IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ROBIN KAYE and SALLY KAYE, Individually and On Behalf of All Others Similarly Situated,	)	
Plaintiffs,	)	Civil Action No. __________
v.	)	
DOLE FOOD COMPANY, INC., DAVID H. MURDOCK, C. MICHAEL CARTER, ELAINE L. CHAO, ANDREW J. CONRAD, DAVID A. DELORENZO, E. ROLLAND DICKSON, and SHERRY LANSING,	)	
Defendants.	)	

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs, by their undersigned attorneys, for their Verified Class Action Complaint against defendants, allege upon knowledge with respect to themselves, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This is a class action on behalf of the public stockholders of Dole Food Company, Inc. ("Dole" or the "Company") against Dole and its Board of Directors (the "Board" or "Individual Defendants") arising from the proposed acquisition of the outstanding shares of Dole common stock $12.00 per share in cash by the Company's Chairman and Chief Executive Officer ("CEO"), David H. Murdock ("Murdock"), in breach of the fiduciary duties that the Individual Defendants owe to the Company's stockholders (the "Proposed Transaction"). Plaintiffs seek enjoinment of the Proposed

Transaction or, alternatively, rescission of the Proposed Transaction in the event defendants are able to consummate it.

PARTIES

2. Plaintiffs are, and have been at all times relevant hereto, the owners of Dole common stock.

3. Dole is a Delaware corporation and maintains its principal executive offices at One Dole Drive, Westlake Village, California 91362. The Company was founded in Hawaii in 1851. As currently constituted, Dole is a commodity produce company with annual revenue over $4 billion and two lines of business: fresh fruit and fresh vegetables. Dole's common stock trades on the New York Stock Exchange under the ticker "DOLE."

4. Defendant Murdock is the Chairman of the Board and CEO of the Company. Murdock owns approximately 35.8 million shares of Dole common stock, or about 40% of shares outstanding.

5. Defendant C. Michael Carter ("Carter") is the Company's President, Chief Operating Officer, and a director. Carter has served as a Dole director since 2013. Carter previously held various positions with the Company since first joining it in 2000, including Senior Vice President, Executive Vice President, General Counsel, and Corporate Secretary. Carter previously served on the Company's Board from 2003 until he resigned in 2009 when the Company went public. Carter served as Murdock's attorney in connection with the 2012 sale of the Hawaiian island of Lanai.

6. Defendant Elaine L. Chao ("Chao") has served on the Board since 2009.

Chao previously served as a member of the Board from 1993 to 2001.

7. Defendant Andrew J. Conrad ("Conrad") has served on the Board since 2013. Conrad serves on the board of directors of the David H. Murdock Research Institute, which was founded by Murdock, his affiliates, and related entities.

8. Defendant David A. DeLorenzo ("DeLorenzo") has served on the Board since 1985. DeLorenzo previously served as the President and CEO of Dole from June 2007 through February 2013, and has occupied various executive positions at the Company since 1986.

9. Defendant E. Rolland Dickson ("Dickson") rejoined the Board in 2013. He previously was a Dole director from 2001 to 2003. Dickson is Murdock's physician at the Mayo Clinic and is a longtime friend.

10. Defendant Sherry Lansing ("Lansing") has served on the Board since 2009.

11. The defendants identified in paragraphs 4 through 10 are collectively referred to herein as the "Individual Defendants." By reason of their positions as officers and/or directors of the Company, the Individual Defendants are in a fiduciary relationship with plaintiffs and the other public stockholders of Dole.

12. Each of the Individual Defendants at all relevant times had the power to control and direct Dole to engage in the misconduct alleged herein. The Individual Defendants' fiduciary obligations required them to act in the best interest of plaintiffs and all Dole stockholders.

13. Each of the Individual Defendants owes fiduciary duties of loyalty, good

faith, fair dealing, due care, and full and fair disclosure to plaintiffs and the other members of the Class, as defined herein. They are acting in concert with one another in violating their fiduciary duties as alleged herein, and, specifically, in connection with the Proposed Transaction.

14. The Company's public stockholders must receive the maximum value for their shares through the Proposed Transaction. Plaintiffs allege herein that the Individual Defendants, separately and together, in connection with the Proposed Transaction, violated and are continuing to violate the fiduciary duties they owe to plaintiffs and the Company's other public stockholders, due to the fact that they have engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

CLASS ACTION ALLEGATIONS

15. Plaintiffs bring this action on their own behalf and as a class action, pursuant to Court of Chancery Rule 23, on behalf of themselves and the public stockholders of Dole (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

16. This action is properly maintainable as a class action.

17. The Class is so numerous that joinder of all members is impracticable. As of April 13, 2013, there were approximately 89 million shares of Dole common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

18. Questions of law and fact are common to the Class, including, among

others:

a. Whether defendants have breached and are continuing to breach their fiduciary duties owed to plaintiffs and the Class; and

b. Whether defendants will irreparably harm plaintiffs and the other members of the Class if defendants' conduct complained of herein continues.

19. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class and plaintiffs have the same interests as the other members of the Class. Accordingly, plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

20. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

21. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

22. According to its website, Dole's worldwide team of growers, packers, processors, shippers, and employees is committed to consistently providing safe, high-

quality fresh fruit, vegetables, and food products, while protecting the environment in which its products are grown and processed.

23. In 1985, Murdock purchased a failing Hawaiian real-estate firm called Castle & Cooke Inc., which owned Dole. Castle & Cooke Inc. was later renamed Dole Food Co. Murdock took Dole private in 2003 and then took the Company public again in 2009 at $12.50 per share.

24. On September 17, 2012, Dole entered into an agreement with ITOCHU Corporation ("ITOCHU"), under which ITOCHU would purchase Dole's worldwide packaged foods and Asia fresh produce businesses for $1.685 billion in cash. According to Dole's Form 10-K filed with the SEC on March 12, 2013:

> The consummation of this transformative transaction for Dole will result in a major percentage of Dole's operations being sold to ITOCHU. The new Dole will have a smaller footprint as a commodity produce company with annual revenue in the $4.2 billion range with two lines of business: fresh fruit and fresh vegetables. We will remain an industry leader in the sourcing, distribution and marketing of bananas, pineapples and other tropical fruits, deciduous fruit from Chile and South Africa, packaged salads, fresh-packed vegetables and fresh berries. ITOCHU will have exclusive rights to the DOLE® trademark on packaged food products worldwide and on fresh produce in Asia, Australia and New Zealand, subject to certain exceptions for our existing businesses. Dole will be free, however, to engage in these businesses as long as we do not use the trademarks or brands being transferred or licensed to ITOCHU, except that subject to terms of the acquisition agreement, under the provisions of a two-year noncompetition arrangement, Dole will be restricted for those two years from growing, ripening, procuring, distributing or selling fresh bananas or pineapples in Asia, Australia and New Zealand (except through the companies being sold to ITOCHU), and processing, distributing or selling processed pineapple worldwide (except through the companies being sold to ITOCHU).

The transaction with ITOCHU closed on April 1, 2013.

25. On March 12, 2013, Dole issued a press release wherein it announced its

fourth quarter and full year financial results for the fiscal year ended December 29, 2012. For the full year, Adjusted EBITDA from continuing operations was $146 million compared to $196 million in 2011. Income from continuing operations for fiscal 2012 was $1 million, compared to $102 million, or $1.15 per share in 2011. Comparable income from continuing operations for fiscal 2012 was $44 million, or $0.49 per share, compared to $122 million, or $1.37 per share, in 2011. According to Individual Defendant Carter:

> *Fiscal 2012 results for both Dole's continuing operations and its discontinued operations were lower compared to 2011 mainly due to banana market conditions and non-recurring charges for ITOCHU transaction related costs, provisions for certain previously-disclosed legal-related matters, and charges related to Typhoon Bopha in Asia*[.] . . . The combined revenue of Dole's discontinued operations being sold represented approximately 38% of Dole's revenues, at $2.6 billion in 2012. The new Dole will continue as an international commodity produce company with a smaller footprint, retaining its entire North American fresh vegetables business as well as its fresh fruit businesses in North America, Latin America, Europe and Africa, which together generated $4.2 billion in revenues in fiscal 2012 and Adjusted EBITDA from continuing operations of $146 million.

(Emphasis added).

26. On May 2, 2013, the Company issued a press release wherein it announced its financial results for the first quarter of 2013 ended March 23, 2013. Adjusted EBITDA from continuing operations was $34 million compared to $44 million in the first quarter of 2012. Comparable Income from continuing operations was $11 million or $0.12 per share, compared with $22 million, or $0.24 per share in the first quarter of 2012. Income from continuing operations was $4 million or $0.04 per share, compared with $26 million, or $0.29 in the first quarter of 2012. Dole's first quarter

2013 Adjusted EBITDA from continuing operations reflected an additional $34 million charge to fully provide for a previously announced EU General Court antitrust decision. Individual Defendant Carter commented as follows:

> *Compared with 2012, excluding this amount, Adjusted EBITDA improved to $68 million from $44 million for Dole's continuing operations*. Dole's first quarter performance is in line with our full-year expectations for 2013, at the low end of the guidance range of $150–$170 million[.] . . . *First quarter Adjusted EBITDA from both of our remaining lines of business exceeded last year. Earnings grew in all of our core fresh fruit product lines. Fresh vegetables performance improved largely due to a turn-around in the fresh-packed product line*.

