifically, Counsel and Defendant's counsel exchanged discovery informally, including the exchange and review of sensitive financial information regarding the subject food products.

13. Following nearly a year long process of informal negotiation telephonically, Counsel and Defendant's counsel met near Miami to mediate these cases with the assistance of experienced mediator, David Lichter, over a full-day mediation.

14. That mediation proved unsuccessful, but Counsel and Defendant's counsel continued negotiating telephonically afterward.

15. Ultimately, Counsel and Defendant's counsel, with the assistance of Mr. Lichter via telephone, reached a settlement of the instant actions (the "Settlement").

16. The Settlement was memorialized into a Settlement Agreement, which is attached as Exhibit 1 to Plaintiffs' Motion for Final Approval of Class Action Settlement.

17. The Settlement, among other things, includes the creation of an initial guaranteed common fund of \$3.0 million, as well as substantial injunctive relief involving Defendant's "Natural Promise," which Defendant has agreed to implement and impose on its ingredient providers. Defendant is obligated to provide additional funding to the common fund up to an amount that would permit payment of \$2.75 million of Settlement claims.

18. Furthermore, based on Counsel's decades of experience in similar consumer class actions, the mechanism by which consumers may collect under the common fund is straightforward and, up to \$10.00 in claimed damages, does not require proof of purchase.

19. Additionally, based on the confidential financial data provided by Defendant in furtherance of the Settlement, Counsel believe that the initial common fund

and additional funding obligation of Defendant will provide fair, adequate and reasonable compensation to the Class member making claims.

20. On October 22, 2014, Counsel submitted to the Court Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, which the Court granted on October 30, 2014.


21. The Settlement, as set forth more fully in the Settlement Agreement, provides substantial relief to the settling Class and is an exceptional result given the uncertainty associated with litigation of this sort.

22. Indeed, although Counsel would have vigorously opposed and distinguished recent case law, there is a rising tide of adverse decisions that make success on behalf of a class at trial on matters such as the instant case, more difficult to achieve.

23. Thus, Class Counsel believes that avoiding the uncertainty, delay and expense of protracted litigation and appeal is a substantial factor supporting the proposed Settlement, which provides an immediate benefit to the Class members, both financially and in the form of injunctive relief.

Under penalty of perjury, under the laws of the United States of America, Counsel for Plaintiffs hereby swear and/or affirm that the foregoing is true and correct to best of their knowledge and belief.

Dated: February 19th, 2015


DeWayne Layfield
Law Office of L. DeWayne Layfield, PLLC

Counsel for the Settlement Class

EXHIBIT 4

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:14-cv-00136-SBA**

Surzyn v. Diamond Foods, Inc.
Assigned to: Hon. Sandra Brown Armstrong
Demand: \$5,000,000
Cause: 28:1332 Diversity-Product Liability

Date Filed: 01/09/2014
Date Terminated: 02/10/2015
Jury Demand: Both
Nature of Suit: 385 Prop. Damage Prod.
Liability
Jurisdiction: Diversity

Plaintiff

Dominika Surzyn
*individually and on behalf of all others
similarly situated*

represented by **Benjamin Michael Lopatin**
Eggnatz, Lopatin & Pascucci, LLP
580 California Street
Suite 1200
San Francisco, CA 94104
415-324-8620
Fax: 415-520-2262
Email: blopatin@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Diamond Foods, Inc.
a Delaware limited liability company

represented by **Amanda L. Groves**
Winston & Strawn LLP
101 California Street, Suite 3900
San Francisco, CA 94111-5894
(415) 591-1409
Fax: (415) 591-1400
Email: agroves@winston.com
ATTORNEY TO BE NOTICED

Sean D. Meenan
Winston and Strawn
101 California Street
San Francisco, CA 94111
415-591-1000
Fax: 415-591-1400
Email: smeenan@winston.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
------------	---	-------------

