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19

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA

22 JANE ROE,  
23 Plaintiff,  
24 v.

25 FRITO-LAY, INC., a foreign  
corporation doing business in  
26 California, and DOES 1 through 10,  
inclusive,  
27 Defendants.  
28

Case No. 3:14-CV-00751 HSG

**STIPULATION AND  
SETTLEMENT OF CLASS ACTION  
CLAIMS**

Hearing Date: July 28, 2016  
Hearing Time: 2:00 p.m.  
Judge: Hon. Haywood Gilliam, Jr.  
Courtroom: 15  
Trial Date: December 12, 2016  
Complaint Filed: December 20, 2013

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**STIPULATION AND SETTLEMENT AGREEMENT  
OF CLASS ACTION CLAIMS**

I. Settlement Agreement. This Stipulation and Settlement Agreement of Class Action Claims ("Settlement," "Stipulation," or "Agreement") is made between Jane Roe ("Named Plaintiff") on behalf of herself and each of the other "Plaintiffs" as defined herein, on the one hand, and defendant, Frito-Lay, Inc. ("Defendant" or "Frito-Lay") on the other hand, in the action pending in the United States District Court for the Northern District of California, Case No. 3:14-CV-00751 HSG ("Action" or "Lawsuit"), and subject to the approval of the Court. This Settlement was reached pursuant to negotiations between counsel for the Parties over the course of several months following a prior settlement reached pursuant to a mediation conducted on November 20, 2014, by Mark Rudy.

II. Definitions.

A. The term "Settlement" means the settlement described in this Stipulation.

B. The term "Settlement Administrator" means the firm that the Class Counsel will identify and propose.

C. The term "Court" as used herein means the United States District Court for the Northern District of California.

D. The term "Plaintiffs' Counsel" or "Settlement Class Counsel" means Devin Fok of the Law Offices of Devin H. Fok d.b.a DHF LAW, P.C.,

1 Joshua Kim of The New Way of Life Reentry Project, and V. Andre Sherman of  
2 Girardi Keese.

3  
4 E. The term “Complaint” means the complaint filed by Named  
5 Plaintiff on December 20, 2013, in the Alameda County Superior Court, later  
6 removed to the United States District Court for the Northern District of California,  
7 in the Lawsuit entitled *Roe v. Frito-Lay, Inc.*, 3:14-CV-00751 HSG.

8  
9 F. The term “Class Period” means the time period beginning on  
10 December 20, 2011, and ending on February 28, 2014.

11  
12 G. “Opt-Out Deadline” means the date forty-five (45) calendar days  
13 after the Notice Date.

14  
15 H. The term “Plaintiffs” means all individuals residing in the United  
16 States who were the subject of a consumer report obtained by Frito-Lay, Inc. for  
17 employment between December 20, 2011, and February 28, 2014, and (1) for whom  
18 a disposition of “Background Check Review – Fail” or “Criminal Background Fail”  
19 was entered in Frito-Lay, Inc.’s applicant tracking system; and/or (2) whose report  
20 was updated following a dispute with Frito-Lay’s background check vendor; and/or  
21 (3) whose applicant file includes a letter or letters sent to the applicant on the basis  
22 of the applicant’s failure of a pre-employment background check..

23  
24 I. The term “Settlement Class Member” means a member of the  
25 Settlement Class to whom a notice is sent pursuant to the procedures outlined in  
26 Section 11(d) and who has not excluded himself or herself from the settlement by  
27 timely submitting a valid exclusion request.

28

1 J. “Settlement Class” means all Plaintiffs, excluding (i) all persons  
2 who timely and validly request exclusion from the Settlement Class; (ii) all persons  
3 who would otherwise qualify for membership in the Settlement Class but for the fact  
4 that such persons previously has released all claims as to the Defendant; (iii)  
5 Defendant’s attorneys; (iv) Plaintiff’s attorneys; (v) any judge who has presided  
6 over either mediation or disposition of this case and the members of his or her  
7 immediate family; and (vi) Mark Rudy.

8  
9 K. . Gross Settlement Amount. The term "Gross Settlement  
10 Amount" means the amount of \$950,000.00 (Nine Hundred Thousand Dollars and  
11 No Cents), which Defendants shall cause to be paid in consideration for the releases  
12 granted herein. inclusive of attorneys' fees, costs and expenses; a service award to  
13 Named Plaintiff; and all costs of administration, including settlement administration  
14 fees. None of the Gross Settlement Amount shall revert to Frito-Lay under any  
15 circumstances. Under no circumstances will Frito-Lay be liable for an amount that  
16 exceeds the total Gross Settlement Amount.