(Emphasis added). Carter continued:

> There is volatility in earnings from both of our fresh produce businesses, as we are currently seeing in the swing from the first quarter to the second quarter this year[.] . . . We expect second quarter Adjusted EBITDA to approximate half of first quarter Adjusted EBITDA (excluding the $34 million charge), with lower earnings from both our fresh fruit and fresh vegetables businesses. This volatility is especially pronounced in our legacy strawberry business, where we expect earnings to be down by $15-$20 million in the first half of 2013, compared to 2012. During the last six months our strawberry growing regions in California have experienced extreme warm weather followed by unusual cold weather and now warm weather again. As for full year 2013, we expect the overall lower earnings in the bananas and berries product lines to put pressure on our expected Adjusted EBITDA at the low end of the guidance range. The impact of higher expected volumes in these product lines is more than offset by expected lower prices and higher costs. . . .
>
> *The new Dole is off to an extraordinary start in 2013*, with the record-setting early approval from China's Ministry of Commerce resulting in the timely completion of the sale of our worldwide packaged foods and Asia fresh businesses to ITOCHU Corporation, for $1.685 billion cash[.] . . . The timeliness of the cash proceeds from this large valuation transaction enabled us to take advantage of optimal credit market conditions, resulting in a more efficient, much lower-cost new capital structure. *This new capital structure allows us to resolve long-standing legacy exposures discussed above, while also providing needed financial flexibility to enhance shareholder value*. *We are very excited and very optimistic about the long-term future of the new Dole and its prospects. Dole remains an*

> *industry leader in the sourcing, distribution and marketing of bananas, pineapples and other tropical and deciduous fruits, packaged salads, fresh-packed vegetables and fresh berries. With our now more flexible capital structure and the eventual lower cost structure from right-sizing our organization, Dole will be well positioned to pursue growth opportunities.*

(Emphasis added).

27. On May 9, 2013, Dole issued a press release titled "Dole Food Company, Inc. Announces Authorization of Share Repurchase Program," wherein it announced that the Board approved a share repurchase program for up to $200 million of Dole's outstanding common stock. The share repurchase authorization, which was effective immediately, would permit Dole to effect share repurchases through open market repurchases, block trades, privately negotiated transactions, tender offers, and/or other transactions. The timing, method, and amount of any shares repurchased would be determined based on Dole's evaluation of market conditions, the trading price of Dole's common stock and other factors. Individual Defendant Carter commented:

> This share repurchase program affords us an opportunity to return cash to our shareholders, while rebalancing our capital structure by reducing the number of outstanding shares of common stock and increasing earnings per share[.] . . . Our new capital structure was designed and implemented to provide needed flexibility to enhance shareholder value, as well as to meet future competitive challenges as we continue to launch the new Dole. We believe the share repurchase program will enhance shareholder value.

28. On May 28, 2013, the Company issued a press release titled "Dole Food Company, Inc. Announces Update of Owned Vessel Fleet[,] Suspends Indefinitely Share Repurchase Program," wherein it announced the indefinite suspension of the previously announced share repurchase program for up to $200 million of its outstanding common stock. Carter commented as follows:

> At this time we have decided to use our existing funding resources to take advantage of this opportune window in the shipping industry, when these specialty ships can be built at very competitive costs[.] . . . While Dole is also seeking to monetize its excess Hawaii land holdings by actively marketing the approximately 20,600 acres of land that it is not currently farming on the island of Oahu, we do not expect that this land will provide a near-term source of liquidity given the magnitude of farmland involved. With the approximate $165 million investment in ships and the drag on earnings due to significant losses in our strawberry business, the share repurchase program is being suspended indefinitely.

29. In the May 28 press release, Dole indicated that the volatility in its strawberry business was especially pronounced during the first half of 2013 due to unusual weather conditions, at a time when the best prices are usually available for strawberries, especially in the first quarter. Carter stated that "Dole is the second largest strawberry supplier in the United States, and all of our 962 acres in the Oxnard, California growing region were affected, limiting our production to mostly freezer and juice outlets. We expect full-year losses in our strawberry business to be approximately $23 million below plan[.]"

30. Dole common stock, which had closed at $11.06 on the last trading day before this announcement, had reached a 2013 low by June 4, 2013, when it closed at $9.27 per share.

