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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br>v.<br><br>STEVEN NEIL,<br><br>Defendant. | Case No.<br><br>COMPLAINT |

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

**SUMMARY OF THE ACTION**

1. This case involves financial reporting fraud and earnings management at Diamond Foods, Inc. ("Diamond"), a San Francisco-based snack food company. One of Diamond's businesses involved buying walnuts from its growers and selling those walnuts to retailers. In order to boost Diamond's reported earnings and to beat Wall Street earnings estimates, Diamond's Chief Financial Officer Steven Neil fraudulently manipulated and delayed the appropriate recording of the costs paid to walnut growers. In emails, Neil referred to these costs as a "lever" to manage earnings in Diamond's financial statements.

2. During 2010, Neil faced pressure to meet or exceed the earnings estimates of Wall Street stock analysts. At that time, Neil and Diamond encountered sharp increases in walnut prices. Diamond's largest commodity cost was walnuts. Diamond would need to pay growers higher prices for their walnuts in order to maintain the company's longstanding relationships

with its growers. Yet Diamond could not increase the amounts paid to growers for walnuts without decreasing Diamond's net income as reported to the investing public.

3. Faced with these two competing demands, Neil orchestrated a scheme to have it both ways. In August of 2010, Diamond made a final installment payment to growers for the 2009 walnut crop. The final installment brought the total payments to growers close to market prices. But instead of recording the final installment accurately as a cost of acquiring walnuts for fiscal year 2010, Neil instructed his finance and accounting team to treat a portion of this amount – referred to as the "continuity" payment – as an advance payment for a future, as yet undelivered, walnut crop. According to Neil, the portion labeled the "continuity" payment would "close the gap" between the recorded walnut cost and the market prices, but would not be recorded as a cost of walnuts acquired during fiscal year 2010. By delaying the recognition of a portion of the cost of walnuts acquired into later fiscal periods, Neil materially underreported the cost of acquiring walnuts and overstated earnings by $10.5 million in fiscal year 2010.

4. Neil devised a similar, but even larger, payment (which Diamond personnel said would "make up" for a below market price) when Diamond growers were paid for walnuts delivered the following fiscal year. Neil treated this payment, labeled a "momentum" payment, as an advance for future crops and did not recognize the payment as a cost of the walnuts Diamond acquired in that fiscal year. By again delaying the recognition of a portion of the cost of walnuts acquired into later fiscal periods, Neil materially underreported the cost of acquiring walnuts and overstated earnings by $23.6 million in fiscal year 2011.

5. Neil's scheme to manipulate and delay the recognition of the costs of acquiring walnuts led Diamond to materially misstate its financial results in multiple SEC Forms 10-Q, 10-K, and 8-K from at least February 2010 and ending in September 2011. During this timeframe, Diamond reported artificially inflated earnings per share ("EPS") that beat Wall Street earnings estimates on a quarterly and yearly basis. Diamond's stock price reached a high of over $90 per share after filing the last of its materially false financial statements in September 2011. Neil also personally benefitted from the fraud by receiving cash bonuses and other compensation based on Diamond's reported EPS in fiscal years 2010 and 2011.

6. Following media reports questioning the “momentum” payment, Diamond conducted an internal investigation and concluded that its financial statements for fiscal years 2010 and 2011 incorrectly excluded the “continuity” payment and “momentum” payment as costs of acquiring walnuts in those periods, respectively. Diamond’s stock price dropped from approximately $90 per share in September 2011 to $17 per share in November 2012 after the filing of its restatement. The stock drop represented a market capitalization loss of approximately $1.7 billion.

**JURISDICTION AND VENUE**

7. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b), 77t(d)] and Sections 21(d) and 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e)].

8. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

9. Defendant, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

10. Venue in the Northern District of California is proper pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because acts and transactions constituting the violations alleged in this Complaint occurred within the district, because the relevant offer or sale of securities took place in the district, and because the Defendant resides or transacts business in the district.

**INTRADISTRICT ASSIGNMENT**

11. Under Civil Local Rule 3-2, this civil action should be assigned to the San Francisco or Oakland Divisions, because a substantial part of the events or omissions which give rise to the claim occurred in the City and County of San Francisco.

**DEFENDANT**

12. Steven Neil, age 61, is a resident of Los Altos Hills, California. Neil joined Diamond’s board of directors in 2005 and was named its Chief Financial Officer (“CFO”) in

2008. Neil served as Diamond's CFO until he was placed on administrative leave by the board of directors in February 2012. Neil is a licensed certified public accountant. In sworn testimony during the Commission investigation Neil invoked his Fifth Amendment right against self-incrimination and refused to answer questions regarding the allegations in this complaint.

