



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE DEL MONTE FOODS COMPANY  
SHAREHOLDER LITIGATION

Consolidated C.A. No. 6027-VCL

**ORDER AND FINAL JUDGMENT**

On this 1<sup>st</sup> day of December, 2011, a hearing having been held before this Court to determine whether the terms and conditions of the Stipulation and Agreement of Compromise and Settlement, dated October 5, 2011 (the "Stipulation"), which is incorporated herein by reference,<sup>1</sup> and the terms and conditions of the settlement proposed in the Stipulation (the "Settlement") are fair, reasonable and adequate for the settlement of all claims asserted herein; and whether an Order and Final Judgment should be entered in the above-captioned consolidated class action (the "Action"); and the Court having considered all matters submitted to it at the hearing and otherwise;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The mailing of the Notice of Pendency and Proposed Settlement of Class Action (the "Notice") pursuant to and in the manner prescribed in the Scheduling Order entered on October 6, 2011 (the "Scheduling Order"), which was mailed by first class mail on October 20, 2011, combined with the publication of the Summary Notice of Pendency and Proposed Settlement of Class Action (the "Summary Notice") pursuant to and in the manner prescribed in the Scheduling Order, which was published on October 20, 2011, is

<sup>1</sup> Capitalized terms (other than proper nouns) that are not defined herein shall have the meanings set forth in the Stipulation.

hereby determined to be the best notice practicable under the circumstances and in full compliance with Court of Chancery Rule 23, the requirements of due process, and applicable law. It is further determined that all Class Members are bound by the Order and Final Judgment herein.

2. The Court finds that the Action is a proper class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and (b)(2) and hereby certifies a non-opt-out Settlement Class consisting of:

Any and all Del Monte stockholders who were record holders or beneficial owners of Del Monte common stock at any time between and including November 25, 2010 and March 8, 2011 (regardless of the date of purchase of Del Monte stock), and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, but excluding Defendants; the Immediate Family members of the Director Defendants; the parents, subsidiaries and affiliates of the Sponsors, Barclays, and Del Monte, and each of their current or former directors, executive officers, partners and members; any person, firm, trust, corporation or other entity in which any Defendant has, or had during the Settlement Class Period, a controlling interest; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any such excluded party.

3. Specifically, the Court finds that the Settlement Class satisfies the numerosity requirement of Rule 23(a)(1). As of January 10, 2011, there were 199,372,722 shares of common stock ("Shares") of Del Monte Foods Company ("Del Monte") issued and outstanding held by at least \_\_\_ holders of record and many more beneficial owners. There are common issues of fact and law in the Action sufficient to satisfy Rule 23(a)(2), including whether the disclosures made by Del Monte in connection with the Merger (as defined herein) were adequate, whether the Director Defendants (as defined in the Stipulation) breached their fiduciary duties to Class Members (as defined in the Stipulation), whether the Sponsors (as defined in the Stipulation) and Barclays (as defined in the Stipulation) aided and abetted these

breaches, and whether the lead plaintiff in this Action (“Lead Plaintiff”) and Class Members were injured as a consequence of Defendants’ actions. The claims of the Lead Plaintiff in the Action are typical of the claims of absent members of the Settlement Class in that they all arise from the same allegedly wrongful course of conduct and are based on the same legal theories, satisfying Rule 23(a)(3). Lead Plaintiff and Co-Lead Counsel (as defined in the Stipulation) are adequate representatives of the Settlement Class, satisfying Rule 23(a)(4). The prosecution of separate actions by individual members of the Settlement Class would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for Defendants, and, as a practical matter, the disposition of this Action will influence the disposition of any pending or future identical cases brought by other members of the Settlement Class, satisfying Rule 23(b)(1); and there were allegations that Defendants acted or refused to act on grounds generally applicable to the Class, satisfying Rule 23(b)(2).

4. The Settlement of this Action as provided for in the Stipulation is approved as fair, reasonable and adequate, and in the best interests of Lead Plaintiff and the Settlement Class.

5. The Parties (as defined in the Stipulation) are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Order and Final Judgment.

6. “Merger” means the transaction announced on November 25, 2010 whereby the Sponsors agreed to acquire Del Monte and all agreements related to that transaction, including, without limitation, the Merger Agreement, any agreement referred to in the Merger Agreement, and all agreements related to the sales process that preceded the transaction, including all confidentiality and other agreements entered into between the Sponsors, Barclays, Del Monte or any of their respective affiliates.