01/09/2014	<u>1</u>	CLASS ACTION COMPLAINT against Diamond Foods, Inc. (Filing fee \$ 400, receipt number 0971-8284602.). Filed byDominika Surzyn. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons)(Lopatin, Benjamin) (Filed on 1/9/2014) Modified on 1/10/2014 (mclS, COURT STAFF). (Entered: 01/09/2014)
01/10/2014	<u>2</u>	Case assigned to Magistrate Judge Elizabeth D. Laporte. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. (sv, COURT STAFF) (Filed on 1/10/2014) (Entered: 01/10/2014)
01/10/2014	<u>3</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 4/2/2014. Case Management Conference set for 4/9/2014 10:00 AM. (Attachments: # <u>1</u> Standing Order)(mclS, COURT STAFF) (Filed on 1/10/2014) (Entered: 01/10/2014)
01/10/2014	<u>4</u>	Summons Issued as to Diamond Foods, Inc. (mclS, COURT STAFF) (Entered: 01/10/2014)
01/10/2014	<u>5</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Dominika Surzyn.. (Lopatin, Benjamin) (Filed on 1/10/2014) (Entered: 01/10/2014)
01/24/2014	<u>6</u>	CLERKS NOTICE Case Management Statement due by 4/1/2014. Case Management Conference moved to 4/8/2014 10:00 AM in Courtroom D, 15th Floor, San Francisco. THIS IS A TEXT ENTRY ONLY. THERE IS NO DOCUMENT ASSOCIATED WITH THIS ENTRY. (lrcS, COURT STAFF) (Filed on 1/24/2014) (Entered: 01/24/2014)
01/27/2014	<u>7</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (lrc, COURT STAFF) (Filed on 1/27/2014) (Entered: 01/27/2014)
01/27/2014	<u>8</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Sandra Brown Armstrong for all further proceedings. Magistrate Judge Elizabeth D. Laporte no longer assigned to the case. Signed by Executive Committee on 1/27/14. (sv, COURT STAFF) (Filed on 1/27/2014) (Entered: 01/27/2014)
01/30/2014	<u>9</u>	CASE MANAGEMENT SCHEDULING ORDER FOR REASSIGNED CIVIL CASES: Case Management Statement due by 4/2/2014. Case Management Conference set for 4/9/2014 03:00 PM. Signed by Judge Sandra Brown Armstrong on 1/30/2014. (Attachments: # <u>1</u> Standing Order)(ndr, COURT STAFF) (Filed on 1/30/2014) (Entered: 01/30/2014)
02/10/2014	<u>10</u>	WAIVER OF SERVICE Returned Executed filed by Dominika Surzyn. Service waived by Diamond Foods, Inc. waiver sent on 1/9/2014, answer due 3/10/2014.

		(Lopatin, Benjamin) (Filed on 2/10/2014) (Entered: 02/10/2014)
03/07/2014	11	STIPULATION of Extension of Time to Respond to Complaint Pursuant to Civil Local Rule 6-1, filed by Diamond Foods, Inc., Dominika Surzyn. (Groves, Amanda) (Filed on 3/7/2014) Modified on 3/10/2014 (jlmS, COURT STAFF). (Entered: 03/07/2014)
03/19/2014	12	STIPULATION WITH PROPOSED ORDER CONTINUING CASE MANAGEMENT CONFERENCE, filed by Diamond Foods, Inc., Dominika Surzyn. (Groves, Amanda) (Filed on 3/19/2014) Modified on 3/20/2014 (jlmS, COURT STAFF). (Entered: 03/19/2014)
03/19/2014	13	Joint NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d), filed by Diamond Foods, Inc., Dominika Surzyn (Groves, Amanda) (Filed on 3/19/2014) Modified on 3/20/2014 (jlmS, COURT STAFF). (Entered: 03/19/2014)
03/21/2014	14	ORDER by Judge Sandra Brown Armstrong Granting 12 Stipulation CONTINUING CASE MANAGEMENT CONFERENCE. (ndr, COURT STAFF) (Filed on 3/21/2014) (Entered: 03/21/2014)
03/21/2014		Reset Deadlines/Hearing (see docket no. 14): Case Management Statement due by 5/7/2014. Telephonic Case Management Conference set for 5/14/2014 02:45 PM. (ndr, COURT STAFF) (Filed on 3/21/2014) (Entered: 03/21/2014)
03/24/2014	15	MOTION to Dismiss <i>and Strike Complaint; Memorandum of Points and Authorities ISO of Same</i> filed by Diamond Foods, Inc.. Motion Hearing set for 5/6/2014 01:00 PM in Courtroom 1, 4th Floor, Oakland before Hon. Sandra Brown Armstrong. Responses due by 4/7/2014. Replies due by 4/14/2014. (Attachments: # 1 Exhibit A, # 2 Proposed Order)(Groves, Amanda) (Filed on 3/24/2014) (Entered: 03/24/2014)
03/24/2014	16	Request for Judicial Notice re 15 MOTION to Dismiss <i>and Strike Complaint; Memorandum of Points and Authorities ISO of Same</i> filed by Diamond Foods, Inc.. (Related document(s) 15) (Groves, Amanda) (Filed on 3/24/2014) (Entered: 03/24/2014)
03/26/2014	17	ADR Clerks Notice Setting ADR Phone Conference on Wednesday, May 7, 2014 at 2:30 PM Pacific time. Please note that you must be logged into an ECF account of counsel of record in order to view this document. (af, COURT STAFF) (Filed on 3/26/2014) (Entered: 03/26/2014)
04/07/2014	18	RESPONSE in Opposition re 15 <i>Motion to Dismiss and Strike Complaint</i> , filed by Dominika Surzyn. (Lopatin, Benjamin) (Filed on 4/7/2014) Modified on 4/8/2014 (jlmS, COURT STAFF). (Entered: 04/07/2014)
04/07/2014	19	RESPONSE in Opposition to 16 <i>Request for Judicial Notice</i> , filed by Dominika Surzyn. (Lopatin, Benjamin) (Filed on 4/7/2014) Modified on 4/8/2014 (jlmS, COURT STAFF). (Entered: 04/07/2014)
04/07/2014	20	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options, filed by Dominika Surzyn (Lopatin, Benjamin) (Filed on 4/7/2014) Modified on 4/8/2014 (jlmS, COURT STAFF). (Entered: 04/07/2014)
04/14/2014	21	Reply Memorandum re 15 <i>Motion to Dismiss and Strike Complaint</i> , filed by Diamond Foods, Inc.. (Groves, Amanda) (Filed on 4/14/2014) Modified on