## RELEVANT ENTITIES

13. **Diamond Foods, Inc.** ("Diamond") is a Delaware corporation with its principal place of business in San Francisco, California. During the time period of the conduct alleged in this complaint, Diamond's stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on NASDAQ.

## FACTUAL ALLEGATIONS

### A. Background

14. Diamond was originally formed in 1912 as a walnut grower cooperative. As a cooperative, Diamond's principal business involved buying walnuts from California-based growers, processing the walnuts, and reselling the walnuts through various channels to retailers.

15. Diamond converted from a walnut grower cooperative into a public corporation in 2005, issuing stock priced at $17 per share through an initial public offering. Following this initial stock offering, Diamond expanded into other snack food businesses through a series of acquisitions, including the acquisition of businesses involved in the sale of microwave popcorn and potato chips. By 2010, Diamond was becoming a large snack food conglomerate.

16. In 2010 and 2011, Diamond's walnut business, while no longer the sole focus, still represented a significant part of its revenue, and the cost of acquiring walnuts was its largest commodity cost. Any recorded increase in the walnut price Diamond paid to growers (also referred to as the "walnut cost" or "final crop price") would decrease the company's reported earnings, and would decrease the company's reported earnings per share ("EPS"). At the same time, Diamond needed to pay a competitive walnut price in order to maintain longstanding relationships with its growers and to avoid losing walnut supply to competitors.

17. During the time of the conduct alleged in this complaint, Diamond reported EPS that consistently beat the forecasted expectations of Wall Street stock analysts. In this

timeframe, Diamond's stock price increased from approximately $39 per share at the time of the filing of SEC Form 10-Q for the second quarter of 2010 (filed on February 25, 2010) to approximately $90 per share after the filing of SEC Form 10-K for the 2011 fiscal year (filed on September 15, 2011). Diamond registered two stock offerings during the relevant time period, including (1) a successful $181 million offering of Diamond stock priced at $37 per share in March 2010; and (2) a June 20, 2011 registration statement for an issuance of stock pursuant to an agreement to acquire a potato chip business unit from a major snack food company.

**B. Determining and Accounting for the Walnut Cost**

18. Diamond was required to prepare financial statements in conformity with Generally Accepted Accounting Principles ("GAAP"), and disclosed in its SEC Forms 10-K annual reports filed with the Commission that its financial statements were prepared in conformity with GAAP. In its SEC Forms 10-K for fiscal years ended July 31, 2010 and July 31, 2011, Diamond disclosed the following accounting policy regarding the accounting for walnut crop payments:

> We have entered into long-term Walnut Purchase Agreements with growers, under which they deliver their entire walnut crop to us during the Fall harvest season and we determine the minimum price for this inventory by March 31, or later, of the following calendar 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.

19. GAAP required Diamond to record walnut inventory and any payables to growers at acquisition cost in the period in which the walnuts were purchased, and to recognize the cost of selling the walnut inventory in the period in which the walnuts were sold. Pursuant to GAAP, Diamond was required to record all payments used to acquire the 2009 crop in fiscal year 2010 (when the crop was purchased and mostly sold), and all payments used to acquire the 2010 crop in fiscal year 2011 (same). The "walnut cost" – i.e., the term that Diamond used to refer to the final price it paid growers for a given crop – had financial effects on several line items on Diamond's financial statements, including value of inventory, payables to growers, and cost of goods sold.

20. During the relevant period, Diamond's practice was to accept delivery of a walnut crop in the fall after the harvest, and then to determine the final walnut price it would pay to growers by fiscal year-end (i.e., July 31 of the next calendar year following the harvest). Because walnuts were being acquired and sold throughout the year and before the determination of the final crop price, Diamond recorded the costs of walnuts in its quarterly financial statements using a walnut cost estimate. According to the disclosed accounting policy, the walnut cost estimate was supposed to reflect the best estimate of the final walnut cost Diamond intended to pay its growers.

21. Diamond's contracts with its growers discussed the determination of the final crop price: "The Final Price will be determined in good faith, taking into account market conditions, quality, variety, and other relevant factors." Similar guidance appeared in Diamond's internal accounting controls, other accounting policies in effect during the relevant time period, and publicly-disclosed accounting policies contained in Diamond's SEC Forms 10-K and 10-Q. Pursuant to the contracts, Diamond issued a series of installment payments to growers, with the final payment accrued at fiscal year-end. These installment payments totaled the final crop price paid for the walnut crop acquired during that fiscal year.

