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WHA

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

CV 11 5386  
Case No. \_\_\_\_\_

14 JORGE SALHUANA, Individually and On  
15 Behalf of All Others Similarly Situated,

16 Plaintiff,

CLASS ACTION

17 v.

COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS

18 DIAMOND FOODS, INC., MICHAEL J.  
19 MENDES, and STEVEN M. NEIL,

DEMAND FOR JURY TRIAL

20 Defendants.

FILED BY FAX  
PURSUANT TO LOCAL RULES

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1 Plaintiff Jorge Salhuana ("Plaintiff"), by and through his attorneys, alleges the  
2 following upon information and belief, except as to those allegations concerning Plaintiff,  
3 which are alleged upon personal knowledge. Plaintiff's information and belief is based upon,  
4 among other things, his counsel's investigation, which includes without limitation: (a) review  
5 and analysis of regulatory filings made by Diamond Foods, Inc. ("Diamond Foods" or the  
6 "Company"), with the United States Securities and Exchange Commission ("SEC"); (b) review  
7 and analysis of press releases and media reports issued by and disseminated by Diamond  
8 Foods; and (c) review of other publicly available information concerning Diamond Foods.  
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#### 10 NATURE OF THE ACTION AND OVERVIEW

11  
12 1. This is a class action on behalf of purchasers of Diamond Foods' securities  
13 between April 5, 2011, and November 1, 2011, inclusive (the "Class Period"), seeking to  
14 pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

15 2. Diamond Foods, Inc. was incorporated in Delaware in 2005 as the successor to  
16 Diamond Walnut Growers, Inc., a member-owned California agricultural cooperative  
17 association. In July 2005, Diamond Walnut Growers, Inc. merged with and into Diamond  
18 Foods, Inc., converted from a cooperative association to a Delaware corporation and completed  
19 an initial public offering of Diamond Foods' common stock. Diamond Foods engages in  
20 processing, marketing and distributing snack products.  
21

22 3. Diamond Foods enters into exclusive purchase agreements with walnut growers  
23 for their crops. According to the Company, under these agreements, the walnut growers  
24 deliver their entire walnut crop to the Company during the fall harvest season and the  
25 Company then determines the minimum price for the crops by March 31, or later, of the  
26 following calendar year. The Company represents that it determines the purchase price in  
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1 good faith, taking into account market conditions, crop size, quality, and nut varieties, among  
2 other relevant factors. Since the ultimate price to be paid by the Company to the walnut  
3 growers is determined subsequent to receiving the walnut crop, the Company estimates the cost  
4 of the walnuts for its interim financial statements.

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6 4. On April 5, 2011, the Company announced that it was going to acquire the  
7 Pringles snack business (the "Acquisition") from The Procter & Gamble Company ("P&G").  
8 The Company represented to investors that the Acquisition would be completed by December  
9 2011.

10  
11 5. According to media reports, on or around September 25, 2011, an equity  
12 research firm for hedge funds named Off Wall Street Consulting Group issued a report  
13 questioning Diamond Foods' accounting practices with respect to walnut purchases.  
14 Thereafter, on September 27, 2011, *The Wall Street Journal* published an article noting that as  
15 walnut prices surged for the 2010 crop, Diamond Foods actually paid growers much less than  
16 most buyers. Further, the article disclosed that on September 2, 2011, after the close of the  
17 Company's 2011 fiscal year (July 31, 2011), the Company made an unusual extra  
18 "momentum" payment to growers that growers had not received in past years. According to  
19 the article, that payment would significantly impact the Company's 2011 fiscal year financial  
20 results had it been made by July 31, 2011. The article estimates that the "momentum"  
21 payments could total as much as \$50 million, which if made prior to July 31, 2011, would have  
22 substantially reduced the Company's \$93 million in operating income that it had previously  
23 reported for the entire 2011 fiscal year.  
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26 6. On this news, shares of Diamond Foods declined \$5.11 per share, or about  
27 5.65%, to close on September 26, 2011, at \$85.26 per share, on unusually heavy trading  
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1 volume, and shares of Diamond Foods further declined \$3.20 per share, or 3.75%, to close on  
2 September 27, 2011, at \$82.06 per share, also on unusually heavy trading volume.

3 7. On November 1, 2011, the Company disclosed that the Acquisition would be  
4 delayed until the first half of 2012. The Company revealed that the delay was the result of an  
5 internal investigation regarding payments to walnut growers. According to the Company, the  
6 investigation was prompted by the Chairman of the Audit Committee of the Company's Board  
7 of Directors receiving an external communication regarding Diamond's accounting for certain  
8 crop payments to walnut growers.  
9

10 8. On this news, the Company's shares declined \$11.33 per share, or 17.67%, to  
11 close on November 2, 2011, at \$52.79 per share, on unusually heavy trading volume.  
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13 9. Throughout the Class Period, Defendants made false and/or misleading  
14 statements, as well as failed to disclose material adverse facts about the Company's business,  
15 operations, and prospects. Specifically, Defendants made false and/or misleading statements  
16 and/or failed to disclose: (1) that the Company was underestimating the ultimate price to be  
17 paid to walnut growers; (2) that the Company was improperly accounting for its cost of sales;  
18 (3) that, as a result, the Company's financial results were overstated; (4) that the Company  
19 lacked adequate internal and financial controls; (5) that, as a result of the foregoing, the  
20 Company's financial statements were materially false and misleading at all relevant times; and  
21 (6) that, as a result of the foregoing, the Company's positive statements about Diamond Foods'  
22 business, operations, and prospects, as well as those regarding the timetable for the  
23 Acquisition, lacked a reasonable basis.  
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1 10. As a result of Defendants' wrongful acts and omissions, and the precipitous  
2 decline in the market value of the Company's securities, Plaintiff and other Class members  
3 have suffered significant losses and damages.

#### 4 JURISDICTION AND VENUE

5 11. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange  
6 Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17  
7 C.F.R. § 240.10b-5).

9 12. This Court has jurisdiction over the subject matter of this action pursuant to 28  
10 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

11 13. Venue is proper in this Judicial District pursuant to §28 U.S.C. §1391(b) and  
12 §27 of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged  
13 fraud or the effects of the fraud have occurred in this Judicial District. Additionally, the  
14 Company's principal executive offices are located in this Judicial District.

15 14. In connection with the acts, transactions, and conduct alleged herein,  
16 Defendants directly and indirectly used the means and instrumentalities of interstate  
17 commerce, including the United States mail, interstate telephone communications, and the  
18 facilities of a national securities exchange.  
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#### 21 PARTIES

22 15. Plaintiff Jorge Salhuana, as set forth in the accompanying certification,  
23 incorporated by reference herein, purchased Diamond Foods securities during the Class Period  
24 and suffered damages as a result of the federal securities law violations and false and/or  
25 misleading statements and/or material omissions alleged herein.  
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1           16. Defendant Diamond Foods is a Delaware corporation with its principle  
2 executive offices located at 600 Montgomery Street, 13th Floor, San Francisco, California  
3 94111.

4           17. Defendant Michael J. Mendes (“Mendes”) was, at all relevant times, the  
5 Chairman of the Board, President and Chief Executive Officer (“CEO”) of Diamond Foods.

6           18. Defendant Steven M. Neil (“Neil”) was, at all relevant times, Chief Financial  
7 Officer (“CFO”) of Diamond Foods.

8           19. Defendants Mendes and Neil are collectively referred to hereinafter as the  
9 “Individual Defendants.” The Individual Defendants, because of their positions with the  
10 Company, possessed the power and authority to control the contents of Diamond Foods’  
11 reports to the SEC, press releases and presentations to securities analysts, money and portfolio  
12 managers and institutional investors, *i.e.*, the market. Each Defendant was provided with  
13 copies of the Company’s reports and press releases alleged herein to be misleading prior to, or  
14 shortly after, their issuance and had the ability and opportunity to prevent their issuance or  
15 cause them to be corrected. Because of their positions and access to material non-public  
16 information available to them, each of these Defendants knew that the adverse facts specified  
17 herein had not been disclosed to, and were being concealed from, the public, and that the  
18 positive representations which were being made were then materially false and/or misleading.  
19 The Individual Defendants are liable for the false statements pleaded herein, as those  
20 statements were each “group-published” information, the result of the collective actions of the  
21 Individual Defendants.  
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## SUBSTANTIVE ALLEGATIONS

### Background

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3 20. Diamond Foods, Inc. was incorporated in Delaware in 2005 as the successor to  
4 Diamond Walnut Growers, Inc., a member-owned California agricultural cooperative  
5 association. In July 2005, Diamond Walnut Growers, Inc. merged with and into Diamond  
6 Foods, Inc., converted from a cooperative association to a Delaware corporation and completed  
7 an initial public offering of Diamond Foods' common stock. Diamond Foods engages in  
8 processing, marketing and distributing snack products.  
9

10 21. Diamond Foods enters into exclusive purchase agreements with walnut growers  
11 for their crops. According to the Company, under these agreements, the walnut growers  
12 deliver their entire walnut crop to the Company during the fall harvest season and the  
13 Company then determines the minimum price for the crops by March 31, or later, of the  
14 following calendar year. The Company represents that it determines the purchase price in  
15 good faith, taking into account market conditions, crop size, quality, and nut varieties, among  
16 other relevant factors. Since the ultimate price to be paid by the Company to the walnut  
17 growers is determined subsequent to receiving the walnut crop, the Company estimates the cost  
18 of the walnuts for its interim financial statements.  
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### Materially False and Misleading Statements Issued During the Class Period

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22  
23 22. The Class Period begins on April 5, 2011. On this day, Diamond Foods issued a  
24 press release entitled, "Diamond Foods to Merge P&G's Pringles Business into the Company."

