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Diamond Foods Investors Certified In \$2.3B Pringles Suit

By David McAfee

Law360, Los Angeles (May 06, 2013, 6:10 PM ET) -- A California federal judge on Monday certified a class of Diamond Foods Inc. investors who say the snack maker duped them into buying its stocks before it flubbed a \$2.3 billion deal to purchase Procter & Gamble Co.'s Pringles brand, sending share prices into a nosedive.

Last week, lead plaintiff Mississippi Public Employees' Retirement System urged U.S. District Court Judge William Alsup to certify a class of shareholders who had invested in Diamond Foods' stock between October 2010 and February 2012 and lost money when the stock went south in 2011.

Judge Alsup on Monday certified the class, which claims violations of the Securities Exchange Act and alleges false and misleading statements relating to payments by walnut growers. The judge rejected Diamond's contentions that MSPERS is not typical of the class nor an adequate representative.

"Plaintiff's allegations, viewed against the backdrop of Diamond's share price over the class period, indicate that, had the truth been known, Diamond shares would have traded in the \$30 range rather than the range of \$50 to \$80," Judge Alsup wrote in the order. "Based on the current record, plaintiff may well be able to establish that this differential was, in whole or in large part, attributable to price inflation due to the alleged misleading statements."

In the putative class action filed in 2011, investors claim Diamond puffed up its earnings by improperly accounting for at least \$50 million in payments to walnut farmers that were designed to artificially lower the company's costs for fiscal 2011. When those payments came to light in early November, the company was forced to delay the closing of its \$2.3 billion deal with The Procter & Gamble Co. for the Pringles brand.

The payments and delay also sent Diamond's stock spiraling down, from \$64.12 one day to \$39.09 a few days later, the complaint said.

Among Diamond's stable of products are several brands of nuts. Walnut growers deliver their crop to the company in the fall, and it pays them in the following year after determining the appropriate price, according to court documents. Sometimes this can occur as late as the end of July, when Diamond's fiscal year draws to a close, the suit says.

In September 2011, Diamond allegedly sent walnut growers a so-called momentum payment just weeks after making a regular payment for the fall 2010 crop, the complaint alleges.

Although the company says the payments were meant to help tide over farmers before they received their payments for the 2011 crop, outside analysts have said the payments were made to lower Diamond's reported costs for 2010, according to the complaint.

Judge Alsup on Monday granted certification for the class, which includes purchasers of Diamond's securities between Oct. 5, 2010, and Feb. 8, 2012, who suffered damages as a result. The class excludes short sales of Diamond securities and subsequent purchases of Diamond securities to cover short sales, according to the order.

Representatives for the parties didn't immediately return requests for comment Monday.

Diamond Foods Inc. is represented by Dean S. Kristy, Susan S. Muck, Jennifer Bretan and Alexis I. Caloza of Fenwick & West LLP.

Mississippi PERS is represented by John F. Harnes, Gregory E. Keller, Meryl W. Roper and Ze'eva Kushner Banks of Chitwood Harley Harnes LLP and by Richard M. Heimann and Joy A. Kruse of Loeff Cabraser Heimann & Bernstein LLP.

The case is In re: Diamond Foods Securities Litigation, case number 3:11-cv-05386, in the U.S. District Court for the Northern District of California.

--Additional reporting by Beth Winegarner and Stewart Bishop. Editing by Eydie Cubarrubia.