22. At all relevant times, Neil approved the walnut cost and determined the accounting for walnut payments in Diamond's financial statements. Neil supervised both Diamond's finance and accounting team ("Finance Team"), and Diamond's team managing relationships with growers ("Grower Relations Team"). Neil also directly interacted with Diamond's independent outside auditors. Each quarter during the relevant period, Neil prepared a memorandum to the outside auditors justifying the quarterly walnut cost accrual estimate. At fiscal year-end, Neil also prepared a memorandum to the outside auditors justifying the final walnut cost. The auditors relied on Neil's memoranda in issuing their audit opinions.

**C. Understated Walnut Cost in Diamond's 2010 Financial Statements**

23. At Neil's direction, Diamond fraudulently understated the recorded walnut cost in its financial statements in fiscal year 2010 by (1) manipulating the walnut cost accrual estimates in certain quarters to hit EPS targets, and (2) improperly excluding a portion of the final walnut

cost for the 2009 crop from fiscal year-end financial statements. As part of his scheme, Neil also misled Diamond's independent auditors during their review of the recorded walnut cost for the 2009 crop.

1. Manipulation of the Walnut Cost for the 2009 Crop to Meet EPS Targets

24. Neil caused Diamond to understate its recorded walnut cost, and thereby overstated earnings and EPS, in its interim financial statements prepared for the second quarter of 2010 (the quarter ending January 31, 2010) and subsequent quarters.

25. After the first quarter, ending October 31, 2009, Diamond had received the 2009 walnut crop from growers. At this time, Neil caused Diamond to record an average walnut cost of 82 cents per pound in Diamond's financial statements based on the estimated walnut price of 82 cents.

26. In February 2010, Neil instructed members of his Finance Team to adjust the walnut cost in order to meet an EPS target for the second quarter. Members of the Finance Team performed calculations as instructed by Neil, and provided Neil with a walnut cost estimate that would result in reported EPS that was just higher than the consensus analyst estimates of $0.47 per share for the quarter. Based on these calculations, Neil reduced the existing walnut cost estimate of 82 cents per pound by 10 cents per pound, to 72 cents per pound. Diamond's quarterly financial statements for the second quarter of 2010, ended January 31, 2010, as well as other books and records, accounted for the walnut cost at the adjusted estimate of 72 cents per pound.

27. On or about February 25, 2010, Diamond filed an SEC Form 10-Q with the Commission that included the second quarter 2010 financial statements. The same day, Diamond filed an SEC Form 8-K reporting EPS of $0.48, beating consensus analyst estimates. A week later, on March 1, 2010, Diamond filed an SEC Form 424B5 prospectus related to a proposed stock sale to pay a portion of the acquisition costs associated with Diamond's recent acquisition of a snack food company, and the prospectus incorporated the Form 10-Q for second quarter of 2010. This offering closed on March 8, 2010, and Diamond raised approximately $181 million.

28. On March 10, 2010, Diamond filed an SEC Form 8-K, which attached an investor presentation touting Diamond's EPS record of "Twelve Consecutive Quarters of Outperformance" from Q3 2007 through Q2 2010.

2. Extraordinary "Continuity" Payment Excluded from the Walnut Cost for the 2009 Walnut Crop

29. In March 2010, Neil and others at Diamond began determining the final crop price and final payment for the 2009 crop (which related to fiscal year 2010, ended July 31, 2010). At the time, Diamond's practice was to issue an individualized statement to each grower projecting a "final minimum price," a number meant to communicate the guaranteed lowest price that the grower would receive for the 2009 crop. The estimated "final minimum price" was on average 71 cents per pound (further reduced from the Q2 2010 estimate of 72 cents per pound).

30. Neil was aware that growers were dissatisfied with Diamond's estimated "final minimum price" of 71 cents per pound, and that other walnut handlers who purchased walnuts from growers for resale were paying approximately 87 cents per pound. Neil was informed by his Grower Relations Team that walnut growers expected Diamond to pay walnut prices that were within five to seven cents per pound of what other handlers were paying for the 2009 crop. Neil instructed the Grower Relations Team to tell growers that Diamond would "close the gap" with other handlers' prices through its final payment.

