1 JINA L. CHOI (New York Bar No. 154425) MICHAEL S. DICKE (Cal. Bar No. 158187) 2 LLOYD A. FARNHAM (Cal. Bar No. 202231) farnhaml@sec.gov 3 JENNIFER J. LEE (Cal. Bar No. 261399) leejen@sec.gov 4 Attorneys for Plaintiff 5 SECURITIES AND EXCHANGE COMMISSION 44 Montgomery Street, 26th Floor San Francisco, California 94104 Telephone: (415) 705-2500 7 Facsimile: (415) 705-2501 8 UNITED STATES DISTRICT COURT 9 NORTHERN DISTRICT OF CALIFORNIA 10 SECURITIES AND EXCHANGE COMMISSION. Case No. 11 **[PROPOSED]** FINAL JUDGMENT AS Plaintiff, V. TO DEFENDANT DIAMOND FOODS, 12 INC. DIAMOND FOODS, INC. 13 Defendant. 14 15 The Securities and Exchange Commission having filed a Complaint and Defendant 16 Diamond Foods, Inc. ("Defendant" or "Diamond") having entered a general appearance; 17 consented to the Court's jurisdiction over Defendant and the subject matter of this action; 18 consented to entry of this Final Judgment without admitting or denying the allegations of the 19 Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived 20 any right to appeal from this Final Judgment: 21 I. 22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and 23 Defendant's agents, servants, employees, attorneys, and all persons in active concert or 24 participation with them who receive actual notice of this Final Judgment by personal service or 25 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 26 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and 27 Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or 28 1 [PROPOSED] FINAL JUDGMENT AS TO DEFENDANT DIAMOND FOODS, INC.

1	instrumental	lity of interstate commerce, or of the mails, or of any facility of any national
2	securities ex	change, 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	opera	ate as a fraud or deceit upon any person.
9		II.
10		IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
11	Defendant as	nd Defendant's agents, servants, employees, attorneys, and all persons in active
12	concert or pa	articipation with them who receive actual notice of this Final Judgment by personal
13	service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the	
14	Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any	
15	security by the use of any means or instruments of transportation or communication in interstate	
16	commerce or by use of the mails, directly or indirectly:	
17	(a)	to employ any device, scheme, or artifice to defraud;
18	(b)	to obtain money or property by means of any untrue statement of a material fact
19		or any omission of a material fact necessary in order to make the statements
20		made, in light of the circumstances under which they were made, not misleading
21		or
22	(c)	to engage in any transaction, practice, or course of business which operates or
23		would operate as a fraud or deceit upon the purchaser.
24		III.
25	IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and	
26	Defendant's	agents, servants, employees, attorneys, and all persons in active concert or
27	participation	with them who receive actual notice of this Final Judgment by personal service or
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1	otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
2	13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13
3	promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] by
4	failing to file, or by filing or causing to be filed, with the Commission any report required to be
5	filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and
6	regulations promulgated thereunder, which filed report omits to disclose any information
7	required to be disclosed or such further information, if any, as may be necessary to make the
8	statements, in light of the circumstances under which they were made not misleading.
9	IV.
10	IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
11	and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
12	participation with them who receive actual notice of this Final Judgment by personal service or
13	otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
14	13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], by failing to make and keep
15	books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the
16	expenses and transactions of Defendant.
17	V.
18	IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
19	and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
20	participation with them who receive actual notice of this Final Judgment by personal service or
21	otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
22	13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], by failing to devise and maintain a
23	system of internal accounting controls sufficient to provide reasonable assurances that
24	transactions are recorded as necessary to permit preparation of financial statements in conformity

with generally accepted accounting principles or any other criteria applicable to such statements,

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and to maintain accountability for such assets.

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	5 Oklahoma City, OK 73169	
16	and shall be accompanied by a letter identifying the case title, civil action number, and name of	
17	this Court; Diamond Foods, Inc. as a defendant in this action; and specifying that payment is	
18	made pursuant to this Final Judgment.	
19	Defendant shall simultaneously transmit photocopies of evidence of payment and case	
20	identifying information to the Commission's counsel in this action. By making this payment,	
21	Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part	
22	of the funds shall be returned to Defendant.	
23	The Commission shall hold the funds, together with any interest and income earned	
24	thereon (collectively, the "Fund"), pending further order of the Court. Defendant shall pay post-	
25	judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.	
26	The Commission may propose a plan to distribute the Fund subject to the Court's	
27	approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund	

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

1	Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.
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3	Dated: <u>January 21</u> , <u>2014</u> .
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5	UNITED STATES DISTRICT JUDGE
6	Approved as to form:
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8	Susan Muck, Esq.
9	Fenwick & West LLP
10	Attorneys for Defendant Diamond Foods, Inc.
11	Submitted by:
12	
13	Jennifer J. Lee leejen@sec.gov
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15	Telephone: 415-705-2500 Facsimile: 415-705-2501
16	Attorneys for Plaintiff
17	SECURITIES AND EXCHANGE COMMISSION
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