1 2	JINA L. CHOI (New York Bar No. 154425) MICHAEL S. DICKE (Cal. Bar No. 158187) LLOYD A. FARNHAM (Cal. Bar No. 202231) farnhaml@sec.gov			
3	JENNIFER J. LEE (Cal. Bar No. 261399) leejen@sec.gov			
5	Attorneys for Plaintiff SECURITIES AND EXCHANGE COMMISSION			
6	44 Montgomery Street, 26th Floor San Francisco, California 94104 Telephone: (415) 705-2500			
7	Facsimile: (415) 705-2501			
8	UNITED STATES DIST	RICT COURT		
9	NORTHERN DISTRICT O	F CALIFORNIA		
10	SECURITIES AND EXCHANGE COMMISSION,	Case No.		
11	Plaintiff,	[PROPOSED] FINAL JUDGMENT AS TO DEFENDANT DIAMOND FOODS,		
12	V.	INC.		
13	DIAMOND FOODS, INC.			
14	Defendant.			
15	The Securities and Exchange Commission hav	ing filed a Complaint and Defendant		
15 16	The Securities and Exchange Commission hav Diamond Foods, Inc. ("Defendant" or "Diamond") ha			
		ving entered a general appearance;		
16	Diamond Foods, Inc. ("Defendant" or "Diamond") ha	ving entered a general appearance; and the subject matter of this action;		
16 17	Diamond Foods, Inc. ("Defendant" or "Diamond") has consented to the Court's jurisdiction over Defendant a	ving entered a general appearance; and the subject matter of this action; nitting or denying the allegations of the		
16 17 18	Diamond Foods, Inc. ("Defendant" or "Diamond") had consented to the Court's jurisdiction over Defendant at consented to entry of this Final Judgment without admits the consented to entry of the consen	ving entered a general appearance; and the subject matter of this action; nitting or denying the allegations of the		
16 17 18	Diamond Foods, Inc. ("Defendant" or "Diamond") had consented to the Court's jurisdiction over Defendant as consented to entry of this Final Judgment without admic Complaint (except as to jurisdiction); waived findings	ving entered a general appearance; and the subject matter of this action; nitting or denying the allegations of the		
16 17 18 19 20	Diamond Foods, Inc. ("Defendant" or "Diamond") has consented to the Court's jurisdiction over Defendant a consented to entry of this Final Judgment without adm Complaint (except as to jurisdiction); waived findings any right to appeal from this Final Judgment:	ving entered a general appearance; and the subject matter of this action; nitting or denying the allegations of the of fact and conclusions of law; and waived		
116 117 118 119 220	Diamond Foods, Inc. ("Defendant" or "Diamond") has consented to the Court's jurisdiction over Defendant as consented to entry of this Final Judgment without admic Complaint (except as to jurisdiction); waived findings any right to appeal from this Final Judgment: I.	ving entered a general appearance; and the subject matter of this action; aitting or denying the allegations of the of fact and conclusions of law; and waived		
116 117 118 119 220 221	Diamond Foods, Inc. ("Defendant" or "Diamond") had consented to the Court's jurisdiction over Defendant as consented to entry of this Final Judgment without admit Complaint (except as to jurisdiction); waived findings any right to appeal from this Final Judgment: I. IT IS HEREBY ORDERED, ADJUDGED, AM	ving entered a general appearance; and the subject matter of this action; aitting or denying the allegations of the of fact and conclusions of law; and waived ND DECREED that Defendant and and all persons in active concert or		
116 117 118 119 120 221 222 23	Diamond Foods, Inc. ("Defendant" or "Diamond") had consented to the Court's jurisdiction over Defendant as consented to entry of this Final Judgment without admic Complaint (except as to jurisdiction); waived findings any right to appeal from this Final Judgment: I. IT IS HEREBY ORDERED, ADJUDGED, AND Defendant's agents, servants, employees, attorneys, and consented to the Court's jurisdiction over Defendant as consented to entry of this Final Judgment without admic consented to entry of this Final Judgment without admic consented to entry of this Final Judgment without admic consented to entry of this Final Judgment without admic consented to entry of this Final Judgment.	ving entered a general appearance; and the subject matter of this action; aitting or denying the allegations of the of fact and conclusions of law; and waived ND DECREED that Defendant and and all persons in active concert or his Final Judgment by personal service or		
16 17 18 19 20 21 22 23	Diamond Foods, Inc. ("Defendant" or "Diamond") had consented to the Court's jurisdiction over Defendant as consented to entry of this Final Judgment without adm Complaint (except as to jurisdiction); waived findings any right to appeal from this Final Judgment: I. IT IS HEREBY ORDERED, ADJUDGED, AMD Defendant's agents, servants, employees, attorneys, ar participation with them who receive actual notice of the	ving entered a general appearance; and the subject matter of this action; nitting or denying the allegations of the of fact and conclusions of law; and waived ND DECREED that Defendant and all persons in active concert or his Final Judgment by personal service or m violating, directly or indirectly, Section		
16 17 18 19 20 21 22 23 24 25	Diamond Foods, Inc. ("Defendant" or "Diamond") had consented to the Court's jurisdiction over Defendant as consented to entry of this Final Judgment without admic Complaint (except as to jurisdiction); waived findings any right to appeal from this Final Judgment: I. IT IS HEREBY ORDERED, ADJUDGED, AMD Defendant's agents, servants, employees, attorneys, ar participation with them who receive actual notice of the otherwise are permanently restrained and enjoined from	ving entered a general appearance; and the subject matter of this action; nitting or denying the allegations of the of fact and conclusions of law; and waived ND DECREED that Defendant and and all persons in active concert or his Final Judgment by personal service or m violating, directly or indirectly, Section schange Act") [15 U.S.C. § 78j(b)] and		

