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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE:

No. C 11-05386 WHA

DIAMOND FOODS, INC.,  
SECURITIES LITIGATION.

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This Document Relates to:

All Actions.  
\_\_\_\_\_

**ORDER DENYING MOTION TO  
MODIFY ORDER APPOINTING  
CLASS COUNSEL**

By order dated March 20, 2012, Mississippi PERS was appointed lead plaintiff. Mississippi PERS then filed a motion for appointment of class counsel. By order dated June 13, 2012, the firm of Lieff Cabraser Heimann & Bernstein LLP and Attorneys John F. Harnes, Robert W. Killorin, Meryl W. Roper, and Ze'eva Kushner Banks from the firm of Chitwood Harley Harnes LLP were appointed as class counsel. The order stated that Attorney Harnes must serve as lead counsel.

Plaintiff has now filed a motion to modify the June 13 order. Specifically, plaintiff requests that the entire firm of Chitwood Harley, including all of its attorneys, be appointed as Class Counsel. The reasons given are that: (1) Attorney Robert Killorin has recently left the firm, (2) Attorney Meryl Roper will be on temporary leave for several months, and (3) discovery is underway, and plaintiff has received almost five million page of documents from defendants and third parties.


The motion to appoint the entire law firm of Chitwood Harley as class counsel is **DENIED**. Counsel must apply to the Court to add or remove specific attorneys within the firms to the list

1 of approved counsel. Counsel are advised that, in the event of a class settlement or motion for  
2 attorney's fees, it is unlikely that the Court will approve any fees for counsel who have not been  
3 pre-approved by the Court.

4 To the extent that plaintiff wishes to modify or expand the list of approved attorneys,  
5 class counsel shall file a motion identifying specific attorneys from Chitwood Harley that they  
6 would like to add or remove from the list, and provide justification for each. The Court  
7 understands from prior appearances in this case that the responsible attorney from Lieff Cabraser  
8 is and continues to be Richard Heimann. Lieff Cabraser should, however, specify up to three  
9 additional attorneys who will from time to time assist Attorney Heimann. In no way should this  
10 order be construed as permission to add additional firms or individual attorneys from other firms.

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12 **IT IS SO ORDERED.**

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14 Dated: May 6, 2013.

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17 WILLIAM ALSUP  
18 UNITED STATES DISTRICT JUDGE  
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