		4/15/2014 (jlmS, COURT STAFF). (Entered: 04/14/2014)
04/14/2014	<u>22</u>	Reply Memorandum re <u>15</u> <i>Motion to Dismiss and Strike Complaint</i> , filed by Diamond Foods, Inc.. (Groves, Amanda) (Filed on 4/14/2014) Modified on 4/15/2014 (jlmS, COURT STAFF). (Entered: 04/14/2014)
04/22/2014	<u>23</u>	NOTICE of Pendency of Other Actions, filed by Diamond Foods, Inc. (Groves, Amanda) (Filed on 4/22/2014) Modified on 4/23/2014 (jlmS, COURT STAFF). (Entered: 04/22/2014)
04/25/2014	24	<p>CLERKS NOTICE. Notice is hereby given that the Court, on its own motion, shall take the <u>15</u> motion to dismiss under submission on the papers. The hearing previously scheduled for May 6, 2014, is vacated. The Telephonic Case Management Conference, previously set for May 14, 2014, is continued to August 14, 2014, at 2:30 p.m. The parties shall meet and confer prior to the conference and shall prepare a joint Case Management Conference Statement which shall be filed no later than seven (7) days prior to the Case Management Conference that complies with the Standing Order For All Judges Of The Northern District Of California and the Standing Order of this Court. Plaintiffs shall be responsible for filing the statement as well as for arranging the conference call. All parties shall be on the line and shall call (510) 879-3550 at the above indicated date and time.</p> <p>(This is a text only docket entry, there is no document associated with this notice.)</p> <p>(ndr, COURT STAFF) (Filed on 4/25/2014) (Entered: 04/25/2014)</p>
05/08/2014		ADR Remark: ADR Phone Conference held by Howard A. Herman Director, ADR Program on 5/7/2014. (af, COURT STAFF) (Filed on 5/8/2014) (Entered: 05/08/2014)
05/08/2014	<u>25</u>	STIPULATION and Proposed Order selecting Mediation, filed by Diamond Foods, Inc., Dominika Surzyn. filed by Diamond Foods, Inc.. (Groves, Amanda) (Filed on 5/8/2014) Modified on 5/9/2014 (jlmS, COURT STAFF). (Entered: 05/08/2014)
05/08/2014	<u>26</u>	ORDER by Judge Sandra Brown Armstrong Granting <u>25</u> Stipulation Selecting Mediation. (ndr, COURT STAFF) (Filed on 5/8/2014) (Entered: 05/08/2014)
05/28/2014	<u>27</u>	ORDER by Judge Sandra Brown Armstrong GRANTING <u>15</u> Motion to Dismiss, DENYING AS MOOT the Motion to Strike and DENYING AS MOOT the Motion for a More Definite Statement. Plaintiff is GRANTED LEAVE TO AMEND. Plaintiff's Amended Complaint due within (21) twenty-one-days of this Order. Signed by Judge Sandra Brown Armstrong, on 05/28/14 (ndr, COURT STAFF) (Filed on 5/28/2014) Modified on 5/29/2014 (jlmS, COURT STAFF). (Entered: 05/28/2014)
06/02/2014	<u>28</u>	MOTION to Relate Case: C-14-2148-MMC, filed by Diamond Foods, Inc.. (Attachments: # <u>1</u> Exhibit A to Administrative Motion to Consider Whether Cases Should be Related, # <u>2</u> Declaration of Amanda L. Groves in Support of Administrative Motion to Consider Whether Cases Should be Related, # <u>3</u> Proposed Order)(Groves, Amanda) (Filed on 6/2/2014) Modified on 6/3/2014 (jlmS, COURT STAFF). (Entered: 06/02/2014)