1	instrumentality of interstate commerce, or of the mails, or of any facility of any national			
2	securities exchange, in connection with the purchase or sale of any security:			
3	(a)	to employ any device, scheme, or artifice to defraud;		
4	(b)	to make any untrue statement of a material fact or to omit to state a material fact		
5		necessary in order to make the statements made, in the light of the circumstances		
6		under which they were made, not misleading; or		
7	(c)	to engage in any act, practice, or course of business which operates or would		
8	operate as a fraud or deceit upon any person.			
9	II.			
10		IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that		
11	Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active			
12	concert or participation with them who receive actual notice of this Final Judgment by personal			
13	service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the			
14	Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any			
15	security by the use of any means or instruments of transportation or communication in interstate			
16	commerce or by use of the mails, directly or indirectly:			
17	(a)	to employ any device, scheme, or artifice to defraud;		
18	(b)	to obtain money or property by means of any untrue statement of a material fact		
19		or any omission of a material fact necessary in order to make the statements		
20		made, in light of the circumstances under which they were made, not misleading;		
21		or		
22	(c)	to engage in any transaction, practice, or course of business which operates or		
23		would operate as a fraud or deceit upon the purchaser.		
24		III.		
25	IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and			
26	Defendant's agents, servants, employees, attorneys, and all persons in active concert or			
27	participation with them who receive actual notice of this Final Judgment by personal service or			
28				

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

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

VI.

28

1

3

4

5

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1	IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
2	shall pay a civil penalty in the amount of \$5,000,000 to the Securities and Exchange Commission
3	pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d) of the
4	Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall satisfy this obligation by paying
5	\$5,000,000 to the Securities and Exchange Commission within 14 days after entry of this Final
6	Judgment.
7	Defendant may transmit payment electronically to the Commission, which will provide
8	detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly
9	from a bank account via Pay.gov through the SEC website at
10	http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank
11	cashier's check, or United States postal money order payable to the Securities and Exchange
12	Commission, which shall be delivered or mailed to:
13	Enterprise Services Center
14	Accounts Receivable Branch 6500 South MacArthur Boulevard
15	Oklahoma City, OK 73169
16	and shall be accompanied by a letter identifying the case title, civil action number, and name of
17	this Court; Diamond Foods, Inc. as a defendant in this action; and specifying that payment is
18	made pursuant to this Final Judgment.
19	Defendant shall simultaneously transmit photocopies of evidence of payment and case
20	identifying information to the Commission's counsel in this action. By making this payment,
21	Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part
22	of the funds shall be returned to Defendant.
23	The Commission shall hold the funds, together with any interest and income earned
24	thereon (collectively, the "Fund"), pending further order of the Court. Defendant shall pay post-
25	judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.
26	The Commission may propose a plan to distribute the Fund subject to the Court's
27	approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund
28	

1	sions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain	
2	jurisdiction over the administration of any distribution of the Fund. If the Commission staff	
3	determines that the Fund will not be distributed, the Commission shall send the funds paid	
4	pursuant to this Final Judgment to the United States Treasury.	
5	Regardless of whether any such Fair Fund distribution is made, amounts ordered to be	
6	paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the	
7	government for all purposes, including all tax purposes. To preserve the deterrent effect of the	
8	civil penalty, Defendant shall not argue that it is entitled to, nor shall it further benefit by, offset	
9	or reduction of any compensatory damages award in any Related Investor Action by the amount	
10	of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the	
11	court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30	
12	days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in	
13	this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair	
14	Fund, as the Commission directs. Such a payment shall not be deemed an additional civil	
15	penalty and shall not be deemed to change the amount of the civil penalty imposed in this	
16	Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages	
17	action brought against Defendant by or on behalf of one or more investors based on substantially	
18	the same facts as alleged in the Complaint in this action.	
19	VII.	
20	IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is	
21	incorporated herein with the same force and effect as if fully set forth herein, and that Defendant	
22	shall comply with all of the undertakings and agreements set forth therein.	
23	VIII.	
24	IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain	
25	jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.	
26	three years for the purposes of enforcing the terms of this Final Judgment. IX.	
27	There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil	
28		

Case 3:14-cv-00123-WHA Document 7 Filed 01/21/14 Page 6 of 6

1	Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.
2	
3	Dated: <u>January 21</u> , <u>2014</u> .
4	UNITED STATES DISTRICT JUDGE
5	UNITED STATES DISTRICT JUDGE
6	Approved as to form:
7	Some
8	Susan Muck, Esq. Fenwick & West LLP
9	Attorneys for Defendant Diamond Foods, Inc.
10	Submitted by:
11	Sublificed by.
12	
13	Jennifer J. Lee leejen@sec.gov
14	44 Montgomery Street, Suite 2800 San Francisco, California 94104
15	Telephone: 415-705-2500 Facsimile: 415-705-2501
16	Attorneys for Plaintiff
17	SECURITIES AND EXCHANGE COMMISSION
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	