25  
26 Therein, the Company, in relevant part, stated:

27 SAN FRANCISCO and CINCINNATI, April 5, 2011 /PRNewswire-FirstCall/ --  
28 Diamond Foods, Inc. (NASDAQ:DMND - News) and The Procter & Gamble  
Company (NYSE:PG - News) today announced the signing of a definitive

1 agreement to merge the Pringles business ("Pringles") into Diamond Foods in a  
2 transaction valued at \$2.35 billion.

3 "Pringles is an iconic, billion dollar snack brand with significant global  
4 manufacturing and supply chain infrastructure," said Michael J. Mendes,  
5 Chairman, President and CEO of Diamond Foods. "Our plan is to build upon the  
6 brand equity Pringles has established in over 140 countries. This strategic  
7 combination will create an independent, global leader in the snack industry with a  
8 focus on quality and innovative products. Not only is this combination  
9 immediately accretive, it also creates a platform that we believe will allow us to  
10 build shareholder value for years to come."

11 "We are confident Diamond Foods will be an excellent new home for our Snacks  
12 employees," said Bob McDonald, Chairman of the Board, President and Chief  
13 Executive Officer of P&G. "This is also a terrific deal for our shareholders –  
14 maximizing value and minimizing earnings per share dilution."

15 Pringles® is the world's largest potato crisp brand with sales in over 140 countries  
16 and manufacturing operations in the U.S., Europe and Asia. The global, iconic  
17 brand has been built over 45 years with a combination of proprietary products,  
18 unique package design and significant advertising investment. Pringles will join  
19 Diamond's dynamic portfolio of brands, which includes Diamond of California®  
20 and Emerald® nuts, Pop Secret® microwave popcorn and Kettle Brand® potato  
21 chips, creating a premium snack-focused company with total revenues of  
22 approximately \$2.4 billion.

23 The combination will more than triple the size of Diamond's snack business and:

- 24 • Increase scale in U.S. grocery, mass merchandise, drug and convenience  
25 channels to gain greater merchandising and distribution influence;
- 26 • Leverage Diamond's sales and distribution infrastructure through a more  
27 than doubling of snack sales in the U.S. and U.K., which are Pringles' two  
28 largest markets;
- Gain a broader global manufacturing and supply chain platform, with  
access into key growth markets around the world, including Asia, Latin  
America and Central Europe;
- Increase Diamond's geographic diversity, with international sales  
accounting for approximately 49 percent of total revenues on a pro forma  
basis.

Diamond Foods has a history of building, acquiring and energizing brands  
through product and package innovation, efficient distribution and brand



1 investment. The Company's total revenues have doubled and earnings per share  
(EPS) have grown more than four-fold in the past five years.

2  
3 Diamond of California brand has grown from a single product offering to a full  
4 line of culinary nuts over the past decade. Today, Diamond is the category leader  
5 with a market share ten times larger than the nearest branded competitor.  
6 Emerald, which was launched in 2004, is the fastest growing and second largest  
7 brand in the snack nut category. In 2008, the Company acquired and successfully  
8 integrated Pop Secret microwave popcorn, and by revitalizing the brand, Diamond  
has gained over 350 basis points of market share to 26 percent today. In 2010, the  
Company acquired Kettle Brand potato chips and has fueled double-digit organic  
growth in its first year of ownership while investing in new products and  
operational infrastructure.

#### 9 Financial Benefit for Diamond Foods Shareholders

10 Assuming Pringles had been owned for all of fiscal year 2011, the combined  
11 company would be expected to deliver the following estimated financial results  
12 on a pro forma basis for fiscal year 2011:

- 13 • Net sales of approximately \$2.4 billion;
- 14 • Double-digit accretion to earnings per share (EPS), excluding merger and  
15 integration costs;
- 16 • Estimated earnings before interest, taxes, depreciation and amortization  
17 (EBITDA), including \$25 million in synergies, of approximately \$398  
million to \$410 million.

18 For fiscal year 2012, Diamond anticipates strong growth in its core business with  
19 EPS of \$2.85 to \$2.98 per share on a standalone basis, an increase of 15 percent to  
20 20 percent from the midpoint of its fiscal 2011 guidance range, which represents a  
30 percent increase over 2010 EPS.

21 Combined results for Diamond plus the Pringles business for fiscal year 2012 will  
22 depend on the actual closing date of the transaction. Assuming the transaction  
23 closes by the end of calendar 2011, seven months of Pringles performance would  
be included in the following expected results:

- 24 • Fiscal 2012 total net sales are estimated to be approximately \$1.8 billion;
- 25 • Fiscal 2012 EPS, before costs associated with the transaction and  
26 integration, are estimated to range from \$3.00 to \$3.10 per share, which  
27 reflects EPS accretion of 12 to 15 cents per share

1 The transaction is expected to significantly increase cash flow and accelerate the  
2 de-levering of Diamond's balance sheet. Pro forma leverage at closing is  
3 projected to be below four times EBITDA, and projected to drop below three  
4 times at the end of fiscal 2013. Cash flow after brand investments and capital  
expenditures is expected to approach \$200 million in the first full fiscal year after  
closing the merger.

#### 5 Financial Value for P&G Shareholders

6 The tax-efficient deal structure maximizes value for P&G shareholders and  
7 minimizes annual earnings dilution. The transaction will result in a one-time  
8 earnings increase for P&G of approximately \$1.5 billion after tax or  
9 approximately \$0.50 per share. P&G expects only modest EPS dilution of \$0.02  
10 to \$0.04 on an annualized basis. The stock exchange with Diamond will reduce  
outstanding P&G shares, partially offsetting the Pringles earnings impact.  
Updated financial impacts will be provided when the transaction is completed.

#### 11 Transaction Details

12 P&G expects the separation to occur through a "split-off" transaction in which  
13 P&G shareholders can elect to participate in an exchange offer to exchange P&G  
14 shares for shares of Diamond. Under the terms of a split-merge agreement, P&G  
15 will establish a separate entity to hold the Pringles business, which will be  
16 distributed to electing P&G shareholders in a tax-efficient transaction with a  
simultaneous merger with Diamond. This "Reverse Morris Trust" transaction has  
been approved by the boards of both companies. We expect to finalize the details  
of this transaction in the coming months.

17  
18 The value of the transaction is \$2.35 billion, comprising \$1.5 billion in Diamond  
19 common stock, consisting of 29.1 million shares for approximately 57 percent of  
20 the outstanding shares of the combined company, and the assumption of \$850  
million of Pringles debt. Diamond's existing shareholders would continue to own  
approximately 43 percent of the combined company.

21 The parties have also agreed to a collar mechanism that would adjust the amount  
22 of debt assumed by Diamond based upon Diamond's stock price during a trading  
23 period prior to the commencement of the Exchange Offer. The amount of debt to  
24 be assumed by Diamond could increase by up to \$200 million or decrease by up  
to \$150 million based on this adjustment mechanism.

25 Diamond expects to incur one-time costs of approximately \$100 million related to  
26 the transaction over the next two years. P&G also will provide Diamond  
transition services for up to 12 months after closing.

#### 27 Leadership, Approvals and Timing

1 The combined business will be managed by Diamond's executive team and board  
2 of directors, led by Michael J. Mendes, Chairman, President and CEO. The  
company's headquarters will remain in San Francisco, California.

3 The transaction is subject to approval by Diamond shareholders and the  
4 satisfaction of customary closing conditions and regulatory approvals. The  
transaction is expected to be completed by the end of calendar 2011.

5 23. On June 2, 2011, the Company issued a press release entitled, "Diamond Foods  
6 Raises Guidance After Strong Third Quarter." Therein, the Company, in relevant part, stated:  
7

8 SAN FRANCISCO, June 2, 2011 (GLOBE NEWSWIRE) -- Diamond Foods, Inc.  
9 (Nasdaq:DMND) today reported strong financial results for its third quarter of  
fiscal 2011 and raised guidance for fiscal year 2011.

