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DIAMOND FOODS, INC.
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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 DOMINIKA SURZYN, individually and on
behalf of all others similarly situated,

12 Plaintiff,

13 v.
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15 DIAMOND FOODS, a Delaware limited
liability company, and DOES 1 through 10,
inclusive,

16 Defendant.
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Case No. 4:14-cv-00136-SBA

**STIPULATION AND ORDER STAYING
CASE**

Judge: Hon. Sandra Brown

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19 The parties, through their undersigned counsel, hereby stipulate and agree as follows:

20 WHEREAS, Dominika Surzyn (“Plaintiff”) filed a putative class action against Diamond
21 Foods, Inc. (“Diamond Foods”) on January 9, 2014 in the United States District Court for the
22 Northern District of California (the “Complaint”);

23 WHEREAS, on March 24, 2014, Diamond Foods filed a Motion to Dismiss and Strike
24 Complaint;

25 WHEREAS, on April 22, 2014, Diamond Foods filed a Notice of Pendency of Other Actions,
26 which listed Klacko v. Diamond Foods, Inc., No. 9:14-cv-80005 (“Klacko”), a putative class action
27 which was filed in the Southern District of Florida on January 3, 2014, as a case involving all or a
28 material part of the subject matter of the instant action;

1 WHEREAS, on May 28, 2014, the Court granted Diamond Foods’ motion to dismiss and
2 denied Diamond Foods’ alternative motion to strike as moot, and granted Plaintiff leave to amend
3 her Complaint;

4 WHEREAS, on June 11, 2014, Plaintiff filed an Amended Complaint;

5 WHEREAS, on July 14, 2014, Diamond Foods filed its Answer to the Amended Complaint;

6 WHEREAS, the parties in Klacko have reached a settlement and executed a Stipulation of
7 Class Action Settlement, and the court in Klacko is currently considering the unopposed Motion for
8 Preliminary Approval of Class Action Settlement which was filed on October 22, 2014;

9 WHEREAS, the Stipulation of Class Action Settlement in Klacko, if finally approved, would
10 settle and release the claims asserted by the Plaintiff herein;

11 WHEREAS, the parties have agreed to stay the instant action until the court in Klacko
12 determines whether to grant final approval of the Stipulation of Class Action Settlement;

13 WHEREAS, the parties have agreed to inform this Court of the outcome of the Klacko case
14 and whether the court in Klacko grants final approval to the Stipulation of Class Action Settlement;

15 THEREFORE, the parties hereby STIPULATE that, upon order of this Court, this case is
16 stayed pending the court’s decision in Klacko on whether to grant final approval of the Stipulation of
17 Class Action Settlement.

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1 **IT IS SO STIPULATED AND AGREED.**

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4 Dated: October 27, 2014

Respectfully submitted,

WINSTON & STRAWN LLP

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6 By: /s/ Amanda L. Groves
Amanda L. Groves
Attorneys for Defendant
DIAMOND FOODS, INC.

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8 Dated: October 27, 2014

THE LAW OFFICES OF HOWARD W.
RUBINSTEIN, P.A.

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10 By: /s/ Benjamin M. Lopatin
Benjamin M. Lopatin
Attorneys for Plaintiff
DOMINIKA SURZYN

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13 I, Amanda L. Groves, hereby attest that the concurrence to the filing of this document has
14 been obtained from each signatory hereto.

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17 /s/ Amanda L. Groves
Amanda L. Groves

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ORDER

Based on the stipulation of the parties and for good cause showing, it is hereby ordered that this case is stayed pending the court's decision in Klacko on whether to grant final approval of the Stipulation of Class Action Settlement.

The parties shall appear for a telephonic Case Management Conference on **February 11, 2015 at 2:30 p.m.** At least seven (7) calendar days prior to the Case Management Conference, the parties shall meet and confer and file a Joint Case Management Conference Statement that complies with the Standing Order for All Judges of the Northern District of California and the Standing Orders of this Court. Plaintiff's counsel shall be responsible for filing the Joint Case Management Statement and setting up the conference call. At the date and time indicated above, Plaintiff's counsel shall call (510) 879-3550 with all parties on the line. If preliminary or final approval is not conferred in Klacko, the parties shall immediately notify the Court.

IT IS SO ORDERED.

Dated: 10/27/14


UNITED STATES DISTRICT COURT JUDGE