31. From March 2010 through July 2010, Neil and others at Diamond discussed an extraordinary payment to walnut growers that they termed a "continuity" payment. During these discussions, Neil proposed excluding the "continuity" payment from costs recorded in Diamond's financial statements for fiscal year 2010. However, Neil knew, or was reckless in not knowing, that the payment should be treated as a cost of acquiring the 2009 crop and thus recognized in fiscal year 2010. Ultimately, Neil caused Diamond to record the final walnut cost for the 2009 crop using an average cost of 71 cents per pound, and excluded the "continuity" payment (equal to $20 million, or approximately 10 cents per pound) from the recorded walnut cost at the end of fiscal year 2010 (July 31, 2010) in its financial statements for fiscal year 2010, and its books and records.

32. In justifying the unusual accounting treatment for the "continuity" payment, Neil instructed his Finance Team that the payment was an "advance" for the crop to be delivered in the fall of 2010. Neil knew, however, that some growers believed that the payment was part of the payment for the already-delivered 2009 crop. During visits to certain growers in July 2010, Neil and others at Diamond assured the growers that they would receive a competitive price for the 2009 crop and discussed specific final prices that were higher than Diamond's communicated "final minimum price "of 71 cents per pound. Neil also knew that the "continuity" payment, when added to the crop price for the 2009 crop, brought growers within competitive range of market prices.

33. In August 2010, Neil authorized the Grower Relations Team to issue the "continuity" payment together with the final grower payment in one check and accompanied by one statement. The statement sent to growers accompanying the single check was titled, "Final Payment 2009 Crop." The additional payment amount was approximately 10 cents per pound above the final minimum price of 71 cents per pound already communicated to growers, but appeared as a lump sum payment for the 2009 crop. Neil also approved and reviewed a letter to growers that accompanied the final payment and "continuity" payment. This letter did not explain the purpose of the "continuity" payment, did not separate the amount of the payment that constituted a "continuity" payment, and did not identify the payment as an advance payment for the 2010 crop.

34. Though Neil instructed his Finance Team to account for the "continuity" payment as an advance on the 2010 crop, and told Diamond's independent auditors that the payment was an advance to growers for the next year's deliveries, Neil did not instruct the Grower Relations Team to issue the payment to only those growers that were under contract or otherwise expected to deliver the 2010 crop. As a result, Diamond issued over $400,000 in "continuity" payment amounts to growers who delivered a 2009 crop but were not under contract to deliver the 2010 crop, and another $450,000 in "continuity" payments to growers who delivered a 2009 crop but did not ultimately deliver the 2010 crop.

35. Growers generally understood the "continuity" payment to be a 2009 payment.

The payment, if considered in conjunction with the previous installments and final payments, would have totaled 82 cents per pound as the final walnut cost for the 2009 crop. The 82 cents per pound would have brought Diamond closer to the walnut prices paid by other handlers for the 2009 crop (approximately 87 cents per pound) and in some cases, what Diamond had promised growers for the 2009 crop.

### 3. Misrepresentations and Omissions Regarding the Walnut Cost for the 2009 Crop and Continuity Payment to Diamond's Independent Auditors

36. Neil misled Diamond's independent auditors and omitted information known to him during the auditors' review of the financial statements for the second and third quarter of 2010, including their review of the walnut cost estimates for the 2009 crop. Beginning in at least the second quarter of 2010, Neil provided false and misleading information, including written memoranda, regarding the quarterly walnut cost accruals to the auditors. Neil also withheld information from the auditors regarding his efforts to manage the walnut cost to meet EPS targets.

37. Neil also misled Diamond's auditors by omitting information known to him and by making false statements regarding the final walnut cost for the 2009 crop and the "continuity" payment. Throughout the audit of Diamond's fiscal year-end 2010 financial statements, the auditors asked Neil for information to substantiate his decision to account for the "continuity" payment as an advance on the 2010 crop and his assertions that the "continuity" payment was unrelated to 2009 crop deliveries. In response to these inquiries, Neil made material misrepresentations and withheld material information from the auditors. Among other things, Neil omitted information known to him about the competitive prices other handlers had paid for the 2009 crop. Neil also misled Diamond's auditors regarding his conversations with growers, falsely communicating that growers had asked for an advance payment for the next crop and omitting facts about conversations in which he, or others at Diamond, assured growers a competitive price.

38. Diamond's independent auditors relied on Neil's representations regarding the walnut cost for the 2009 crop and "continuity" payment. The auditors also relied on a

management representation letter, signed by Neil, which unequivocally stated that the "continuity" payment was for the 2010 crop and did not represent a payment for 2009 deliveries. Neil knew, or was reckless in not knowing, that this letter was false and misleading at the time he signed it.