06/06/2014	<u>29</u>	Memorandum in Opposition re <u>28</u> <i>Motion to Relate Case: C-14-2148-MMC</i> , filed by Richard Hall. (Orshansky, Anthony) (Filed on 6/6/2014) Modified on 6/9/2014 (jlmS, COURT STAFF). (Entered: 06/06/2014)
06/11/2014	<u>30</u>	AMENDED COMPLAINT with jury demand against Diamond Foods, Inc.. Filed by Dominika Surzyn. (Attachments: # <u>1</u> Declaration Regarding Venue)(Lopatin, Benjamin) (Filed on 6/11/2014) Modified on 6/12/2014 (kcS, COURT STAFF). (Entered: 06/11/2014)
06/12/2014	<u>31</u>	CLERKS NOTICE RE MOTION TO RELATE CASE TO C 14-2148 MMC. (ndr, COURT STAFF) (Filed on 6/12/2014) (Entered: 06/12/2014)
06/25/2014	<u>32</u>	STIPULATION of Extension of Time to Respond to Amended Complaint Pursuant To Civil Local Rule 6-1, filed by Diamond Foods, Inc., Dominika Surzyn. (Groves, Amanda) (Filed on 6/25/2014) Modified on 6/26/2014 (jlmS, COURT STAFF). (Entered: 06/25/2014)
07/14/2014	<u>33</u>	ANSWER to Amended Complaint with Jury Demand, filed by Diamond Foods, Inc.. (Groves, Amanda) (Filed on 7/14/2014) Modified on 7/15/2014 (jlmS, COURT STAFF). (Entered: 07/14/2014)
07/16/2014	<u>34</u>	NOTICE of Report of Mediator, filed by Diamond Foods, Inc.. (Meenan, Sean) (Filed on 7/16/2014) Modified on 7/17/2014 (jlmS, COURT STAFF). (Entered: 07/16/2014)
08/07/2014	<u>35</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options, filed by Diamond Foods, Inc.. (Groves, Amanda) (Filed on 8/7/2014) Modified on 8/8/2014 (jlmS, COURT STAFF). (Entered: 08/07/2014)
08/07/2014	<u>36</u>	Certificate of Interested Entities by Diamond Foods, Inc. (Groves, Amanda) (Filed on 8/7/2014) (Entered: 08/07/2014)
08/07/2014	<u>37</u>	JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER, filed by Diamond Foods, Inc., Dominika Surzyn. (Groves, Amanda) (Filed on 8/7/2014) Modified on 8/8/2014 (jlmS, COURT STAFF). (Entered: 08/07/2014)
08/14/2014	<u>38</u>	Minute Entry: Telephonic Case Management Conference held on 8/14/2014 before Judge Sandra Brown Armstrong (Date Filed: 8/14/2014). Amended Pleadings due by 8/14/2014; Motions due by 10/10/2014; Responses due by 11/14/2014; Replies due by 12/22/2014; Motion Hearing set for 1/20/2015 01:00 PM before Hon. Sandra Brown Armstrong; Case Management Statement due by 2/11/2015; Further Telephonic Case Management Conference set for 2/18/2015 02:30 PM. (Court Reporter: NOT REPORTED) (ndr, COURT STAFF) (Date Filed: 8/14/2014) Modified on 8/21/2014 (jlmS, COURT STAFF). (Entered: 08/20/2014)
10/27/2014	<u>39</u>	STIPULATION WITH PROPOSED ORDER Staying Case, filed by Diamond Foods, Inc., Dominika Surzyn. (Groves, Amanda) (Filed on 10/27/2014) Modified on 10/28/2014 (jlmS, COURT STAFF). (Entered: 10/27/2014)
10/28/2014	<u>40</u>	ORDER by Judge Sandra Brown Armstrong GRANTING <u>39</u> Stipulation Staying Case. Case stayed. Case Management Statement due by 2/4/2015; Further Case Management Conference set for 2/11/2015 02:30 PM. Signed by Judge Sandra Brown Armstrong on 10/27/2014. (ndr, COURT STAFF)