7. "Released Defendants' Claims" means any Claims that have been or could have been asserted in the Action, or in any court, tribunal, forum or proceeding by Defendants or any of them or their respective successors and assigns against any of the Released Plaintiff Parties, which arise out of or relate in any way to the institution, prosecution, settlement or dismissal of the Action; provided, however, that the Released Defendants' Claims shall not include claims to enforce the Stipulation.

8. "Released Defendant Parties" means (i) any and all of the Defendants, each Director Defendant's Immediate Family members, and each Defendant's past or present, direct or indirect, affiliates, associates, members, partners, partnerships, investment funds, subsidiaries, parents, predecessors, and successors (collectively "Affiliates"); (ii) all associates, members, partners, officers, directors, employees, agents, advisors, financial or investment advisors, Financing Sources, and attorneys (including Defendants' Counsel) of each Defendant and their respective Affiliates; (iii) any and all persons, firms, trusts, corporations, officers, directors or other individuals or entities in which any of the Defendants or their respective Affiliates has a financial interest; and (iv) the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any of the foregoing.

9. "Released Plaintiffs' Claims" means any and all Claims which are based upon, arise out of, result from, relate to, or involve or previously were based upon, arose out of, resulted from, related to or involved, directly or indirectly, any of the actual, alleged or attempted actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that (i) were alleged, asserted, set forth, or claimed in the Action or the

Complaint or Amended Complaint against the Released Defendant Parties; (ii) are related to the subject matter of the claims that were alleged, asserted, set forth, or claimed in the Action or the Complaint or Amended Complaint against the Released Defendant Parties; or (iii) could have been alleged, asserted, set forth or claimed in the Action, in the Complaint, in the Amended Complaint or in any other action, court (whether state or federal), tribunal, forum or proceeding by Lead Plaintiff or any or all of the other Class Members, including, but not limited to, claims under any and all federal or state securities laws or federal or state antitrust laws (including those within the exclusive jurisdiction of the federal courts) and which arise out of or relate to the Class Members' Del Monte stockholdings or the Class Members' status as Del Monte stockholders during the Settlement Class Period, including, but not limited to, any and all Claims which are based upon, arise out of, result from, relate in any way to, or involve, directly or indirectly, (a) the Merger or any element, term, condition or circumstance of the Merger or the sale process leading up to the Merger, (b) any actions, deliberations, negotiations, discussions, offers, inquiries, solicitations of interest, indications of interest, bids, due diligence or any act or omission in connection with the review of strategic alternatives available to Del Monte or the Merger, including the process of deliberation or negotiation by the Sponsors, Barclays, Del Monte, the Director Defendants, and any of their respective officers, directors or advisors, (c) any act, omission, advice or services provided by Barclays or its representatives in connection with or related to the Merger, (d) the consideration received by Class Members or the financing provided in connection with the Merger, (e) the Preliminary Proxy and any amendments thereto, the Proxy and any amendments thereto, the Supplemental Proxy or any other disclosures, SEC filings, public filings, periodic reports, press releases, proxy statements or other statements issued, made available, or filed or otherwise disclosed or communicated relating, directly or

indirectly, to the Merger, (f) the March 7, 2011 vote of Del Monte stockholders approving the Merger, (g) proxy solicitation efforts in connection with the March 7, 2011 vote of the Del Monte stockholders on the Merger, (h) the First or Second Go-Shop, (i) any fiduciary obligations in connection with the Merger of the Released Defendant Parties, (j) actions or investments with respect to (including but not limited to, purchases, repurchases, sales, exercises of rights with respect to and decisions to hold) securities issued by Del Monte or its affiliates, (k) the setting of the record date for the Merger and the mailing of the Proxy, or (l) the fees, expenses or costs incurred in prosecuting, defending, or settling the Action, except to the extent of any Fee and Expense Award paid from the Settlement Fund pursuant to Section G of the Stipulation; provided, however, that the Released Plaintiffs' Claims shall not include (1) the right to enforce the Stipulation; or (2) any claims solely for statutory appraisal with respect to the Merger pursuant to Section 262 of the Delaware General Corporation Law by Del Monte shareholders who properly perfected such claims for appraisal and do not otherwise waive their appraisal rights.

10. "Released Plaintiff Parties" means Lead Plaintiff, all other Class Members, and their respective counsel (including Co-Lead Counsel).