17  
18 L. . Settlement Fund. The term "Settlement Fund" shall refer  
19 to the Gross Settlement Amount plus any income earned thereon held in a qualified  
20 settlement fund or similar account at the Financial Institution. Under no  
21 circumstances, will any of the Settlement Fund revert to Frito-Lay. The Settlement  
22 Administrator shall establish a qualified settlement fund or equivalent account  
23 approved by the Parties at a financial institution to hold the Settlement Fund.  
24 Settlement Class Counsel shall direct the Settlement Administrator to make  
25 distributions from the Settlement Fund only in accordance with this Settlement  
26 Agreement and orders of the Court. The Settlement Administrator shall promptly  
27 notify the Parties of the date of the establishment of the account.

28

1           III.    Background and Procedural History. This Action was filed by Named  
2 Plaintiff Jane Roe (“Named Plaintiff”) in the Superior Court of the State of  
3 California – County of Alameda, on December 20, 2013. Frito-Lay removed the  
4 Action to the United States District Court for the Northern District of California on  
5 February 19, 2014. The complaint alleged violations of the Fair Credit Reporting  
6 Act (“FCRA”) and violations of California Labor Code section 432.7.

7  
8                       After informal negotiations, Named Plaintiff agreed to file a First  
9 Amended Complaint (“FAC”), dropping her causes of action under Labor Code  
10 section 432.7, asserting only her FCRA cause of action against Frito-Lay.

11  
12                      On November 20, 2014, the Parties attended a full-day mediation with  
13 mediator Mark Rudy, but did not reach a settlement that day. After continued post-  
14 mediation negotiations with the assistance of Mark Rudy, the Parties reached a  
15 settlement, the terms of which were set forth in a Memorandum of Understanding  
16 signed by all Parties and which were memorialized in a settlement dated October  
17 2015.

18  
19                      Named Plaintiff filed her Motion for Preliminary Approval of  
20 Settlement on October 15, 2015. On November 19, 2015, Named Plaintiff withdrew  
21 her Motion following a dispute regarding the size of the class. The Parties thereafter  
22 engaged in significant discovery, including multiple depositions, several rounds of  
23 written and informal discovery, third-party subpoenas, and the exchange of  
24 hundreds of thousands of lines of data. After undertaking these efforts, the Parties  
25 agreed to re-settle this matter and resolve this litigation once and for all.

26  
27                      After reviewing hundreds of thousands of lines of data, taking two  
28 depositions, and propounding multiple sets of requests for production and



1 interrogatories, Named Plaintiff was able to identify 2,897 unique, identifiable  
2 individual purported class members, and estimated there may be up to 38% more  
3 individuals who may be located through additional effort on the part of Frito-Lay.  
4 In order to account for Named Plaintiff's estimates of this group of yet-to-be-  
5 identified putative class members, the Parties agreed to identify them using the  
6 following procedure: Named Plaintiff provided Frito-Lay with SHA2-512  
7 encrypted SSNs of the 2,897 putative class members identified from the databases  
8 obtained to date. Using the encrypted SSNs, Frito-Lay obtained the actual identity  
9 of those individuals. Frito-Lay also instructed local HR Managers to identify  
10 additional class members according to the following criteria provided by Named  
11 Plaintiff: 1) a letter or letters sent to the applicant on the basis of the applicant's  
12 failure of a pre-employment background check exist in the applicant's file; and 2)  
13 the applicant was not hired. Named Plaintiff agreed that there is no "blowup" of the  
14 settlement unless Frito-Lay's efforts identified more than eleven hundred and three  
15 (1,103) additional putative class members beyond the initially-identified 2,897  
16 individuals.

17  
18           The Parties undertook this agreed-upon procedure. Named Plaintiff  
19 provided Frito-Lay with the encrypted list of the 2,897 individuals, which Frito-Lay  
20 unencrypted. Frito-Lay sent the agreed-upon email to its local HR Managers,  
21 instructing them to search for additional putative class members pursuant to the  
22 criteria provided by Named Plaintiff. These HR Managers were instructed to  
23 provide their results no later than June 9, 2016. After this search was conducted,  
24 Frito-Lay certified to Named Plaintiff that the search resulted in thirty-one (31)  
25 additional putative class members, for a total of 2,928.