		(Filed on 10/28/2014) Modified on 10/29/2014 (jlmS, COURT STAFF). (Entered: 10/28/2014)
02/02/2015	41	JOINT CASE MANAGEMENT STATEMENT, filed by Dominika Surzyn, Diamond Foods, Inc.. (Lopatin, Benjamin) (Filed on 2/2/2015) Modified on 2/3/2015 (jlmS, COURT STAFF). (Entered: 02/02/2015)
02/10/2015	42	ORDER VACATING CASE MANAGEMENT CONFERENCE AND ADMINSTRATIVELY CLOSING ACTION. ***Civil Case Terminated.*** Signed by Judge Saundra Brown Armstrong on 2/10/2015. (ndr, COURT STAFF) (Filed on 2/10/2015) (Entered: 02/10/2015)

PACER Service Center			
Transaction Receipt			
02/18/2015 14:23:50			
PACER Login:	dl0696:2714374:0	Client Code:	
Description:	Docket Report	Search Criteria:	4:14-cv-00136-SBA
Billable Pages:	4	Cost:	0.40

EXHIBIT 5

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:14-cv-02148-MMC**

Richard Hall v. Diamond Foods, Inc.
Assigned to: Hon. Maxine M. Chesney
Case in other court: San Francisco Superior Court, CGC-14-
538387
Cause: 28:1441 Petition for Removal

Date Filed: 05/09/2014
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: Federal Question

Plaintiff

Richard Hall
*on behalf of himself and others similarly
situated*

represented by **Anthony Joshua Orshansky**
CounselOne, PC
9301 Wilshire Boulevard, Suite 650
Beverly Hills, CA 90210
(310) 277-9945
Fax: (424) 277-3727
Email: anthony@counselonengroup.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin Kachadoorian
CounselOne, PC
9301 Wilshire Boulevard, Suite 650
Beverly Hills, CA 90210
(310) 277-9945
Fax: (424) 277-3727
Email: justin@counselonengroup.com
ATTORNEY TO BE NOTICED

V.

Defendant

Diamond Foods, Inc.
*a Delaware corporation
doing business as
Kettle Foods*

represented by **Amanda L. Groves**
Winston & Strawn LLP
101 California Street, Suite 3900
San Francisco, CA 94111-5894
(415) 591-1409
Fax: (415) 591-1400
Email: agroves@winston.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sean D. Meenan
Winston and Strawn LLP
101 California Street, 39th Floor

San Francisco, CA 94111
 415-591-1000
 Fax: (415) 591-1400
 Email: smeenan@winston.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/09/2014	<u>1</u>	NOTICE OF REMOVAL of Civil Action to Federal Court; No Process from San Francisco County Superior Court. Their case number is CGC-14-538387. (Filing fee \$400.00, receipt number 0971-8603752). Filed by Diamond Foods, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Civil Cover Sheet)(Groves, Amanda) (Filed on 5/9/2014) Modified on 5/12/2014 (gbaS, COURT STAFF). (Entered: 05/09/2014)
05/09/2014	2	Case assigned to Magistrate Judge Joseph C. Spero. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. (as, COURT STAFF) (Filed on 5/9/2014) (Entered: 05/09/2014)
05/09/2014	<u>3</u>	Certificate of Interested Entities by Diamond Foods, Inc. identifying Corporate Parent Diamond Foods, Inc., Other Affiliate Blackrock, Inc., Other Affiliate FMR LLC, Other Affiliate Fidelity Management & Research Company for Diamond Foods, Inc.. (Attachments: # <u>1</u> Certificate/Proof of Service)(Groves, Amanda) (Filed on 5/9/2014) (Entered: 05/09/2014)
05/09/2014	<u>4</u>	NOTICE by Diamond Foods, Inc. <i>OF SERVICE OF REMOVAL DOCUMENTS ON PLAINTIFF AND OF FILING OF REMOVAL DOCUMENTS WITH SUPERIOR COURT</i> (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Certificate/Proof of Service)(Meenan, Sean) (Filed on 5/9/2014) (Entered: 05/09/2014)
05/12/2014	<u>5</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 8/1/2014. Case Management Conference set for 8/8/2014 02:00 PM in Courtroom G, 15th Floor, San Francisco. (Attachments: # <u>1</u> Standing Order) (gbaS, COURT STAFF) (Filed on 5/12/2014) (Entered: 05/12/2014)
05/13/2014	<u>6</u>	STIPULATION <i>Extending Time For Defendant To Answer Or Otherwise Respond To Complaint</i> filed by Diamond Foods, Inc.. (Groves, Amanda) (Filed on 5/13/2014) (Entered: 05/13/2014)
05/13/2014	<u>7</u>	CERTIFICATE OF SERVICE by Diamond Foods, Inc. re <u>6</u> Stipulation, <u>5</u> Initial