39. Diamond filed its SEC Form 10-K for the year ended July 31, 2010, on October 5, 2010. As a result of the walnut cost understatement, the Form 10-K reported EPS of $1.91, above consensus analyst expectations between $1.84 and $1.88. That same day, Diamond filed an SEC Form 8-K attaching an earnings release, which touted its 52% growth in earnings during fiscal year 2010 and raised its EPS guidance for fiscal year 2011.

**C. Understated Walnut Cost in Diamond's 2011 Financial Statements**

40. At Neil's direction, Diamond also artificially understated the recorded walnut cost, and thereby overstated earnings and EPS, in its financial statements in fiscal year 2011 by (1) continuing to manipulate the walnut cost accruals in certain quarters to hit EPS targets, and (2) improperly excluding a portion of the final walnut cost for the 2010 crop from fiscal year-end financial statements. As part of his scheme, Neil misled Diamond's independent auditors with respect to Diamond's recorded walnut cost and concealed the second extraordinary payment (termed the "momentum" payment) from the audit committee during its review of Diamond's financial statements for fiscal year 2011.

1. <u>Manipulation of Walnut Cost for the 2010 Crop to Meet EPS Targets</u>

41. During fiscal year 2011, Neil continued to manipulate costs of acquiring the 2010 walnut crop to meet EPS targets. In emails, Neil even referred to the walnut cost as a "lever" to manage earnings in Diamond's quarterly financial statements. As a result of Neil's walnut cost adjustments, Diamond reported EPS that met or exceeded consensus analyst expectations for every quarter in 2011. In addition, Diamond continued to file SEC Forms 8-K with earnings releases touting its earnings and EPS record throughout 2011.

42. Diamond's stock price was central to its proposed acquisition of a major potato chip business unit in the spring of 2011. As CFO, Neil was integral to planning the proposed acquisition. According to registration documents filed with the Commission, Diamond agreed,

pursuant to the agreement between Diamond and the potato chip unit's parent, to issue 29 million shares of its stock to the parent company. The agreement also included a payment of $850 million to the parent of the potato chip business unit, with a provision that Diamond would pay additional amounts if its stock dropped below a certain price.

### 2. Extraordinary "Momentum" Payment Excluded from Walnut Cost for the 2010 Crop

43. In the spring of 2011, Neil and others at Diamond began considering the final crop price for the 2010 crop. Neil was aware that other walnut handlers had paid other growers approximately $1.00 to $1.20 per pound for the 2010 crop. He also knew that Diamond's growers were concerned about Diamond's small first installment payments for the 2010 crop, which were an average of only 57 cents per pound. Neil assured the Grower Relations Team that Diamond was on track to pay a competitive price close to $1.00 per pound for the 2010 crop.

44. In the summer of 2011, Neil and others at Diamond began determining the final payment and final price for the 2010 crop. Neil decided to issue a final payment of approximately eight cents per pound, and another extraordinary "make-up" payment, termed the "momentum" payment, of 30 cents per pound. At fiscal year-end for 2011 (July 31, 2011), Neil caused Diamond to record the final walnut cost for the 2010 crop as 74 cents per pound and instructed his staff that the walnut cost included the prior "continuity" payment. At Neil's direction, Diamond did not record the "momentum" payment as part of the costs of acquiring the 2010 crop in FY2011 in its financial statements for fiscal year 2011 or books and records. Rather, Neil instructed the Finance Team that the "momentum" payment was an advance for the crop to be delivered in the fall of 2011.

45. Neil knew that the final price for the 2010 crop, not including the "momentum" payment, was approximately 40 cents per pound below prices being paid by other handlers for the walnut crop that year. This gap would have been unusual and unprecedented. At least some growers were told by Diamond personnel that the purpose of the "momentum" payment was to "make up" for the low final payment made only a few days earlier.

46. The "momentum" payment was issued to all growers who delivered walnuts to

Diamond for the 2010 crop approximately two days after the final payment for the 2010 crop. Neil knew that growers were not clearly told that the "momentum" payment was an advance for the 2011 crop that had not yet been delivered to Diamond. Neil reviewed and approved the grower letter accompanying the final crop payment and the "momentum" payments. This letter did not identify the "momentum" payment as an advance for the 2011 crop. The amount of the "momentum" payment for each grower was calculated using the pounds of walnuts that they had delivered for the 2010 crop.