26  
27           IV. Investigation in the Class Action. The Parties conducted a significant  
28 investigation of the facts and law during the prosecution of this Action. Such

1 investigations have included, *inter alia*, several rounds of formal written discovery  
2 served on and responded to by Frito-Lay, multiple depositions taken by Named  
3 Plaintiff of Frito-Lay employees, the exchange of information through informal  
4 discovery, including Initial Disclosures pursuant to Federal Rule of Civil Procedure  
5 Rule 26(a) and the exchange of hundreds of thousands of lines of data, as well as  
6 numerous meetings and conferences between counsel for Named Plaintiff and  
7 counsel for Frito-Lay.

8  
9           Counsel for the Parties further investigated the applicable law as  
10 applied to the facts discovered regarding the alleged claims of Named Plaintiff and  
11 potential defenses thereto, and the damages claimed by Named Plaintiff. The gist of  
12 the Action is that Named Plaintiff alleges Frito-Lay failed to comply with the  
13 procedures set forth under FCRA, namely that Frito-Lay failed to provide Plaintiffs  
14 with pre-adverse action disclosures prior to making a decision to not hire Plaintiffs.  
15 On this basis, Named Plaintiff demands various amounts for statutory penalties,  
16 liquidated damages, punitive damages, interest, attorneys' fees, and other damages.  
17 Class Counsel is aware of the defenses and positions of Frito-Lay, but believes  
18 Named Plaintiff would ultimately succeed in the Action.

19  
20           Named Plaintiff has fully investigated the factual and legal bases for  
21 the causes of action asserted in the Action. As a result of her investigation, Named  
22 Plaintiff continues to believe that Frito-Lay failed to comply with the requirements  
23 of FCRA. Frito-Lay, on the other hand, contends it at all times complied with  
24 FCRA, and provided all required disclosures prior to taking any adverse  
25 employment action. Given the disagreement between the Parties as to the viability  
26 of these claims, and the costs and risks of certification and trial, the Parties believe  
27 the Settlement provided for herein is a fair, adequate and reasonable settlement.

28

1           V.     Benefits of Settlement to Class Members. Named Plaintiff recognizes  
2 the expense and length of continued proceedings necessary to continue the litigation  
3 against Frito-Lay through class certification, trial and through any possible appeals.  
4 Named Plaintiff has also taken into account the uncertainty and risk of the outcome  
5 of further litigation, and the difficulties and delays inherent in such litigation.  
6 Named Plaintiff is also aware of the burdens of proof necessary to establish liability  
7 for the claims asserted in the Action (the "Claims" or "Class Action Claims"), Frito-  
8 Lay's defenses thereto, and the difficulties in establishing damages for Plaintiffs.  
9 Named Plaintiff has also taken into account the extensive settlement negotiations  
10 conducted, which negotiations resulted in the material settlement terms entered into  
11 in the Parties' Memorandum of Understanding ("MOU") on May 11, 2016. Based  
12 on the foregoing, Named Plaintiff has determined that the Settlement set forth in this  
13 Agreement is a fair, adequate and reasonable settlement, and is in the best interests  
14 of Plaintiffs.

15  
16           VI.    Frito-Lay's Reasons for Settlement. Frito-Lay has concluded that any  
17 further defense of this litigation would be protracted and expensive for all Parties.  
18 Substantial amounts of time, energy and resources of Frito-Lay have been and,  
19 unless this Settlement is made, will continue to be devoted to the defense of the  
20 claims asserted by Plaintiffs. For these reasons, Frito-Lay has agreed to settle in the  
21 manner and upon the terms set forth in this Agreement to put to rest the Claims as  
22 set forth in the Action.

23  
24           VII. Frito-Lay's Denials of Wrongdoing. Frito-Lay has denied and  
25 continues to deny each of the claims and contentions alleged by Named Plaintiff in  
26 the Action. Frito-Lay has repeatedly asserted and continues to assert defenses  
27 thereto, and has expressly denied and continues to deny any wrongdoing or legal  
28 liability arising out of any of the facts or conduct alleged in the Action. Frito-Lay

1 also has denied and continues to deny, *inter alia*, the allegations that Plaintiffs have  
2 suffered damages or are entitled to liquidated damages or penalties of any kind; that  
3 Frito-Lay failed to comply with FCRA in any respect; that Frito-Lay engaged in any  
4 other wrongful conduct as alleged in the Action; or that Plaintiffs were harmed by  
5 the conduct alleged in the Action. Neither this Agreement, nor any document  
6 referred to or contemplated herein, nor any action taken to carry out this Agreement,  
7 is, may be construed as, or may be used as an admission, concession or indication by  
8 or against Frito-Lay of any fault, wrongdoing or liability whatsoever.