		Case Management Scheduling Order with ADR Deadlines, (Groves, Amanda) (Filed on 5/13/2014) (Entered: 05/13/2014)
05/15/2014	<u>8</u>	ORDER GRANTING re <u>6</u> Stipulation Extending Time for Defendant to Answer or Otherwise Respond to Complaint filed by Diamond Foods, Inc.. Signed by Judge Joseph C. Spero on 5/15/14. (klhS, COURT STAFF) (Filed on 5/15/2014) (Entered: 05/15/2014)
05/19/2014	<u>9</u>	CERTIFICATE OF SERVICE by Diamond Foods, Inc. re <u>5</u> Initial Case Management Scheduling Order with ADR Deadlines, (Groves, Amanda) (Filed on 5/19/2014) (Entered: 05/19/2014)
05/26/2014	<u>10</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Richard Hall.. (Orshansky, Anthony) (Filed on 5/26/2014) (Entered: 05/26/2014)
05/27/2014	<u>11</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (klhS, COURT STAFF) (Filed on 5/27/2014) (Entered: 05/27/2014)
05/27/2014	<u>12</u>	NOTICE by Diamond Foods, Inc. <i>Of Related Cases And/Or Pendency Of Other Actions</i> (Groves, Amanda) (Filed on 5/27/2014) (Entered: 05/27/2014)
05/27/2014	<u>13</u>	RESPONSE to re <u>12</u> Notice (Other) by Richard Hall. (Orshansky, Anthony) (Filed on 5/27/2014) (Entered: 05/27/2014)
05/27/2014	<u>14</u>	Certificate of Interested Entities by Richard Hall (Orshansky, Anthony) (Filed on 5/27/2014) (Entered: 05/27/2014)
05/28/2014	<u>15</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Maxine M. Chesney for all further proceedings. Magistrate Judge Joseph C. Spero no longer assigned to the case.. Signed by Executive Committee on 5/28/14. (as, COURT STAFF) (Filed on 5/28/2014) (Entered: 05/28/2014)
05/30/2014	<u>16</u>	MOTION to Dismiss <i>Defendant Diamond Foods, Inc.'s Notice Of Motion And Motion To Dismiss And Strike Complaint; Memorandum Of Points And Authorities In Support Of Same</i> filed by Diamond Foods, Inc.. Motion Hearing set for 7/11/2014 09:00 AM in Courtroom 7, 19th Floor, San Francisco before Hon. Maxine M. Chesney. Responses due by 6/13/2014. Replies due by 6/20/2014. (Attachments: # <u>1</u> Exhibit A to MTD, # <u>2</u> Exhibit B to MTD, # <u>3</u> Proposed Order, # <u>4</u> Request For Judicial Notice In Support Of Motion To Dismiss And Strike Complaint, # <u>5</u> Exhibit A to RJN, # <u>6</u> Exhibit B to RJN)(Groves, Amanda) (Filed on 5/30/2014) (Entered: 05/30/2014)
06/06/2014	<u>17</u>	STIPULATION WITH PROPOSED ORDER <i>To Continue Deadlines To File Plaintiff's Opposition To Defendant's Motion To Dismiss And Defendant's Reply</i> filed by Diamond Foods, Inc.. (Meenan, Sean) (Filed on 6/6/2014) (Entered: 06/06/2014)
06/10/2014	<u>18</u>	ORDER CONTINUING DEADLINES TO FILE OPPOSITION AND REPLY; CONTINUING HEARING DATE. Plaintiff's opposition to defendant's motion to dismiss shall be due by June 20, 2014, and defendant's reply to plaintiff's opposition shall be due by June 27, 2014. The hearing date on defendant's motion is continued to July 18, 2014. Signed by Judge Maxine M. Chesney on June 10, 2014. (mmclcl, COURT STAFF) (Filed on 6/10/2014) (Entered: 06/10/2014)
06/10/2014		Set/Reset Deadlines as to <u>16</u> MOTION to Dismiss <i>Defendant Diamond Foods,</i>