10 For the three months ended April 30, 2011 non-GAAP diluted earnings per share  
11 (EPS) was \$0.52 and non-GAAP net income was \$11.8 million, 91 percent above  
12 the prior year's comparable net income. On a GAAP basis, EPS was \$0.34  
13 compared to \$(0.22) for the prior year's comparable period. This year's GAAP  
14 EPS included costs associated with the announced merger with Pringles and  
integration costs associated with the Kettle acquisition, while last year's GAAP  
EPS included costs associated with the Kettle acquisition.

15 "Our business performed well during the quarter, including double digit organic  
16 growth in our snack portfolio," said Michael J. Mendes, Chairman, President and  
17 CEO. "Based on our strong overall performance and effective integration of  
18 Kettle, we have increased our financial guidance for the year. We're off to a  
strong start in planning for the integration of Pringles, and are encouraged by the  
prospects for the new combined entity."

19 24. On June 2, 2011, the Company filed its Quarterly Report on Form 10-Q with the  
20 SEC for the 2011 fiscal third quarter. The Company's Form 10-Q was signed by Defendant  
21 Neil and reaffirmed the Company's financial results previously announced that same day. The  
22 Company's Form 10-Q also contained Sarbanes-Oxley required certifications, signed by  
23 Defendants Mendes and Neil, who certified:  
24

- 25
- 26 1. I have reviewed this quarterly report on Form 10-Q for the quarter ended  
27 April 30, 2011 of Diamond Foods, Inc.;
  - 28 2. Based on my knowledge, this report does not contain any untrue  
statement of a material fact or omit to state a material fact necessary to

1 make the statements made, in light of the circumstances under which  
2 such statements were made, not misleading with respect to the period  
covered by this report;

- 3 3. Based on my knowledge, the financial statements, and other financial  
4 information included in this report, fairly present in all material respects  
5 the financial condition, results of operations and cash flows of the  
6 registrant as of, and for, the periods presented in this report;
- 7 4. The registrant's other certifying officer(s) and I are responsible for  
8 establishing and maintaining disclosure controls and procedures (as  
9 defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal  
10 control over financial reporting (as defined in Exchange Act Rules 13a-  
11 15(f) and 15d-15(f)) for the registrant and have:
- 12 (a) Designed such disclosure controls and procedures, or caused such  
13 disclosure controls and procedures to be designed under our  
14 supervision, to ensure that material information relating to the  
15 registrant, including its consolidated subsidiaries, is made known  
16 to us by others within those entities, particularly during the period  
17 in which this report is being prepared;
  - 18 (b) Designed such internal control over financial reporting, or caused  
19 such internal control over financial reporting to be designed  
20 under our supervision, to provide reasonable assurance regarding  
21 the reliability of financial reporting and the preparation of  
22 financial statements for external purposes in accordance with  
23 generally accepted accounting principles;
  - 24 (c) Evaluated the effectiveness of the registrant's disclosure controls  
25 and procedures and presented in this report our conclusions about  
26 the effectiveness of the disclosure controls and procedures, as of  
27 the end of the period covered by this report based on such  
28 evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal  
control over financial reporting that occurred during the  
registrant's most recent fiscal quarter (the registrant's fourth  
fiscal quarter in the case of an annual report) that has materially  
affected, or is reasonably likely to materially affect, the  
registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based  
on our most recent evaluation of internal control over financial reporting,  
to the registrant's auditors and the audit committee of the registrant's  
board of directors (or persons performing the equivalent functions):



- 1 (a) All significant deficiencies and material weaknesses in the design or  
2 operation of internal control over financial reporting which are  
3 reasonably likely to adversely affect the registrant's ability to record,  
4 process, summarize and report financial information; and  
5 (b) Any fraud, whether or not material, that involves management or  
6 other employees who have a significant role in the registrant's internal  
7 control over financial reporting.

8 25. Additionally, the Company's Form 10-Q filed on June 2, 2011, in relevant part,  
9 stated:

10 On April 5, 2011, Diamond entered into a definitive agreement with The Procter  
11 & Gamble Company ("P&G") to merge P&G's Pringles business into the  
12 company. The value of the proposed transaction is approximately \$2.35 billion,  
13 consisting of \$1.5 billion in Diamond common stock and the assumption of  
14 \$850 million of Pringles debt. The equity portion of the purchase price is  
15 represented by approximately 29.1 million shares.

16 The transaction, which is expected to be completed by the end of calendar 2011,  
17 is subject to approval by Diamond's and P&G's stockholders and satisfaction of  
18 customary closing conditions and regulatory approvals. Diamond expects to  
19 incur one-time costs of approximately \$100 million related to the transaction  
20 over the next two years. P&G will also provide Diamond with transition  
21 services for up to 12 months after closing. The merger will be accounted for as a  
22 purchase business combination and for accounting purposes, Diamond will be  
23 treated as the acquiring entity.

24 \* \* \*

25 We have entered into long-term Walnut Purchase Agreements with growers,  
26 under which they deliver their entire walnut crop to us during the Fall harvest  
27 season and we determine the purchase price for this inventory by March 31, or  
28 later, of the following year. This purchase price will be a price determined by us  
in good faith, taking into account market conditions, crop size, quality, and nut  
varieties, among other relevant factors. Since the ultimate price to be paid will  
be determined subsequent to receiving the walnut crop, we must make an  
estimate of price for interim financial statements. Those estimates may  
subsequently change and the effect of the change could be significant. *In the  
three months ended April 30, 2011, the Company revised its estimate for  
expected commodity costs which resulted in a pre-tax decrease in cost of sales  
of approximately \$1.5 million for sales recognized in the first six months of  
fiscal year 2011. In the three months ended April 30, 2010, the Company  
revised its estimate for expected commodity costs which resulted in a pre-tax*



1 ***decrease in cost of sales of approximately \$1.1 million for sales recognized in***  
2 ***the first six months of fiscal year 2010.***

3 (Emphasis added).

4 26. On June 21, 2011, Diamond Foods issued a press release entitled, "Diamond  
5 Foods Announces Expiration of Hart-Scott-Rodino Act Waiting Period for Acquisition of  
6 Pringles." Therein, the Company, in relevant part, stated:

7 SAN FRANCISCO, Jun 21, 2011 (GlobeNewswire via COMTEX) -- Diamond  
8 Foods, Inc. (Nasdaq:DMND) today announced that the waiting period for U.S.  
9 antitrust review under the Hart-Scott Rodino Antitrust Improvements Act of  
10 1976 for Diamond Foods' pending acquisition of the Pringles business from The  
11 Procter & Gamble Company expired on June 20, 2011. The pending acquisition  
remains subject to regulatory approval by competition authorities in various  
jurisdictions outside the United States.

12 On April 5, 2011, Diamond Foods announced the signing of a definitive  
13 agreement to acquire the Pringles business from The Procter & Gamble  
14 Company in a Reverse Morris Trust transaction valued at \$2.35 billion. The  
15 transaction, expected to close by the end of this calendar year, is also subject to  
satisfaction of other conditions including approval by Diamond's stockholders.

16 27. On July 27, 2011, Diamond Foods issued a press release entitled, "Diamond  
17 Foods Receives Clearance on Pringles Acquisition From U.K. Office of Fair Trading."

18 Therein, the Company, in relevant part, stated:

19 Diamond Foods, Inc. (Nasdaq:DMND) today announced that it has received  
20 clearance from the United Kingdom's Office of Fair Trading (OFT) on its pending  
21 acquisition of the Pringles business from The Procter & Gamble Company.

22 The clearance by the OFT follows Diamond's June announcement that the waiting  
23 period for U.S. antitrust review under the Hart-Scott Rodino Antitrust  
24 Improvements Act of 1976 for Diamond Foods' pending acquisition of the  
Pringles business from The Procter & Gamble Company expired on June 20,  
2011.

25 On April 5, 2011, Diamond Foods announced the signing of a definitive  
26 agreement to acquire the Pringles business from The Procter & Gamble Company  
27 in a Reverse Morris Trust transaction valued at \$2.35 billion. The transaction,  
28 expected to close by the end of this calendar year, is also subject to satisfaction of  
other conditions, including approval by Diamond's stockholders.

1           28.     On August 3, 2011, Diamond Foods issued a press release entitled, "Diamond  
2 Foods Receives Final Anti-Trust Clearance on Pringles Acquisition." Therein, the Company,  
3 in relevant part, stated:  
4

5           Diamond Foods, Inc. (Nasdaq:DMND) today announced that The Antimonopoly  
6 Committee of Ukraine has granted its approval to Diamond Foods, Inc. for its  
7 pending acquisition of the Pringles business from The Procter & Gamble  
8 Company. Earlier this summer Diamond received clearances from U.S., U.K. and  
9 German authorities. With today's announcement, Diamond has received all  
10 antitrust clearances required for the transaction.

11           On April 5, 2011, Diamond Foods announced the signing of a definitive  
12 agreement to acquire the Pringles business from The Procter & Gamble Company  
13 in a Reverse Morris Trust transaction valued at \$2.35 billion. The transaction,  
14 expected to close by the end of this calendar year, remains subject to the  
15 satisfaction of other closing conditions, including approval of Diamond's  
16 stockholders.