47. Neil did not instruct the Grower Relations Team to pay only growers that were under contract or otherwise expected to deliver a 2011 crop. As a result, Diamond issued more than $3 million in "momentum" payments to growers who delivered a 2010 crop but were not under contract to deliver a 2011 crop, and another $5.8 million in "momentum" payments to growers who delivered a 2010 crop but did not ultimately deliver the 2011 crop.

3. Misrepresentations and Omissions About the Walnut Cost for the 2010 Crop and Momentum Payment to Diamond's Audit Committee and Auditors

48. Neil misled Diamond's independent auditors by either omitting information known to him, or by making false statements, throughout their review of the walnut cost for the 2010 crop. Beginning in at least the first quarter of 2011 (ending October 31, 2010), Neil provided false and misleading information, including written memoranda, regarding the quarterly walnut cost estimates and the final walnut cost to the auditors. Neil also withheld information known to him from the auditors regarding competitive data showing that prices paid by other walnut handlers for the 2010 crop were higher than Diamond's recorded walnut cost of 74 cents per pound.

49. Neil also concealed the "momentum" payment from Diamond's audit committee as the committee considered the accuracy of the financial statements for the fiscal year 2011. A few weeks after the fiscal year-end (July 31, 2011), a member of Diamond's audit committee asked Neil whether Diamond was planning an advance payment. Despite having arranged for the "momentum" payment, Neil falsely represented to the audit committee member that Diamond was not planning another advance payment that year.

50. Diamond filed its SEC Form 10-K for the year ended July 31, 2011 on September 15, 2011. As a result of the walnut cost understatement, the Form 10-K reported EPS of $2.61, above consensus analyst expectations of $2.49. That same day, Diamond filed an SEC Form 8-K attaching an earnings release, which touted its 37% increase in EPS during fiscal year 2011.

**D. Diamond Restates its Financial Statements to Correct Walnut Costs**

51. On November 1, 2011, Diamond filed with the Commission an SEC Form 8-K, disclosing that the Audit Committee of the Board of Directors would be initiating an internal investigation with respect to walnut crop payments.

52. On February 8, 2012, Diamond filed with the Commission an SEC Form 8-K, disclosing that the Audit Committee of the Board of Directors determined that the company's financial statements for fiscal years 2010 and 2011 did not correctly account for certain extraordinary walnut payments and would need to be restated. The Form 8-K announced that the company's CEO and Neil had been placed on administrative leave.

53. On November 14, 2012, Diamond filed with the Commission an SEC Form 10-K/A, which included restated financial results for fiscal years 2010 and 2011. The restated financial results reported the extraordinary walnut payments as a prior period walnut cost, thereby increasing cost of goods sold, value of inventory, and payables to growers in fiscal years 2010 and 2011. By improperly excluding the true cost paid related to walnut acquisitions, Diamond's original financial statements materially misstated its financial results in multiple SEC Forms 10-Q, 10-K, 8-K, and S-4 (collectively "false filings") starting in at least February 2010 and ending in September 2011, as listed below:

a. SEC Form 10-Q for the second quarter of fiscal year 2010 (filed 2/25/10);

b. SEC Form 8-K and attachments thereto (2/25/10);

c. SEC Form 424B5 prospectus (filed 3/1/10);

d. SEC Form 10-Q for the third quarter of fiscal year 2010 (filed 5/27/10);

e. SEC Form 8-K and attachments thereto (filed 5/27/10);

f. SEC Form 10-K for fiscal year 2010 (filed 10/5/10);

g. SEC Form 8-K and attachments thereto (filed 10/5/10);

h. SEC Form 10-Q for the first quarter of fiscal year 2011 (filed 12/8/10);

i. SEC Form 8-K and attachments thereto (filed 12/8/10);

j. SEC Form 10-Q for second quarter of fiscal year 2011 (filed 3/8/11);

k. SEC Form 8-K and attachments thereto (filed 3/8/11);

l. SEC Form 10-Q for the third quarter of fiscal year 2011 (filed 6/2/11);

m. SEC Form 8-K and attachments thereto (filed 6/2/11);

n. SEC Form S-4 (filed 6/20/11), with amendments filed on 8/4/11 and 9/16/11;

o. SEC Form 10-K for fiscal year 2011 (filed 9/15/11); and

p. SEC Form 8-K and attachments thereto (filed 9/15/11).

Diamond's stock price dropped to $17 per share after the filing of the restatement in November 2012 from its high of approximately $90 per share after the filing of its SEC Form 10-K for fiscal year 2011 in September 2011.