31. Shortly thereafter, on June 11, 2013, the Company announced that it had received the proposal from Murdock to acquire the approximately 60% of Dole common stock he does not already own and take the Company private.

32. According to the press release announcing the Proposed Transaction, the Board received an unsolicited proposal from Murdock to acquire all of the outstanding shares of common stock of Dole not already owned by Murdock or his family for $12.00

per share in cash.

33. According to an article in *The Wall Street Journal* titled "Dole's 90-Year-Old CEO Plots $1.5 Billion Buyout," much of the reason for Dole's recent reduction in guidance was due to weather events and not long-term problems within the Company:

> During the first half of this year, volatility in Dole's strawberry business was especially pronounced due to what Dole called "unusual weather conditions," at a time when the best prices are usually available for strawberries.
>
> Banana prices also have been low lately due to excess supply. The company reported last month that it swung to a first-quarter loss, due partly to charges from the recent sale of several business lines, while revenue declined 3%.

34. Analysts believe that the Board will likely agree to the Proposed Transaction, due in part to Murdock's insider status. According to a *Bloomberg* article published on June 11, 2013 titled "Dole Food Chairman Makes $645 Million Bid to Go Private":

> "*Even though Dole's equity is trading above the offer price, we believe there is a relatively high probability of completion*," Hale Holden, a New York-based analyst for Barclays Plc, said in a note today. . . .
>
> Murdock has a strong ability to close the transaction given the cash bid, his insider status and the premium to yesterday's closing price…

(Emphasis added).

35. On June 13, 2013, *Bloomberg* published an article titled "Dole Holders See Déjà vu in Push for Deal Bump," which stated:

> *The fresh fruit and vegetable seller has traded above the $12-a-share buyout offer from Chairman and Chief Executive Officer David Murdock since it was announced this week* -- a sign traders expect a sweetened offer from the 90-year-old. That's what Murdock had to do the first time he took Dole private 10 years ago, eventually boosting his bid 14 percent. He

> then took the pineapple producer public again in 2009 at $12.50 a share.
>
> Murdock's offer to buy the about 60 percent he doesn't already own values Westlake Village, California-based Dole *at 0.25 times this year's sales, the cheapest in a similar-sized U.S. food deal since 2009*, according to data compiled by Bloomberg. *Barclays Plc said investors may raise concerns about whether the price is fair for the now $1.1 billion company. It could be valued at about $15 a share*, said BB&T Corp. and shareholder Adirondack Research & Management Inc.

(Emphasis added).

36. According to Roy Behren, who holds Dole shares as part of the $4.7 billion merger fund he co-manages at Westchester Capital Management LLC in Valhalla, New York, "It's a good starting bid from Mr. Murdock[.] . . . In our view, it's a little bit light. They have valuable land. They have a nice franchise. They have a well-known name. It certainly has value."

37. According to data compiled by *Bloomberg*, Murdock's bid was a fifteen percent premium to Dole's 20-day average stock price, compared with the average premium of more than twenty-eight percent for U.S. food deals valued at more than $1 billion.

38. As Keith Moore, a strategist at Stamford, Connecticut-based MKM Partners LLC, has stated, "This has been timed in an opportunistic way for him to try to buy it back cheaply, but I don't think that will work. . . . He's going to have to pay up for it."

39. The June 13 *Bloomberg* article continued:

> Bids from majority holders and founders tend to "receive a higher level of investor pushback," and shareholders may raise concerns about the value of Murdock's latest go-private offer, Hale Holden, a credit analyst at Barclays, wrote in a June 11 report. *He still said there's a "relatively high*

probability of completion."

Depressed Price

Murdock made the bid after Dole lowered its earnings guidance and indefinitely suspended share repurchases, sparking a drop that sent the shares to as low as $9.27 on June 4.

"*The bid came off of what I consider to be a fairly depressed price*," Lesa Anne Sroufe, chief investment officer at Seattle-based Lesa Sroufe & Co., which oversees about $250 million, including Dole shares, said in a phone interview. "Good businessmen like Mr. Murdock are always opportunistic. I absolutely don't blame him for making an offer at this time."

Murdock's proposal values Dole's equity at about $1.07 billion, or about 0.25 times this year's projected sales of $4.24 billion, according to analysts' estimates compiled by Bloomberg. *That's the lowest revenue multiple for a U.S. food deal of more than $1 billion since JBS SA bought 64 percent of Pilgrim's Pride Corp. in 2009, according to data compiled by Bloomberg*.

"*Our gut feeling is that it's slightly undervaluing the company*," Matt Reiner, a money manager at Adirondack Research, which oversees about $145 million, including Dole shares, said in a phone interview.