17           29.     On September 15, 2011, Diamond Foods issued a press release entitled,  
18 "Diamond Reports Record 2011 Results and Raises Guidance for Fiscal 2012." Therein, the  
19 Company, in relevant part, stated:  
20

21           SAN FRANCISCO, Sept. 15, 2011 (GLOBE NEWSWIRE) -- Diamond Foods,  
22 Inc. (Nasdaq:DMND) today reported record financial results for its fiscal 2011  
23 fourth quarter and full year.  
24

25           For the three months ended July 31, 2011, the first full comparable quarter since  
26 the acquisition of Kettle Foods, non-GAAP net income grew 58 percent to \$11.9  
27 million and non-GAAP fully diluted earnings per share (EPS) grew 53 percent  
28 over the prior year's quarter to \$0.52. During the quarter, the Company incurred  
\$9.4 million in acquisition and integration costs related to the purchase of Kettle  
Foods in 2010 and the pending acquisition of Pringles. Including these charges,  
GAAP net income grew 27 percent to \$8.5 million and GAAP fully diluted EPS  
was \$0.37, up 23 percent.

          For the twelve months ended July 31, 2011, non-GAAP net income grew 61  
percent over the prior year period to \$59.0 million and non-GAAP EPS grew 37  
percent to \$2.61. Including \$16.8 million in acquisition and integration costs  
related to the purchase of Kettle Foods in 2010 and the pending acquisition of  
Pringles, GAAP earnings grew 92 percent to \$50.2 million, and GAAP EPS  
grew 63 percent to \$2.22.

1 "Our base Diamond business delivered record financial results this quarter, with  
2 our snack portfolio up a solid 16 percent on an organic basis," said Michael J.  
3 Mendes, Chairman, President and CEO. "We're particularly pleased that we  
4 could achieve such strong performance while effectively managing the Pringles  
integration."

5 \* \* \*

6 -- On August 3, 2011, the Company received the last of its antitrust clearances  
7 required for its pending merger of the Pringles business into Diamond in a  
8 Reverse Morris Trust transaction. The transaction is expected to close in  
December of this year.

9 30. On September 15, 2011, the Company filed its Annual Report on Form 10-K  
10 with the SEC for the 2011 fiscal year. The Company's Form 10-K was signed by Defendants  
11 Mendes and Neil, and reaffirmed the Company's financial results previously announced that  
12 same day. The Company's Form 10-K also contained Sarbanes-Oxley required certifications,  
13 signed by Defendants Mendes and Neil, substantially similar to the certifications contained in  
14 ¶24, *supra*.

15  
16 31. Additionally, the Company's Form 10-K filed on September 15, 2011, in  
17 relevant part, stated:

18  
19 **Pending Pringles Merger**

20 On April 5, 2011, we entered into a definitive agreement with The Procter &  
21 Gamble Company ("P&G") to merge P&G's Pringles business into our  
22 Company. The value of the proposed transaction at April 5, 2011 was  
23 approximately \$2.35 billion, consisting of \$1.5 billion of our common stock and  
24 the assumption of \$850 million of Pringles debt. The number of shares of our  
25 common stock to be issued in the transaction was based on \$1.5 billion divided  
26 by the average of 60 days of daily volume weighted average prices, or 60-day  
27 VWAP, of our common stock for the period ended March 28, 2011 of \$51.47,  
28 which amounted to approximately 29.1 million shares of our common stock to  
be issued to Pringles stockholders in connection with the transaction. As of  
September 14, 2011, the value of the approximately 29.1 million shares of our  
common stock to be issued in the transaction was \$2.2 billion. The parties have  
also agreed to a collar mechanism that would adjust the amount of debt assumed  
by us based upon our price during a trading period prior to the commencement

1 of the Exchange Offer. The amount of debt to be assumed by us could increase  
2 by up to \$200 million or decrease by up to \$150 million based on this  
3 adjustment mechanism. The equity portion of the purchase price is represented  
4 by approximately 29.1 million shares.

5 The transaction, which is expected to be completed by the end of calendar 2011,  
6 is subject to approval by our stockholders and satisfaction of customary closing  
7 conditions and regulatory approvals. We expect to incur one-time costs of  
8 approximately \$150 million, net of income taxes, related to the transaction over  
9 the next two years. P&G will also provide us with transition services for up to  
10 12 months after closing. The merger will be accounted for as a purchase  
11 business combination and for accounting purposes, we will be treated as the  
12 acquiring entity.

13 32. The statements contained in ¶¶22-31 were materially false and/or misleading  
14 when made because defendants failed to disclose or indicate the following: (1) that the  
15 Company was underestimating the ultimate price to be paid to walnut growers; (2) that the  
16 Company was improperly accounting for its cost of sales; (3) that, as a result, the Company's  
17 financial results were overstated; (4) that the Company lacked adequate internal and financial  
18 controls; (5) that, as a result of the foregoing, the Company's financial statements were  
19 materially false and misleading at all relevant times; and (6) that, as a result of the foregoing,  
20 the Company's positive statements about Diamond Foods' business, operations, and prospects,  
21 as well as those regarding the timetable for the Acquisition, lacked a reasonable basis.

22 33. According to media reports, on or around September 25, 2011, an equity  
23 research firm for hedge funds called Off Wall Street Consulting Group issued a report  
24 questioning Diamond Foods' accounting practices for walnut purchases.

25 34. Thereafter, on September 27, 2011, *The Wall Street Journal* published an article  
26 entitled, "Hidden Flaw in P&G's Diamond Deal." Therein, the article, in relevant part, stated:

27 Procter & Gamble's plan to combine its Pringles unit with Diamond Foods  
28 should come with a warning label: Old business problems won't disappear.



1 P&G has agreed to unload the potato-chip unit in a deal where its investors can  
2 choose to swap some of their shares for a stake in Diamond, the snack and nut  
3 company that is buying Pringles. The transaction, which was announced in April  
4 but hasn't closed, needs enough P&G shareholders to take that option, so that  
5 they end up owning 57% of Diamond foods. The deal would let P&G exit the  
6 food business to concentrate on household products. In turn, Diamond would  
7 become the second-largest snack company after PepsiCo, owner of Frito-Lay.

8 But before opting for shares in the merged company, which keeps the Diamond  
9 name, investors should take a closer look at its historical business: walnuts.  
10 Diamond uses multi-year contracts that allow it to set walnut prices  
11 unilaterally—a practice that is causing uproar among growers.

12 *As walnut prices surged for the 2010 crop, Diamond paid growers much less  
13 than most buyers, according to several growers interviewed by The Wall Street  
14 Journal. And yet on September 2, Diamond made an extra "momentum"  
15 payment to growers they hadn't received in past years. The payment sizes  
16 varied, but averaged 25 cents a pound or more, growers say. By email,  
17 Diamond says: "In an effort to optimize cash flow for growers, particularly in  
18 light of the delayed harvest, we issued a momentum payment to growers that  
19 provides additional cash flow in the fall consistent with the current market  
20 environment as we enter the 2011 harvest."*

21 A deal with Diamond Foods would allow P&G to exit the food business.

22 *That payment is critical to investors because it would have made a big dent in  
23 Diamond's earnings had it been made by July 31, when the company's fiscal  
24 year ended. The company declined to specify the size of the payment, but it's  
25 possible to make a decent estimate. According to the Department of  
26 Agriculture, one billion pounds of California walnuts were sold in the 2010  
27 crop. Diamond disclosed that in 2005 it bought 283 million pounds of walnuts,  
28 or about 40% of California's production. So conservatively assuming it  
bought 20% of 2010's output, the momentum payments would total \$50  
million. That compares with \$93 million in operating income for the entire  
fiscal year.*

*Even with the September payment, growers still look underpaid for the 2010  
crop. Independent grower Ryan Palm, for example, says he received about 70  
cents a pound before the momentum payment and less than \$1 a pound if it's  
included. The Department of Agriculture says the average price per pound  
was \$1.06 for all California walnuts in the 2010 crop. Some varieties sold for  
far more.*

Pressure from growers could quickly become an issue for Diamond. After all,  
growers can go elsewhere when contracts expire and exports to places like  
China and Turkey have been surging.



1 That makes the Pringles deal all the more important for Diamond as a way to  
2 diversify away from walnuts, which account for nearly 30% of sales, estimates  
3 Ed Aaron of RBC Capital Markets. Apart from Walnuts, Diamond owns snack  
4 brands like Kettle chips and Pop Secret. It says the combined company's sales  
5 would have been \$2.4 billion last fiscal year including Pringles, rather than its  
6 actual \$966 million.

7 Diamond's shares have surged 51% since the deal announcement, trading at 27.3  
8 times earnings for the year ending next July. That valuation helps P&G get a big  
9 price for Pringles, whose shareholders will get a fixed number of Diamond  
10 shares. But with the walnut business looking strained, Diamond stock could  
11 soon begin to crack.