54. Defendant Neil signed each of the periodic reports filed with the Commission, and certified the financial results incorporated in its SEC Forms 10-Q for the second quarter of 2010 through the fourth quarter of 2011, and its SEC Forms 10-K for fiscal years 2010 and 2011 pursuant to Exchange Act Rule 13a-14. At the time that he signed or certified these filings, Neil knew, or was reckless in not knowing, that these filings contained materially false and misleading financial information as a result of the understated walnut cost.

55. From at least February 25, 2010 through September 15, 2011, Neil knowingly, or recklessly, caused Diamond to understate the reported walnut cost in its financial statements for the purpose of improving EPS. First, Neil manipulated the walnut cost to meet EPS targets. Second, Neil improperly excluded certain "extraordinary" payments from the walnut cost and recognized the payments in future fiscal periods. As a result of Neil's understatement of the walnut cost, Diamond met or exceeded analyst expectations on EPS every quarter during the relevant timeframe.

56. The financial statements prepared for each quarter and each year-end during the relevant time frame materially understated the value of inventory, payables to growers, and cost

of goods sold, and materially overstated earnings. The accurate reporting of inventory, payables, cost of goods sold, and earnings, including EPS, would have been material to a reasonable investor. Diamond's reported EPS for the fiscal year 2010 was overstated by more than 65 percent, and Diamond's reported EPS for the fiscal year 2011 was overstated by more than 89 percent.

57. Defendant Neil employed devices, scheme, and artifices to defraud described above with scienter, knowingly or recklessly engaging in the activities that led to misstated financial statements in the false filings. The actions described above did not serve any legitimate business purpose, and Neil did not act in good faith.

58. Defendant Neil obtained money or property by artificially inflating Diamond's reported EPS and earnings. Among other things, Neil received $1.18 million in bonuses, of which $687,043 was tied to meeting EPS goals. Neil also received Diamond equity grants, including restricted stock and options. Neil has not returned any compensation to Diamond.

59. As CFO, Defendant Neil was responsible for devising Diamond's controls and policies to ensure the accuracy of its books and records, including policies regarding the accounting for walnut payments, and the manner in which the walnut cost was incorporated into the financial statements. Neil circumvented Diamond's existing controls and policies, which required the company to determine the final crop price in "good faith, taking into account market conditions, crop size, quality, nut varieties, among other relevant factors." Neil also failed to implement controls and policies that would ensure a documented and substantiated process for meeting this standard. As such, Neil exploited Diamond's weak controls and policies by manipulating the walnut cost to meet EPS targets and improperly recognizing walnut payments in incorrect fiscal periods. Neil falsified Diamond's books and records by, among other things, directing the incorrect recording of costs of acquiring walnuts in Diamond's general ledger, and creating false memoranda justifying these recorded costs.

60. By the acts and omissions described above, Defendant Neil knowingly circumvented a system of internal accounting controls, failed to implement a system of internal accounting controls, and falsified books and records of Diamond.

## FIRST CLAIM FOR RELIEF

**Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5**

61. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

62. By engaging in the conduct described above, Neil, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or the mails, with scienter:

(a) Employed devices, schemes, or artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) Engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

63. By reason of the foregoing, Neil has violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

## SECOND CLAIM FOR RELIEF

**Violations of Sections 17(a)(1), (2), and (3) of the Securities Act**

64. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

65. By engaging in the conduct described above, Neil directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails,

(1) with scienter, employed devices, schemes, or artifices to defraud;

(2) obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(3) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers.

66. By reason of the foregoing, Neil violated and, unless restrained and enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**<u>THIRD CLAIM FOR RELIEF</u>**

**Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13**

67. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

68. Based on the conduct alleged above, Diamond violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13], which obligate issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to file with the Commission periodic reports, including annual reports, with information that is accurate and not misleading.

69. By engaging in the acts and conduct alleged above, Defendant Neil knowingly provided substantial assistance to Diamond's filing of misleading reports with the Commission.

70. By reason of the foregoing, Defendant Neil aided and abetted violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13], and unless restrained and enjoined, will continue to aid and abet such violations.

**<u>FOURTH CLAIM FOR RELIEF</u>**

**Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act**

71. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

72. Based on the conduct alleged above, Diamond violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

73. By engaging in the acts and conduct alleged above, Defendant Neil knowingly provided substantial assistance to Diamond's failure to make and keep books, records, and

accounts which, in reasonable detail, accurately and fairly reflect its transactions and dispositions of its assets.

74. By reason of the foregoing, Defendant Neil aided and abetted violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], and unless restrained and enjoined, will continue to aid and abet such violations.