11. "Unknown Claims" means any and all Released Plaintiffs' Claims which Lead Plaintiff or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiffs' Claims against the Released Defendant Parties, including (without limitation) Claims which if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement, and any and all Released Defendants' Claims which any Defendant or any other Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendants' Claims against the

Released Plaintiff Parties, including (without limitation) Claims which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Plaintiffs' Claims and Released Defendants' Claims, the Parties stipulate and agree that upon the Effective Date, Lead Plaintiff and Defendants shall expressly waive, and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have expressly, waived, relinquished and released any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law or foreign law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and Defendants acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Plaintiffs' Claims and the Released Defendants' Claims, but that it is the intention of Lead Plaintiff and Defendants, and by operation of law the other Class Members, to completely, fully, finally and forever extinguish any and all Released Plaintiffs' Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Lead Plaintiff and Defendants acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Plaintiffs' Claims and Released Defendants' Claims was separately bargained for and was a key element of the Settlement.

12. This Action and the Released Plaintiffs' Claims are hereby dismissed as to the Released Defendant Parties on the merits and with prejudice, and without costs.

13. Upon the Effective Date, Lead Plaintiff and all Class Members, on behalf of themselves, their legal representatives, heirs, executors, administrators, estates, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, shall thereupon fully, finally and forever, release, settle and discharge the Released Defendant Parties from and with respect to every one of the Released Plaintiffs' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any Released Plaintiffs' Claims against any of the Released Defendant Parties.

14. Upon the Effective Date, each of Defendants, on behalf of themselves and the other Released Defendant Parties and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, shall thereupon fully, finally and forever, release, settle and discharge the Released Plaintiff Parties from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

15. Neither the Stipulation, nor the fact or any terms of the Settlement, nor any communications relating thereto, is evidence, or an admission or concession by any Party or their counsel, Class Member, or any other Released Defendant Party or Released Plaintiff Party, of any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, or as to the validity or merit of any of the claims or defenses alleged or asserted in any such action or proceeding. The Stipulation shall not be



deemed a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by any Party, Class Member or other Released Defendant Party or Released Plaintiff Party, or any damages or injury to any Party, Class Member or other Released Defendant Party or Released Plaintiff Party. Neither the Stipulation, nor any of the terms and provisions of the Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, (a) shall (i) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any of the Released Defendant Parties or Released Plaintiff Parties, or of any infirmity of any defense, or of any damage to Lead Plaintiff or any other Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Parties or Released Plaintiff Parties concerning any fact or any purported liability, fault, or wrongdoing of the Released Defendant Parties or Released Plaintiff Parties or any injury or damages to any person or entity, or (b) shall otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Stipulation and/or Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or Judgment has *res judicata*, collateral estoppel or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or Judgment or to secure any insurance rights or proceeds of any of the Released Defendant Parties or Released Plaintiff Parties.

16. Co-Lead Counsel are hereby awarded attorneys' fees in the sum of \$ 22,300,000 in connection with the Action, which sum the Court finds to be fair and reasonable, and reimbursement of expenses in the amount of \$ 0.00. Such sums shall be paid pursuant to the provisions of the Stipulation. No counsel representing any Class Member in any action shall make any further or additional application for fees and expenses to the Court or any other court.

17. If the Effective Date does not occur, this Order and Final Judgment shall be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void and the Parties shall be returned, without prejudice in any way, to their respective litigation positions immediately prior to the execution of the Stipulation.

18. The binding effect of this Order and Final Judgment and the obligations of Lead Plaintiff, Class Members and Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of Co-Lead Counsel's (or any other counsel's) application for an award of attorneys' fees and expenses.

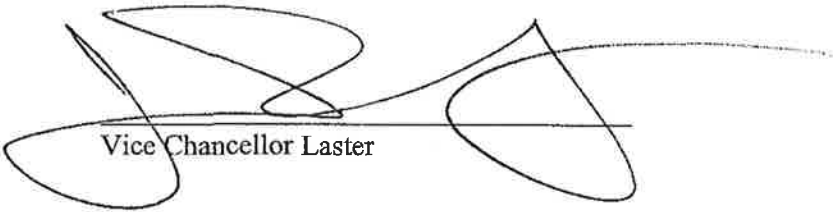
19. All Class Members shall be and are deemed bound by the Stipulation and this Order and Final Judgment. This Order and Final Judgment, including the release of all Released Plaintiffs' Claims against all Released Defendant Parties, shall have *res judicata*, collateral estoppel and all other preclusive effect in all pending and future lawsuits, arbitrations or other proceedings maintained by, or on behalf of, Lead Plaintiff or any Class Members, as well as their respective heirs, executors, administrators, estates, predecessors-in-interest, predecessors,

successors-in-interest, successors, and assigns and anyone claiming through or on behalf of any of them.

20. Without further order of this Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Stipulation.

21. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement.

Dated: December 1, 2011



Vice Chancellor Laster