12 (Emphasis added).

13 35. On this news, shares of Diamond Foods declined \$5.11 per share, or about  
14 5.65%, to close on September 26, 2011, at \$85.26 per share, on unusually heavy trading  
15 volume, and shares of Diamond Foods further declined \$3.20 per share, or 3.75%, to close on  
16 September 27, 2011, at \$82.06 per share, also on unusually heavy trading volume.

17 36. On October 3, 2011, the Company issued a press release entitled, "Media  
18 Statement -- Diamond Foods, Inc. Reaffirms Fiscal 2012 Guidance." Therein, the Company,  
19 in relevant part, stated:

20 Diamond Foods, Inc. (Nasdaq:DMND) *made a pre-harvest momentum*  
21 *payment to walnut growers in early September, prior to the delivery of the fall*  
22 *walnut crop to reflect the fiscal 2012 projected market environment.* The  
23 payment is accounted for in fiscal 2012 cost of goods sold and is reflected in the  
24 guidance provided by the company on September 15, 2011.

25 Diamond reaffirms the guidance provided in its press release dated September  
26 15, 2011, which reflects not only higher commodity costs expected in fiscal  
27 2012, but also recent retail price increases taken for its products. Diamond  
28 believes it has an ample walnut supply for both the retail and value-added, non-  
retail business.

#### **Financial Outlook**

For the first half of fiscal 2012, for Diamond on a standalone basis, we expect total net sales of between \$540 million to \$560 million, an increase in

1 advertising investment of 20-25% over the first half of 2011 and non-GAAP  
2 EPS ranging from \$1.65 to \$1.75. We expect the distribution of earnings  
between Q1 and Q2 to be similar to last year's first half.

3 For the full year of fiscal 2012, we expect non-GAAP EPS to range from \$3.05  
4 to \$3.15, assuming the Pringles transaction closes in the first half of December  
and reflects:

- 5 • Net sales of between \$1.85 billion and \$1.95 billion;
- 6
- 7 • An estimated operating margin of between 11.5 percent and 12.0  
8 percent;
- 9 • Interest expense of between \$40 million to \$45 million;
- 10 • An effective tax rate of 27 percent to 30 percent;
- 11 • Outstanding share count of 42 million to 43 million;
- 12 • Capital expenditures of \$75 million to \$85 million;
- 13 • EBITDA of \$300 million to \$310 million;
- 14 • Transaction and integration costs of \$150 million associated with the  
15 Pringles transaction over the next two years.
- 16

17 (Emphasis added).

18 37. The statements contained in ¶36 were materially false and/or misleading when  
19 made because defendants failed to disclose or indicate the following: (1) that the Company was  
20 underestimating the ultimate price to be paid to walnut growers; (2) that the Company was  
21 improperly accounting for its cost of sales; (3) that, as a result, the Company's financial results  
22 were overstated; (4) that the Company lacked adequate internal and financial controls; (5) that,  
23 as a result of the foregoing, the Company's financial statements were materially false and  
24 misleading at all relevant times; and (6) that, as a result of the foregoing, the Company's  
25 positive statements about Diamond Foods' business, operations, and prospects, as well as those  
26 regarding the timetable for the Acquisition, lacked a reasonable basis.  
27  
28

**Disclosures at the End of the Class Period**

1  
2 38. On November 1, 2011, the Company issued a press release entitled, "Diamond  
3 Foods Provides Update on Pringles Transaction." Therein, the Company, in relevant part, stated:

4 Diamond Foods, Inc. (Nasdaq:DMND) today announced that its previously  
5 announced acquisition of the Pringles snack business from The Procter & Gamble  
6 Company ("P&G") is now expected to close in the first half of calendar 2012.  
7 Diamond and P&G had previously expected the closing to occur in December of  
8 2011.

9 Diamond and P&G have revised the expected closing date of the acquisition  
10 following the receipt by the Chairman of the Audit Committee of Diamond's  
11 Board of Directors of an external communication regarding Diamond's accounting  
12 for certain crop payments to walnut growers. In response to the communication,  
13 Diamond's Audit Committee decided to perform an investigation of this matter.  
14 Management is fully committed to supporting the Audit Committee in this  
15 process.

16 Closing of the Pringles transaction remains subject to customary closing  
17 conditions and completion of an exchange offer by P&G. Antitrust approvals  
18 required for the transaction have already been obtained.

19 39. On this news, the Company's shares declined \$11.33 per share, or 17.67%, to  
20 close on November 2, 2011, at \$52.79 per share, on unusually heavy trading volume.

21 40. On November 3, 2011, *The Wall Street Journal* published an article entitled,  
22 "Investors Punish Diamond for Delay: *Stock Drops 18% as Questions About Company's*  
23 *Accounting Force Postponement of Pringles Purchase.*" Therein, the article, in relevant part,  
24 stated:

25 Investors reacted harshly Wednesday to questions about accounting at Diamond  
26 Foods Inc. that forced the snack maker to delay its \$2.35 billion acquisition of  
27 Pringles into next year.

28 The company's stock fell 18% to \$52.79 a share, a level that, if sustained, would  
make the deal \$150 million more expensive than it would have been before  
Diamond announced the delay.

A worker views harvested walnuts. The questions at Diamond involve the  
company's accounting for crop payments to walnut growers.

1 Late Tuesday, Diamond said it would investigate allegations sent to the  
2 chairman of the board's audit committee, Edward A. Blechschmidt, regarding  
3 Diamond's accounting for certain crop payments to walnut growers.

4 The company didn't detail the allegations or say who sent them, but a person  
5 familiar with the matter said they didn't come from the Securities and Exchange  
6 Commission or another enforcement agency. Mr. Blechschmidt didn't return  
7 calls seeking comment.

8 The investigation centers around the timing of a recent payment to walnut  
9 growers for their 2011 crop, which currently is being harvested, another person  
10 familiar with the matter said.

11 Under the long-term contracts Diamond uses to buy walnuts, the company takes  
12 delivery in the fall and then decides the following year what to pay growers—  
13 potentially not until the July 31 end of its fiscal year, according to the  
14 company's securities filings.

15 In between, the company reports estimated prices in its financial statements. The  
16 company warns that those estimates can change significantly.

17 ***On Sept. 2, Diamond made what it called a "momentum" payment to growers,  
18 who said it arrived just after they received their final payment for their 2010  
19 crop as usual in August.***

20 ***The company told growers in a terse letter in late August that the momentum  
21 payment was an advance on the 2011 crop yet to be delivered. But growers  
22 said they didn't recall receiving that sort of payment in past years. Some  
23 analysts and growers speculated that the timing of the payment—more than  
24 30 days after the close of the 2011 fiscal year—was meant to make that year's  
25 costs appear lower than they actually were.***

26 ***"We believe the basis of the investigation is whether the momentum payment  
27 was properly accounted for," RBC Capital analyst Ed Aaron said in a report.***

28 The company has said the payment is accounted for in its fiscal 2012 cost of  
goods sold and reflected in its earnings forecast for the year.

***In prior years, analysts say, Diamond has sent growers one lump sum in  
August covering the final payment for the previous year and a momentum  
payment for the coming year. The company wouldn't say if that was the case  
or why it decided to separate the payments this year.***

***After the market closed on Sept. 15, Diamond reported that its fourth-quarter  
earnings rose a better than expected 27% to \$8.5 million, with help from***



1 ***stronger sales and a tax benefit. The company's shares climbed nearly 12%***  
2 ***the following day and closed at \$87.30.***

3 ***Diamond is using its stock to buy Pringles. Under the deal, Procter & Gamble***  
4 ***shareholders will end up owning 57% of Diamond. In addition to turning over***  
5 ***the shares, Diamond has agreed to assume \$850 million in Pringles debt.***

6 ***If the company's share price is averaging more than \$56.62 when the deal***  
7 ***closes, Diamond will have to take on only \$700 million in debt, according to***  
8 ***Diamond's securities filings. But if the price falls below \$44.61, it will have to***  
9 ***take on \$1.05 billion in debt.***

10 An official with one institutional investor with just over 70,000 Diamond Foods  
11 shares and eight million P&G shares said the unexpected setback in completing  
12 the Pringles purchase troubles some investors. "Diamond Foods needs to get to  
13 the bottom of this," the official said. "Is this an isolated incident? Or is it a  
14 pattern of behavior?"

15 ***If Diamond does find that it materially misrepresented its accounting for***  
16 ***grower payments, the company could have to restate its financial reports, said***  
17 ***Lynn Turner, a former chief accountant for the Securities and Exchange***  
18 ***Commission.***

19 A big enough breach could give P&G room to cancel or renegotiate the sale,  
20 though analysts don't think that outcome is likely. P&G is still committed to  
21 closing the sale, a spokesman said.

22 (Emphasis added).