Offering More

Dole could be valued at $15 a share, based on the sum of its parts and accounting for real estate assets such as its properties in Hawaii and the company's corporate headquarters, Reiner said.

Brett Hundley, a Richmond, Virginia-based analyst at BB&T *who also gives Dole a potential value of about $15 a share*, said Murdock could offer more if he faces pressure from shareholders.

Murdock "definitely prefers to own the business outright and prefers to have it private," Hundley said in a phone interview. A sale of the company's Hawaiian land assets -- which the company has said it is actively marketing -- "would soften the blow" of funding a higher bid.

(Emphasis added).

40. The decrease in guidance and cancellation of the share repurchase

program preceded Murdock's Proposed Transaction by less than one month. Because Murdock stands on both sides of the transaction and due to his control over the Company, the unaffiliated stockholders are now exposed to imminent harm. Indeed, as the Company's Annual Report filed on Form 10-K with the SEC on March 12, 2013 states:

> **Risks Relating to Our Common Stock**
>
> **David H. Murdock and his affiliates, whose interests in our business may be different from yours, can exert significant control over us.**
>
> David H. Murdock, our Chairman and Chief Executive Officer, and his affiliates currently own 35,542,968 shares, or approximately 40%, of our outstanding common stock. Therefore, *Mr. Murdock and his affiliates have significant influence over our management and affairs, including the election of our Board of Directors, and have significant control over actions to be taken by us and our Board of Directors*, including amendments to our certificate of incorporation and bylaws and approval of significant corporate transactions, including mergers and sales of substantially all of our assets.

(Emphasis added).

41. The Individual Defendants are breaching the fiduciary duties they owe to the Company's public stockholders. The Company has been improperly valued and stockholders will likely not receive adequate or fair value for their Dole common stock in the Proposed Transaction. Further, the Board is failing to employ any real procedural protections for shareholders who have no one to bargain on their behalf.

42. Unless enjoined by this Court, defendants will continue to breach the fiduciary duties owed to plaintiffs and the Class, and may approve and consummate the Proposed Transaction to the irreparable harm of the Class. Plaintiffs and the other members of the Class have no adequate remedy at law.

COUNT I
Breach of Fiduciary Duties
(Against All Individual Defendants)

43. Plaintiffs repeat and reallege the preceding allegations as if fully set forth herein.

44. As members of the Company's Board, the Individual Defendants have fiduciary obligations to: (a) undertake an appropriate evaluation of Dole's net worth as a merger/acquisition candidate; (b) take all appropriate steps to enhance Dole's value and attractiveness as a merger/acquisition candidate; (c) act independently to protect the interests of the Company's public stockholders; (d) adequately ensure that no conflicts of interest exist between the Individual Defendants' own interests and their fiduciary obligations, and, if such conflicts exist, to ensure that all conflicts are resolved in the best interests of Dole's public stockholders; (e) actively evaluate the Proposed Transaction and engage in a meaningful auction with third parties in an attempt to obtain the best value on any sale of Dole; and (f) disclose all material information to the Company's stockholders.

45. The Individual Defendants have breached and are breaching their fiduciary duties to plaintiffs and the Class.

46. The Individual Defendants are knowingly or recklessly failing to exercise the care required, and breaching their duties owed to stockholders of Dole, because, *inter alia*:

(a) They are taking steps to avoid competitive bidding, to cap the price of Dole common stock, and to give Murdock an unfair advantage by, among other things, failing to adequately solicit other potential acquirers or alternative transactions; and

(b) They have failed to engage in a sales process that will maximize stockholder value.

47. As a result of the Individual Defendants' breaches of their fiduciary duties, plaintiffs and the Class will suffer irreparable injury in that they have not and will not receive their fair portion of the value of Dole's assets and will be prevented from benefiting from a value-maximizing transaction.

48. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to plaintiffs and the Class, and may consummate the Proposed Transaction, to the irreparable harm of the Class.

49. Plaintiffs and the members of the Class have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

(A) Ordering that this action may be maintained as a class action and certifying plaintiffs as the Class representatives and plaintiffs' counsel as Class counsel;

(B) Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

(C) In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to plaintiffs and the Class;

(D) Directing defendants to account to plaintiffs and the Class for their damages sustained because of the wrongs complained of herein;

(E) Awarding plaintiffs the costs of this action, including reasonable allowance for plaintiffs' attorneys' and experts' fees; and

(F) Granting such other and further relief as this Court may deem just and proper.

Dated: June 27, 2013

RIGRODSKY & LONG, P.A.

By: */s/ Seth D. Rigrodsky*

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