		<i>Inc.'s Notice Of Motion And Motion To Dismiss And Strike Complaint; Memorandum Of Points And Authorities In Support Of Same.</i> Responses due by 6/20/2014. Replies due by 6/27/2014. Motion Hearing set for 7/18/2014 09:00 AM in Courtroom 7, 19th Floor, San Francisco before Hon. Maxine M. Chesney. (ysS, COURT STAFF) (Filed on 6/10/2014) (Entered: 06/10/2014)
06/11/2014	<u>19</u>	CASE MANAGEMENT SCHEDULING ORDER: Case Management Statement due by 8/1/2014. Case Management Conference set for 8/8/2014 10:30 AM in Courtroom 7, 19th Floor, San Francisco.. Signed by Judge Maxine M. Chesney on 6/11/2014. (Attachments: # <u>1</u> Standing Order of Judge Maxine M. Chesney)(tlS, COURT STAFF) (Filed on 6/11/2014) (Entered: 06/11/2014)
06/12/2014	<u>20</u>	CLERKS NOTICE RE MOTION TO RELATE FILED IN CASE NO. C 14-0136 SBA. (ndr, COURT STAFF) (Filed on 6/12/2014) (Entered: 06/12/2014)
06/20/2014	<u>21</u>	RESPONSE (re <u>16</u> MOTION to Dismiss <i>Defendant Diamond Foods, Inc.'s Notice Of Motion And Motion To Dismiss And Strike Complaint; Memorandum Of Points And Authorities In Support Of Same</i>) filed by Richard Hall. (Attachments: # <u>1</u> Request for Judicial Notice, # <u>2</u> Opposition to Request for Judicial Notice, # <u>3</u> Declaration of Anthony J. Orshansky, # <u>4</u> Proposed Order)(Orshansky, Anthony) (Filed on 6/20/2014) (Entered: 06/20/2014)
06/27/2014	<u>22</u>	REPLY in support of (re <u>16</u> MOTION to Dismiss <i>Defendant Diamond Foods, Inc.'s Notice Of Motion And Motion To Dismiss And Strike Complaint; Memorandum Of Points And Authorities In Support Of Same, Request for Judicial Notice</i>) and Response To [21-2] Plaintiff's Request For Judicial Notice filed by Diamond Foods, Inc.. (Groves, Amanda) (Filed on 6/27/2014) Modified on 6/30/2014 (ysS, COURT STAFF). (Entered: 06/27/2014)
07/11/2014	<u>23</u>	ORDER VACATING HEARING ON DEFENDANT'S MOTION TO DISMISS AND TO STRIKE. Signed by Judge Maxine M. Chesney on July 11, 2014. (mmclcl, COURT STAFF) (Filed on 7/11/2014) (Entered: 07/11/2014)
07/18/2014	<u>24</u>	STIPULATION WITH PROPOSED ORDER <i>Continuing Initial Case Management Conference</i> filed by Diamond Foods, Inc.. (Groves, Amanda) (Filed on 7/18/2014) (Entered: 07/18/2014)
07/21/2014	<u>25</u>	ORDER CONTINUING INITIAL CASE MANAGEMENT CONFERENCE. The initial case management conference is continued from August 8, 2014 to August 22, 2014. The parties shall file a Joint Case Management Statement no later than August 15, 2014. Signed by Judge Maxine M. Chesney on July 21, 2014. (mmclcl, COURT STAFF) (Filed on 7/21/2014) (Entered: 07/21/2014)
07/21/2014		Set Deadlines/Hearings: Case Management Statement due by 8/15/2014. Case Management Conference set for 8/22/2014 10:30 AM in Courtroom 7, 19th Floor, San Francisco. (ysS, COURT STAFF) (Filed on 7/21/2014) (Entered: 07/21/2014)
07/22/2014	<u>26</u>	STIPULATION WITH PROPOSED ORDER <i>REQUESTING LEAVE TO APPEAR TELEPHONICALLY AT INITIAL CASE MANAGEMENT CONFERENCE</i> filed by Richard Hall. (Orshansky, Anthony) (Filed on 7/22/2014) (Entered: 07/22/2014)
07/31/2014	<u>27</u>	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS AND STRIKE COMPLAINT; AFFORDING