23 41. On November 3, 2011, *The Wall Street Journal* published an article entitled,  
24 "Procter & Gamble's Diamond Loses Its Sparkle." Therein, the article, in relevant part, stated:

25 Once you pop, you can't stop—that has been true of Diamond Foods in recent  
26 years as it gorged on snack-food acquisitions. But with the deal to acquire  
27 Pringles from Procter & Gamble in question, it may be tough to get the party  
28 started again.

Diamond shares plunged 18% Wednesday following an announcement the night  
before that the audit committee was investigating how the company accounted  
for crop payments to walnut growers. P&G said it wants to see the matter  
resolved before proceeding with the deal and delayed the expected close to next  
year, rather than December.

If the Pringles deal crumbles, so too could Diamond's hopes of transforming into  
a high-margin snacks conglomerate.



1 *At issue is an extra payment Diamond made to walnut farmers in September,*  
2 *which may have related to walnuts purchased in the previous fiscal year. The*  
3 *payment, estimated at \$50 million based on Wall Street Journal interviews*  
4 *with walnut farmers, would have reduced the company's operating income by*  
5 *more than 50% had it been included in results for the year ended July.*

6 If the Pringles deal crumbles, so too could Diamond's hopes of transforming  
7 from a nuts company to a high-margin snacks conglomerate. Back in 2005,  
8 nearly 70% of the company's sales were walnuts. But the company has since  
9 spent more than \$800 million to acquire Pop Secret and Kettle Chips, bringing  
10 its net debt to \$529 million. That compares with earnings before interest, taxes,  
11 depreciation and amortization of about \$140 million last fiscal year, a figure that  
12 would have been lower including the September walnut payment.

13 It isn't just cash that could get tight. The company wants to use its shares as a  
14 currency to buy Pringles, but the stock would likely fall hard without a deal.  
15 Even after Wednesday's plunge, the stock trades at about 20 times earnings for  
16 the year through July. Without deals to boost the top line, such a multiple looks  
17 rich.

18 It is true Diamond shares could justify a level even higher if the Pringles deal  
19 closes. But if it cracks, it's a long way to the bottom.

20 (Emphasis added).

21 42. On November 5, 2011, *Barron's* published an article entitled, "Getting to the  
22 Nut of the Problem." Therein, the article, in relevant part, stated:

23 After nearly a century as a walnut growers' cooperative, Diamond Foods broke  
24 out of its shell with a 2005 initial public offering. The San Francisco company,  
25 which also sells pine nuts, almonds and pecans, proceeded to gobble up snack  
26 brands that included Pop Secret popcorn and Kettle chips—and promoting them  
27 with cheeky television ads, among them, an annual 30-second spot on the Super  
28 Bowl.

29 In April, Diamond (ticker: DMND) took an even bigger bite, announcing plans  
30 to acquire the Pringles chips business from Procter & Gamble (PG) in exchange  
31 for Diamond stock. Those shares had themselves become a premium brand.  
32 Endorsements from mutual-fund manager Ron Baron and CNBC's Jim Cramer  
33 helped the snack company's stock climb over the past three years from about 20  
34 bucks to an all time high of 92 in mid-September.

35 Then, The Wall Street Journal talked to some walnut growers and found serious  
36 issues with Diamond's accounting—issues that had escaped the eagle-eyed

1 advisors on the Pringles deal: Bank of America Merrill Lynch, Morgan Stanley  
2 and the Blackstone Group. On Tuesday, Diamond delayed the Pringles closing  
3 while the audit committee of its board of directors investigates how Diamond  
4 accounted for its walnut-crop payments. Diamond's shares closed late Friday at  
5 \$46.40, below their level when the Pringles plan was announced.

6 After Diamond's walnut accounting gets scrutiny, the stock could get crushed  
7 again.

8 Suspect accounting for walnut purchases could crack snack-food producer  
9 Diamond Foods' deal to buy Pringles from Procter & Gamble.

10 Diamond's problems come from its legacy business as a walnut processor, which  
11 Chief Executive Michael Mendes has been hustling to push backstage via his  
12 purchases of snack brands. At the same time, walnut growers say that the  
13 company has underpaid them in recent years. Rio Oso, Calif., grower Pat  
14 Mecklenburg remembers when she realized that Diamond was turning its back  
15 on walnuts: She poured out one of the company's Emerald brand pouches of trail  
16 mix, and there was one walnut in the whole package. "Ever since Diamond  
17 came public," says Mecklenburg, "they've become less and less competitive  
18 with other handlers, until the point that it just got ridiculous."

19 Even after the selloff, Diamond shares look pricey. The acquisitive outfit has no  
20 tangible book value. It reported earnings for the fiscal year ended July 2011 of  
21 \$2.61 a share (ignoring pesky noncash charges, like option expenses), so  
22 Diamond's multiple on those trailing earnings is a generous 18 times. And 2011  
23 earnings were likely overstated, says Mark Roberts, whose Off Wall Street  
24 Consulting Group rang the first alarm about Diamond's nutty accounting on  
25 Sept. 25, when most of Wall Street was still cheering the company on. Had  
26 Diamond properly booked costs for fiscal 2011, Roberts estimates, it would've  
27 earned as little as \$1.14 a share.

28 Diamond declined to talk about the walnut investigation, but a spokesman said  
that both Diamond and P&G remain committed to completing a Pringles deal  
next year, which would double the company's sales. Yet if questions arise about  
Diamond's "representations and warranties" as it offered its shares to P&G  
shareholders in exchange for the Pringles business, the deal could fall apart—or  
at least become much more expensive for Diamond.

Diamond's co-op members got more than half the company's stock in the IPO  
and signed contracts to sell their entire crop to Diamond for a term of three, five  
or 10 years. Happily for the farmer shareholders and all others, the stock rose  
steadily from its IPO price of 17. At the same time, however, many growers  
became unhappy with their multiyear contracts with Diamond.





1 Over its history, Diamond had paid growers around a third of the fall crop's  
2 estimated value within two weeks of receiving delivery, typically in November.  
3 It made another small payment in February of the following year, and the final  
4 65% in August. Diamond ought to have booked these payments, or estimates  
5 thereof, as costs against the matching revenues from the prior fall's crop.

6 In good years, Diamond paid a little less than other handlers, says Jonathan  
7 Field, the general manager of the Walnut Bargaining Association, because  
8 Diamond committed to take a grower's entire crop, and because in years of weak  
9 demand, it paid a little more than the market price. In 2008, prices tanked to  
10 about 60 cents a pound, recalls Field, but Diamond paid more than 70 cents.

11 With recent demand booming for walnuts as a protein-packed snack with  
12 healthy, omega-3 fatty acids, Diamond's payments for the fall 2010 crop came  
13 short of market prices. "Woefully short," says Field.

14 Then, in early September, Diamond sent growers something it called "a  
15 momentum payment" of 30 to 40 cents a pound. The company said the payment  
16 was for the coming 2011 crop, but farmers believe it was really a way to bring  
17 Diamond's price for their 2010 crop closer to market rates. Transaction records  
18 examined by Off Wall Street's Roberts showed that, until 2009, Diamond had  
19 called its August check the "final payment" for the prior year's crop.

20 The Bottom Line

21 Diamond Foods' shares have fallen by half since analyst Mark Roberts raised  
22 accounting questions. There could be more downside if Diamond's deal to buy  
23 Pringles gets scotched.

24 This year, Diamond didn't use the word "final" on its August payment to a  
25 grower Roberts spoke with, telling the grower to expect a September  
26 "momentum payment." Believing himself underpaid, the farmer asked  
27 Diamond's head of field operations if the September payment was for the 2010  
28 crop. According to Roberts, the Diamond executive said yes. Most puzzling, the  
September payments went to farmers who've ended their sales contracts with  
Diamond and won't be supplying it with their 2011 year crop. Barron's spoke  
with one of those growers.

Had the September payments been counted as part of Diamond's July 2011  
fiscal year, Roberts thinks that the gross margin reported by the company would  
have shrunk to less than 20%, from about 25%—making the exchange of its  
shares for Pringles less appetizing for P&G shareholders.

### **CLASS ACTION ALLEGATIONS**

43. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil



1 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons or entities who  
2 purchased Diamond Foods securities between April 5, 2011, and November 1, 2011, inclusive  
3 (the "Class Period"), and who were damaged thereby (the "Class"). Excluded from the Class are  
4 Defendants, the officers and directors of the Company, at all relevant times, members of their  
5 immediate families and their legal representatives, heirs, successors or assigns and any entity in  
6 which Defendants have or had a controlling interest.  
7

8 44. The members of the Class are so numerous that joinder of all members is  
9 impracticable. During the Class Period, Diamond Foods securities were actively traded on the  
10 NASDAQ Stock Market (the "NASDAQ"). While the exact number of Class members is  
11 unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,  
12 Plaintiff believes that there are hundreds or thousands of members in the proposed Class.  
13 Millions of Diamond Foods shares were traded publicly during the Class Period on the  
14 NASDAQ and as of August 31, 2011, the Company had 22,011,196 shares of common stock  
15 outstanding. Record owners and other members of the Class may be identified from records  
16 maintained by Diamond Foods or its transfer agent and may be notified of the pendency of this  
17 action by mail, using the form of notice similar to that customarily used in securities class  
18 actions.  
19  
20

21 45. Plaintiff's claims are typical of the claims of the members of the Class as all  
22 members of the Class are similarly affected by Defendants' wrongful conduct in violation of  
23 federal law that is complained of herein.  
24

25 46. Plaintiff will fairly and adequately protect the interests of the members of the  
26 Class and has retained counsel competent and experienced in class and securities litigation.  
27  
28

1           47. Common questions of law and fact exist as to all members of the Class and  
2 predominate over any questions solely affecting individual members of the Class. Among the  
3 questions of law and fact common to the Class are:

4                   (a) Whether the federal securities laws were violated by Defendants' acts as  
5 alleged herein;

6                   (b) Whether statements made by Defendants to the investing public during  
7 the Class Period omitted and/or misrepresented material facts about the operations, financial  
8 performance and prospects of Diamond Foods; and

9                   (c) To what extent the members of the Class have sustained damages and the  
10 proper measure of damages.  
11

12           48. A class action is superior to all other available methods for the fair and efficient  
13 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as  
14 the damages suffered by individual Class members may be relatively small, the expense and  
15 burden of individual litigation makes it impossible for members of the Class to individually  
16 redress the wrongs done to them. There will be no difficulty in the management of this action as  
17 a class action.  
18

19  
20                                   **UNDISCLOSED ADVERSE FACTS**

21           49. The market for Diamond Foods securities was open, well-developed and efficient  
22 at all relevant times. As a result of these materially false and/or misleading statements, and/or  
23 failures to disclose, Diamond Foods securities traded at artificially inflated prices during the  
24 Class Period. Plaintiff and other members of the Class purchased or otherwise acquired  
25 Diamond Foods securities relying upon the integrity of the market price of the Company's  
26 securities and market information relating to Diamond Foods, and have been damaged thereby.  
27  
28

1 50. During the Class Period, Defendants materially misled the investing public,  
2 thereby inflating the price of Diamond Foods securities, by publicly issuing false and/or  
3 misleading statements and/or omitting to disclose material facts necessary to make Defendants'  
4 statements, as set forth herein, not false and/or misleading. Said statements and omissions were  
5 materially false and/or misleading in that they failed to disclose material adverse information  
6 and/or misrepresented the truth about Diamond Foods' business, operations, and prospects as  
7 alleged herein.  
8

9 51. At all relevant times, the material misrepresentations and omissions particularized  
10 in this Complaint directly or proximately caused or were a substantial contributing cause of the  
11 damages sustained by Plaintiff and other members of the Class. As described herein, during the  
12 Class Period, Defendants made or caused to be made a series of materially false and/or  
13 misleading statements about Diamond Foods' financial performance and prospects. These  
14 material misstatements and/or omissions had the cause and effect of creating in the market an  
15 unrealistically positive assessment of the Company and its financial well-being and prospects,  
16 thus causing the Company's securities to be overvalued and artificially inflated at all relevant  
17 times. Defendants' materially false and/or misleading statements during the Class Period  
18 resulted in Plaintiff and other members of the Class purchasing the Company's securities at  
19 artificially inflated prices, thus causing the damages complained of herein.  
20  
21

#### 22 **LOSS CAUSATION**

23 52. Defendants' wrongful conduct, as alleged herein, directly and proximately caused  
24 the economic loss suffered by Plaintiff and the Class.  
25

26 53. During the Class Period, Plaintiff and the Class purchased Diamond Foods  
27 securities at artificially inflated prices and were damaged thereby. The price of the Company's  
28 securities significantly declined when the misrepresentations made to the market, and/or the

1 information alleged herein to have been concealed from the market, and/or the effects thereof,  
2 were revealed, causing investors' losses

### 3 SCIENTER ALLEGATIONS

4 54. As alleged herein, Defendants acted with scienter in that Defendants knew that  
5 the public documents and statements issued or disseminated in the name of the Company were  
6 materially false and/or misleading; knew that such statements or documents would be issued or  
7 disseminated to the investing public; and knowingly and substantially participated or acquiesced  
8 in the issuance or dissemination of such statements or documents as primary violations of the  
9 federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their  
10 receipt of information reflecting the true facts regarding Diamond Foods, his/her control over,  
11 and/or receipt and/or modification of Diamond Foods' allegedly materially misleading  
12 misstatements and/or their associations with the Company which made them privy to  
13 confidential proprietary information concerning Diamond Foods, participated in the fraudulent  
14 scheme alleged herein.  
15  
16

### 17 APPLICABILITY OF PRESUMPTION OF RELIANCE 18 (FRAUD-ON-THE-MARKET DOCTRINE)

19 55. The market for Diamond Foods securities was open, well-developed and efficient  
20 at all relevant times. As a result of the materially false and/or misleading statements and/or  
21 failures to disclose, Diamond Foods securities traded at artificially inflated prices during the  
22 Class Period. On September 20, 2011, the Company's stock closed at a Class Period high of  
23 \$92.47 per share. Plaintiff and other members of the Class purchased or otherwise acquired the  
24 Company's securities relying upon the integrity of the market price of Diamond Foods securities  
25 and market information relating to Diamond Foods, and have been damaged thereby.  
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1           56. During the Class Period, the artificial inflation of Diamond Foods stock was  
2 caused by the material misrepresentations and/or omissions particularized in this Complaint  
3 causing the damages sustained by Plaintiff and other members of the Class. As described herein,  
4 during the Class Period, Defendants made or caused to be made a series of materially false  
5 and/or misleading statements about Diamond Foods' financial performance and prospects.  
6 These material misstatements and/or omissions created an unrealistically positive assessment of  
7 Diamond Foods and its business, operations, and financial performance, thus causing the price of  
8 the Company's securities to be artificially inflated at all relevant times, and when disclosed,  
9 negatively affected the value of the Company stock. Defendants' materially false and/or  
10 misleading statements during the Class Period resulted in Plaintiff and other members of the  
11 Class purchasing the Company's securities at such artificially inflated prices, and each of them  
12 has been damaged as a result.

13  
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15           57. At all relevant times, the market for Diamond Foods securities was an efficient  
16 market for the following reasons, among others:

17           (a) Diamond Foods stock met the requirements for listing, and was listed  
18 and actively traded on the NASDAQ, a highly efficient and automated market;

19           (b) As a regulated issuer, Diamond Foods filed periodic public reports with  
20 the SEC and the NASDAQ;

21           (c) Diamond Foods regularly communicated with public investors via  
22 established market communication mechanisms, including through regular dissemination of  
23 press releases on the national circuits of major newswire services and through other wide-  
24 ranging public disclosures, such as communications with the financial press and other similar  
25 reporting services; and  
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1 (d) Diamond Foods was followed by securities analysts employed by major  
2 brokerage firms who wrote reports about the Company, and these reports were distributed to  
3 the sales force and certain customers of their respective brokerage firms. Each of these reports  
4 was publicly available and entered the public marketplace.

5 58. As a result of the foregoing, the market for Diamond Foods securities promptly  
6 digested current information regarding Diamond Foods from all publicly available sources and  
7 reflected such information in Diamond Foods' stock price. Under these circumstances, all  
8 purchasers of Diamond Foods securities during the Class Period suffered similar injury through  
9 their purchase of Diamond Foods securities at artificially inflated prices and a presumption of  
10 reliance applies.  
11

12  
13 **NO SAFE HARBOR**

14 59. The statutory safe harbor provided for forward-looking statements under certain  
15 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.  
16 The statements alleged to be false and misleading herein all relate to then-existing facts and  
17 conditions. In addition, to the extent certain of the statements alleged to be false may be  
18 characterized as forward looking, they were not identified as "forward-looking statements" when  
19 made and there were no meaningful cautionary statements identifying important factors that  
20 could cause actual results to differ materially from those in the purportedly forward-looking  
21 statements. In the alternative, to the extent that the statutory safe harbor is determined to apply  
22 to any forward-looking statements pleaded herein, Defendants are liable for those false forward-  
23 looking statements because at the time each of those forward-looking statements was made, the  
24 speaker had actual knowledge that the forward-looking statement was materially false or  
25 misleading, and/or the forward-looking statement was authorized or approved by an executive  
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1 officer of Diamond Foods who knew that the statement was false when made.

2 **FIRST CLAIM**  
3 **Violation of Section 10(b) of The Exchange Act**  
4 **and Rule 10b-5 Promulgated Thereunder**  
5 **Against All Defendants**

6 60. Plaintiff repeats and realleges each and every allegation contained above as if  
7 fully set forth herein.

8 61. During the Class Period, Defendants carried out a plan, scheme and course of  
9 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing  
10 public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and  
11 other members of the Class to purchase Diamond Foods' securities at artificially inflated prices.  
12 In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of  
13 them, took the actions set forth herein.