**FIFTH CLAIM FOR RELIEF**

**Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act**

75. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

76. Based on the conduct alleged above, Diamond violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to devise and maintain a sufficient system of internal accounting controls.

77. By engaging in the acts and conduct alleged above, Defendant Neil knowingly provided substantial assistance to Diamond's failure to devise and maintain a sufficient system of internal accounting controls.

78. By reason of the foregoing, Defendant Neil aided and abetted violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], and unless restrained and enjoined, will continue to aid and abet such violations.

**SIXTH CLAIM FOR RELIEF**

**Violations of Section 13(b)(5) of the Exchange Act**

79. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

80. By the conduct alleged above, Defendant Neil violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] which prohibits anyone from knowingly circumventing a system of internal accounting controls, knowingly failing to implement a system of internal accounting controls, or knowingly falsifying required books, records, and accounts.

81. Defendant Neil violated and, unless restrained and enjoined, will continue to violate, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

**SEVENTH CLAIM FOR RELIEF**

**Violations of Exchange Act Rule 13b2-1**

82. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

83. By engaging in the conduct described above, Defendant Neil falsified or caused to be falsified Diamond's required books, records, and accounts, in violation of Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

84. Defendant Neil violated and, unless restrained and enjoined, will continue to violate Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

**EIGHTH CLAIM FOR RELIEF**

**Violations of Exchange Act Rule 13b2-2**

85. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

86. By engaging in the acts and conduct alleged above, Defendant Neil, as an officer, directly or indirectly, made or caused to be made a materially false or misleading statement or omitted to state or caused another person to omit to state, material facts necessary in order to make a statement made, in light of the circumstances under which such statements was made, not misleading to an accountant in connection with an audit or examination of the financial statements of an issuer required to be made, or the preparation or filing of reports required to be filed, by the issuer with the Commission.

87. By reason of the foregoing, Defendant Neil violated and, unless restrained and enjoined, will continue to violate Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

**NINTH CLAIM FOR RELIEF**

**Violations of Exchange Act Rule 13a-14**

88. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

89. Defendant Neil signed certifications, that were required to be made pursuant to Rule 13a-14 of the Exchange Act and that were included in Diamond's filings, which were false or misleading when made.

90. By reason of the foregoing, Defendant Neil violated, and unless restrained and enjoined will continue to violate, Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

**TENTH CLAIM FOR RELIEF**

**Violations of Section 304 of the Sarbanes-Oxley Act**

91. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

92. Diamond, by engaging in the aforementioned conduct, filed Forms 10-Q for Q2 2010 through Q3 2011 and Forms 10-K for fiscal years 2010 and 2011 that were in material noncompliance with its financial reporting requirements under the federal securities laws.

93. Diamond's material noncompliance with its financial reporting requirements under the securities laws was the result of misconduct in understating the cost of goods sold, as well as value of inventory and payables to growers. By understating cost of goods sold, Diamond overstated earnings and EPS. Due to Diamond's material noncompliance with its financial reporting requirements and its misconduct, Diamond was required to file accounting restatements for fiscal years 2010 and 2011.

94. The Commission has not exempted Defendant Neil pursuant to Section 304(b) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243(b)] from its application under Section 304(a) [15 U.S.C. § 7243(a)]. Section 304(a) requires that Neil, as Diamond's CFO during the misconduct alleged above, reimburse Diamond for any bonus or other incentive-based compensation received during the statutory time periods.

95. Defendant Neil has failed to reimburse Diamond for compensation he received or obtained during the statutory time periods established by Section 304 of the Sarbanes-Oxley Act.

96. By engaging in the conduct described above, Neil violated, and unless ordered to comply, will continue to violate Section 304(a) of the Act, 15 U.S.C. § 7243(a).

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

**I.**

Permanently enjoin Defendant Neil from directly or indirectly violating the applicable provisions and rules of the Federal securities laws as alleged and asserted above.

**II.**

Pursuant to Section 20(e) of the Securities Act [15 U.S.C. §§ 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], prohibit Defendant Neil from serving as an officer or director of any entity having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

**III.**

Order Defendant Neil to disgorge all wrongfully obtained benefits, including prejudgment interest.

**IV.**

Order Defendant Neil to reimburse Diamond for all compensation as described by Section 304 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243] received or obtained during the relevant statutory time periods established by Section 304 of the Sarbanes-Oxley.

**V.**

Order Defendant Neil to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

**VI.**

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VII.**

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: January 9, 2014

Respectfully submitted,

/s/ Jennifer J. Lee
JENNIFER J. LEE
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION