

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:14-cv-80005-BB

DEENA KLACKO, individually and on behalf	:
of all others similarly situated,	:
	:
<i>Plaintiff,</i>	:
	:
v.	:
	:
DIAMOND FOODS, INC., a California	:
Corporation	:
	:
<i>Defendant.</i>	:
	:

**MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff Deena Klacko (“Plaintiff”), with the consent of Defendant Diamond Foods, Inc. (“Defendant”), hereby moves for an Order:

1. Conditionally certifying the following proposed Class for settlement purposes only: All Persons who, for personal or household use, purchased Diamond Foods, Inc. Kettle Brand® Products<sup>1</sup> in the United States from January 3, 2010 through and including February 24, 2015. Excluded from the Settlement Class are: (a) all Persons who purchased or acquired Diamond Kettle Brand® products for resale; (b) Diamond Foods, Inc. and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely

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<sup>1</sup> Products means Diamond Foods Kettle Brand® products labeled as “All Natural,” “Natural,” “Naturally,” “Made with All Natural Ingredients,” “Natural Promise,” or any other derivation of “natural,” “nothing artificial,” “no preservatives,” “non-GMO,” “non-GMO ingredients,” “only natural colors and flavors,” “natural flavors,” “A Natural Obsession,” “real food ingredients,” “Reduced Fat,” and/or “\_\_% Less Fat.”

Request for Exclusion; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof) and (e) the judges to whom the Kettle Actions are assigned and any members of their immediate families.

2. Conditionally designating Plaintiff Klacko as one of three representatives of the Class. Specifically, in addition to the instant case, two other related actions are currently pending in the United States District Court for the Northern District of California. Those actions are: *Dominika Surzyn v. Diamond Foods, Inc.*, Case No. 4:14-cv-136 and *Richard Hall v. Diamond Foods, Inc.*, Case No. 3:14-cv-02148. Plaintiffs in these other two actions have joined in the Settlement reached by Plaintiff Klacko and Diamond Foods and, accordingly, Plaintiff Klacko respectfully moves that Plaintiff Surzyn and Plaintiff Hall also be conditionally named as representatives of the Class.

3. Appointing Benjamin M. Lopatin, Esq. of The Law Offices of Howard Rubinstein, P.A., One Embarcadero Center, Suite 500, San Francisco, CA 94111; L. DeWayne Layfield, Esq. of the Law Office of L. DeWayne Layfield, PLLC, P.O. Box 3829, Beaumont, TX 77704; and Anthony Orshansky and Justin Kachadoorian of CounselOne, P.C., 9301 Wilshire Boulevard, Suite 650, Beverly Hills, CA 90210, as Co-Lead Counsel for the Class;

4. Preliminarily approving the terms of the Settlement as set forth in the Stipulation of Settlement;

5. Approving the forms of notice and the methods of providing notice of the Settlement to the Class as set forth in the Stipulation of Settlement and the exhibits thereto and directing that said forms of notice be provided to Class Members in that manner;

6. Scheduling a Final Approval Hearing at which the request for final approval of the proposed Settlement, Plaintiffs' Counsel's application for an award of attorneys' fees and expenses, and the entry of the Final Judgment and Order will be considered.

As set forth in the Stipulation of Settlement and Exhibits in support thereof, the parties suggest the following event schedule leading to the claims submission deadline, predicated on preliminary approval by the Court on December 1, 2014:

<b>Proposed Date<sup>2</sup></b>	<b>Event</b>
February 24, 2015	Publication notice begins
February 20, 2015	Deadline for opening briefs in support of settlement
June 11, 2015	Deadline for opt-outs and objections
June 25, 2015	Deadline for reply briefs in support of settlement
July 15, 2015	Final Approval Hearing
July 29, 2015	Deadline for submitting claims

This motion is based on Stipulation of Settlement and Exhibits in support thereof and upon such other matters as may be presented at the hearing. Plaintiff is also filing concurrently herewith Plaintiff's Memorandum in Support of Joint Request for Preliminary Approval of Class Action Settlement, the Declarations of L. DeWayne Layfield and Anthony J. Orshansky, and a proposed Notice Plan and affidavit in support of the efficacy of that plan, all in support of this Motion.

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2. Pursuant to the Parties' stipulation, the actual deadlines for the events listed in this schedule will vary depending upon the date on which preliminary approval is granted (if it is granted) and the date that the Court set for the Final Approval Hearing.

**LOCAL RULE 7.1 (A)(3) CERTIFICATION**

Pursuant to Local Rule 7.1(A)(3), on October 21, 2014, counsel for Plaintiff has conferred with counsel for Defendant, who agrees with the relief requested in this Motion.

**Respectfully Submitted,**

**Dated: October 22, 2014**

*/s/ Howard W. Rubinstein*

Howard W. Rubinstein

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*Attorneys for Plaintiff Deena Klacko  
and the Proposed Class*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 22, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing generated by CM/ECF.

/s/ Howard W. Rubinstein  
Howard W. Rubinstein

**SERVICE LIST**

*Klacko v Diamond Foods, Inc.*

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United States District Court, Southern District of Florida

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