14 62. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made  
15 untrue statements of material fact and/or omitted to state material facts necessary to make the  
16 statements not misleading; and (iii) engaged in acts, practices, and a course of business which  
17 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to  
18 maintain artificially high market prices for Diamond Foods' securities in violation of Section  
19 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary  
20 participants in the wrongful and illegal conduct charged herein or as controlling persons as  
21 alleged below.

22 63. Defendants, individually and in concert, directly and indirectly, by the use, means  
23 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a  
24 continuous course of conduct to conceal adverse material information about Diamond Foods'  
25 financial well-being and prospects, as specified herein.

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COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

1           64.     These Defendants employed devices, schemes and artifices to defraud, while in  
2 possession of material adverse non-public information and engaged in acts, practices, and a  
3 course of conduct as alleged herein in an effort to assure investors of Diamond Foods' value and  
4 performance and continued substantial growth, which included the making of, or the  
5 participation in the making of, untrue statements of material facts and/or omitting to state  
6 material facts necessary in order to make the statements made about Diamond Foods and its  
7 business operations and future prospects in light of the circumstances under which they were  
8 made, not misleading, as set forth more particularly herein, and engaged in transactions,  
9 practices and a course of business which operated as a fraud and deceit upon the purchasers of  
10 the Company's securities during the Class Period.  
11

12           65.     Each of the Individual Defendants' primary liability, and controlling person  
13 liability, arises from the following facts: (i) the Individual Defendants were high-level executives  
14 and/or directors at the Company during the Class Period and members of the Company's  
15 management team or had control thereof; (ii) each of these Defendants, by virtue of their  
16 responsibilities and activities as a senior officer and/or director of the Company, was privy to and  
17 participated in the creation, development and reporting of the Company's internal budgets, plans,  
18 projections and/or reports; (iii) each of these Defendants enjoyed significant personal contact and  
19 familiarity with the other Defendants and was advised of, and had access to, other members of  
20 the Company's management team, internal reports and other data and information about the  
21 Company's finances, operations, and sales at all relevant times; and (iv) each of these Defendants  
22 was aware of the Company's dissemination of information to the investing public which they  
23 knew and/or recklessly disregarded was materially false and misleading.  
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1           66.     The Defendants had actual knowledge of the misrepresentations and/or omissions  
2 of material facts set forth herein, or acted with reckless disregard for the truth in that they failed  
3 to ascertain and to disclose such facts, even though such facts were available to them. Such  
4 Defendants' material misrepresentations and/or omissions were done knowingly or recklessly  
5 and for the purpose and effect of concealing Diamond Foods' financial well-being and prospects  
6 from the investing public and supporting the artificially inflated price of its securities. As  
7 demonstrated by Defendants' overstatements and/or misstatements of the Company's business,  
8 operations, financial well-being, and prospects throughout the Class Period, Defendants, if they  
9 did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless  
10 in failing to obtain such knowledge by deliberately refraining from taking those steps necessary  
11 to discover whether those statements were false or misleading.  
12

13  
14           67.     As a result of the dissemination of the materially false and/or misleading  
15 information and/or failure to disclose material facts, as set forth above, the market price of  
16 Diamond Foods securities was artificially inflated during the Class Period. In ignorance of the  
17 fact that market prices of the Company's securities were artificially inflated, and relying directly  
18 or indirectly on the false and misleading statements made by Defendants, or upon the integrity of  
19 the market in which the securities trades, and/or in the absence of material adverse information  
20 that was known to or recklessly disregarded by Defendants, but not disclosed in public  
21 statements by Defendants during the Class Period, Plaintiff and the other members of the Class  
22 acquired Diamond Foods securities during the Class Period at artificially high prices and were  
23 damaged thereby.  
24

25  
26           68.     At the time of said misrepresentations and/or omissions, Plaintiff and other  
27 members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff  
28

1 and the other members of the Class and the marketplace known the truth regarding the  
2 Company's improper accounting practices, which were not disclosed by Defendants, Plaintiff  
3 and other members of the Class would not have purchased or otherwise acquired their Diamond  
4 Foods securities, or, if they had acquired such securities during the Class Period, they would not  
5 have done so at the artificially inflated prices which they paid.

6  
7 69. By virtue of the foregoing, Defendants have violated Section 10(b) of the  
8 Exchange Act and Rule 10b-5 promulgated thereunder.

9 70. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and  
10 the other members of the Class suffered damages in connection with their respective purchases  
11 and sales of the Company's securities during the Class Period.  
12

13 **SECOND CLAIM**  
14 **Violation of Section 20(a) of The Exchange Act**  
15 **Against the Individual Defendants**

16 71. Plaintiff repeats and realleges each and every allegation contained above as if  
17 fully set forth herein.

18 72. The Individual Defendants acted as controlling persons of Diamond Foods within  
19 the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level  
20 positions, and their ownership and contractual rights, participation in and/or awareness of the  
21 Company's operations and/or intimate knowledge of the false financial statements filed by the  
22 Company with the SEC and disseminated to the investing public, the Individual Defendants had  
23 the power to influence and control and did influence and control, directly or indirectly, the  
24 decision-making of the Company, including the content and dissemination of the various  
25 statements which Plaintiff contends are false and misleading. The Individual Defendants were  
26 provided with or had unlimited access to copies of the Company's reports, press releases, public  
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1 filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after  
2 these statements were issued and had the ability to prevent the issuance of the statements or  
3 cause the statements to be corrected.

4 73. In particular, each of these Defendants had direct and supervisory involvement in  
5 the day-to-day operations of the Company and, therefore, is presumed to have had the power to  
6 control or influence the particular transactions giving rise to the securities violations as alleged  
7 herein, and exercised the same.

9 74. As set forth above, Diamond Foods and the Individual Defendants each violated  
10 either Section 10(b) or Rule 10b-5, by their acts and/or omissions as alleged in this Complaint.  
11 By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant  
12 to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful  
13 conduct, Plaintiff and other members of the Class suffered damages in connection with their  
14 purchases of the Company's securities during the Class Period.  
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

18 (a) Determining that this action is a proper class action under Rule 23 of the Federal  
19 Rules of Civil Procedure;

20 (b) Awarding compensatory damages in favor of Plaintiff and the other Class  
21 members against all Defendants, jointly and severally, for all damages sustained as a result of  
22 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;  
23

24 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in  
25 this action, including counsel fees and expert fees; and  
26

27 (d) Such other and further relief as the Court may deem just and proper.  
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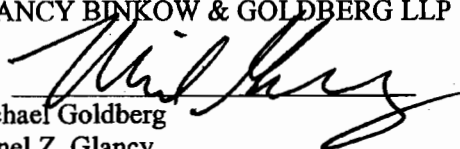
**JURY TRIAL DEMANDED**

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Plaintiff hereby demands a trial by jury.

DATED: November 7, 2011

GLANCY BINKOW & GOLDBERG LLP

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*Attorneys for Plaintiff Jorge Salhuana*



**SWORN CERTIFICATION OF PLAINTIFF**

**Diamond Foods, Inc., SECURITIES LITIGATION**

I, Jorge Salhuana, certify that:

1. I have reviewed the complaint and authorized its filing.
2. I did not purchase Diamond Foods, Inc., the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in any private action arising under this title.
3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.
4. My transactions in Diamond Foods, Inc.. during the class period set forth in the Complaint are as follows:

I bought 500 shares on 9/19/11 at \$86.56 per share.  
 I bought 1000 shares on 9/19/11 at \$86.89 per share.  
 I bought 400 shares on 10/28/11 at \$67.33 per share.  
 I bought 350 shares on 10/28/11 at \$67.34 per share.  
 I bought 1000 shares on 10/03/11 at \$72.11 per share.

I sold \_\_\_\_\_ shares on \_\_\_\_/\_\_\_\_/\_\_\_\_ at \$ \_\_\_\_\_ per share.  
 I sold \_\_\_\_\_ shares on \_\_\_\_/\_\_\_\_/\_\_\_\_ at \$ \_\_\_\_\_ per share.  
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 I sold \_\_\_\_\_ shares on \_\_\_\_/\_\_\_\_/\_\_\_\_ at \$ \_\_\_\_\_ per share.  
 I sold \_\_\_\_\_ shares on \_\_\_\_/\_\_\_\_/\_\_\_\_ at \$ \_\_\_\_\_ per share.

(List Additional Transactions on a Separate Page if Necessary)

5. I have not served as a representative party on behalf of a class under this title during the last three years except as stated:
6. I will not accept any payment for serving as a representative party, except to receive my pro rata share of any recovery or as ordered or approved by the court including the award to a representative plaintiff of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

Check here if you are a current employee or former employee of the defendant Company.

I declare under penalty of perjury that the foregoing are true and correct statements.

Dated: 11/4/11

  
 (Please Sign Your Name Above)