		PLAINTIFF LEAVE TO AMEND; CONTINUING CASE MANAGEMENT CONFERENCE. To the extent the motion seeks dismissal of all claims that are based on statements appearing on the Reduced Fat Sea Salt Chips product and, to the extent the motion seeks dismissal of all claims that are based on statements in defendant's promotional materials and on its website, the motion is granted. If plaintiff wishes to file an amended complaint, any such amended complaint shall be filed no later than August 15, 2014; if plaintiff does not amend by the deadline provided, the instant action will proceed on plaintiff's remaining claims. The Case Management Conference is continued from August 22, 2014 to October 31, 2014, at 10:30 a.m. A Joint Case Management Statement shall be filed no later than October 24, 2014. Signed by Judge Maxine M. Chesney on July 31, 2014. (mmclcl1, COURT STAFF) (Filed on 7/31/2014) (Entered: 07/31/2014)
07/31/2014		Set/Reset Deadlines:, Set/Reset Hearing re 27 Order on Motion to Dismiss,,,,, Order on Stipulation,,,,, ***Deadlines terminated. Amended Pleadings due by 8/15/2014. Case Management Statement due by 10/24/2014. Initial Case Management Conference re-set to 10/31/2014 10:30 AM in Courtroom 7, 19th Floor, San Francisco. (tlS, COURT STAFF) (Filed on 7/31/2014) (Entered: 07/31/2014)
08/15/2014	28	AMENDED COMPLAINT <i>First Amended Class Action Complaint</i> against Diamond Foods, Inc.. Filed by Richard Hall. (Orshansky, Anthony) (Filed on 8/15/2014) (Entered: 08/15/2014)
09/02/2014	29	MOTION to Dismiss <i>First Amended Class Action Complaint; Memorandum of Points and Authorities in Support of Same</i> filed by Diamond Foods, Inc.. Motion Hearing set for 10/24/2014 09:00 AM in Courtroom 7, 19th Floor, San Francisco before Hon. Maxine M. Chesney. Responses due by 9/16/2014. Replies due by 9/23/2014. (Attachments: # 1 Proposed Order re MTD FAC, # 2 Exhibit A to Diamond-Hall - Motion to Dismiss)(Groves, Amanda) (Filed on 9/2/2014) (Entered: 09/02/2014)
09/02/2014	30	Request for Judicial Notice re 29 MOTION to Dismiss <i>First Amended Class Action Complaint; Memorandum of Points and Authorities in Support of Same</i> filed by Diamond Foods, Inc.. (Attachments: # 1 Exhibit A to RJN, # 2 Exhibit B to RJN) (Related document(s) 29) (Groves, Amanda) (Filed on 9/2/2014) (Entered: 09/02/2014)
09/09/2014	31	ORDER DIRECTING PLAINTIFF TO SUBMIT CHAMBERS COPY OF DOCUMENT IN COMPLIANCE WITH CIVIL LOCAL RULES AND THE COURT'S STANDING ORDERS. Signed by Judge Maxine M. Chesney on September 9, 2014. (mmclcl1, COURT STAFF) (Filed on 9/9/2014) (Entered: 09/09/2014)
09/16/2014	32	RESPONSE /Opposition (re 29 MOTION to Dismiss <i>First Amended Class Action Complaint; Memorandum of Points and Authorities in Support of Same</i>) filed by Richard Hall. (Attachments: # 1 Proposed Order Proposed Order Denying Defendant's Motion to Dismiss the First Amended Complaint, # 2 Response in Opposition to Defendant's Request for Judicial Notice)(Orshansky, Anthony) (Filed on 9/16/2014) Modified on 9/17/2014 (ysS, COURT STAFF). (Entered: 09/16/2014)
10/21/2014	33	ORDER DENYING DEFENDANT'S MOTION TO DISMISS; VACATING

		HEARING. Signed by Judge Maxine M. Chesney on October 21, 2014. (mmclcl1, COURT STAFF) (Filed on 10/21/2014) (Entered: 10/21/2014)
10/24/2014	<u>34</u>	STIPULATION WITH PROPOSED ORDER <i>CANCELLING CASE MANAGEMENT CONFERENCE AND STAYING CASE</i> filed by Diamond Foods, Inc.. (Groves, Amanda) (Filed on 10/24/2014) (Entered: 10/24/2014)
10/27/2014	<u>35</u>	ORDER CANCELLING CASE MANAGEMENT CONFERENCE AND STAYING CASE; DIRECTING PARTIES TO FILE JOINT STATUS REPORT. The parties are directed to file, no later than August 7, 2015, a Joint Status Report. Signed by Judge Maxine M. Chesney on October 27, 2014. (mmclcl1, COURT STAFF) (Filed on 10/27/2014) (Entered: 10/27/2014)

PACER Service Center			
Transaction Receipt			
02/18/2015 14:30:29			
PACER Login:	dl0696:2714374:0	Client Code:	
Description:	Docket Report	Search Criteria:	3:14-cv-02148-MMC
Billable Pages:	4	Cost:	0.40