9  
10 VIII. Plaintiffs' Claims. Named Plaintiff claims and continues to claim that  
11 the causes of action asserted in the Complaint have merit and give rise to liability on  
12 the part of Frito-Lay. Neither this Agreement nor any documents referred to herein,  
13 or any action taken to carry out this Agreement is, or may be construed as or may be  
14 used as an admission by or against Plaintiffs or Class Counsel as to the merits or  
15 lack thereof of the claims asserted.

16  
17 NOW, THEREFORE, IT IS HEREBY STIPULATED, by and among  
18 the Named Plaintiff on behalf of Plaintiffs on the one hand, and Frito-Lay on the  
19 other hand, and subject to the approval of the Court, that the Action is hereby being  
20 compromised and settled pursuant to the terms and conditions set forth in this  
21 Agreement and that upon the Effective Date (as defined below) the Action shall be  
22 dismissed with prejudice and shall be a binding and final resolution of any and all  
23 claims by Class Members, subject to the recitals set forth hereinabove which by this  
24 reference become an integral part of this Agreement and subject to the following  
25 terms and conditions:

26  
27 1. "Effective Date". As used in this Settlement, "Effective Date"  
28 means the date by which the Settlement Agreement is finally approved as provided

1 herein and the Court’s Final Judgment becomes final. For purposes of this  
2 paragraph, the Final Judgment “becomes final” when: (i) the period for filing any  
3 appeal, writ, or other appellate proceeding opposing the Settlement has elapsed  
4 without any appeal, writ, or other appellate proceeding having been filed; (ii) any  
5 appeal, writ or other appellate proceeding opposing the Settlement has been  
6 dismissed finally and conclusively with no right to pursue further remedies or relief;  
7 or (iii) or any appeal, writ or other appellate proceeding has upheld the Court’s final  
8 order with no right to pursue further remedies or relief. In this regard, it is the  
9 intention of the parties that the Settlement shall not become effective until the  
10 Court’s order approving the Settlement is completely final, and there is no further  
11 recourse by an appellant or objector who seeks to contest the Settlement.

12  
13           2.     Class Certification. For the purposes of this Stipulation only, the  
14 Parties agree to the certification of the Settlement Class, to include all individuals  
15 residing in the United States who were the subject of a consumer report obtained by  
16 Frito-Lay, Inc. for employment between December 20, 2011 and February 28, 2014  
17 and (1) for whom a disposition of “Background Check Review–Fail” or “Criminal  
18 Background Fail” was entered in Frito-Lay, Inc.’s applicant tracking system; and/or  
19 (2) whose report was updated following a dispute with Frito-Lay’s background  
20 check vendor; and/or (3) whose applicant file includes a letter or letters sent to the  
21 applicant on the basis of the applicant’s failure of a pre-employment background  
22 check.

23  
24           Should for whatever reason the Stipulation not become final, the fact  
25 that the Parties were willing to stipulate to class certification as part of the  
26 Settlement shall have no bearing on, and shall not be admissible in connection with,  
27 the issue of whether a class should be certified in a non-settlement context in the  
28

1 Action, and shall have no bearing on, and shall not be admissible in connection  
2 with, the issue of whether a class should be certified in any other lawsuit.

3  
4 3. Releases.

5  
6 (a) Release As To All Class Members . The Settlement Class  
7 Members, including Named Plaintiff, but excluding those who submit timely and  
8 valid requests for exclusion, shall, as of the Effective Date, fully and finally release  
9 and discharge Frito-Lay, Inc. and its former and present parents, subsidiaries and  
10 affiliated corporations and their officers, directors, employees, partners,  
11 shareholders and agents, and any other successors, assigns, or legal representatives  
12 ("Released Parties") from the "Released Claims." The Released Parties will be  
13 released only by the Settlement Class Members, and only from the Released Claims  
14 as defined herein. They will not be released from any other category of claims by  
15 Settlement Class Members or by any other persons. For purposes of this  
16 Agreement, the "Released Claims" are defined as:

17  
18 (1) any and all claims, demands, rights, liabilities, and  
19 causes of action of every nature and description whatsoever, known or unknown,  
20 asserted or that might have been asserted,

21  
22 (2) whether in tort, contract, or for violation of any state  
23 constitution, statute, rule or regulation, and^^

24  
25 (3) whether for economic damages, non-economic  
26 damages, restitution, penalties or liquidated damages, arising out of, relating to, or  
27 in connection with all causes of action pleaded or that could have been pleaded  
28 based upon the facts asserted in the Action, including but not limited to: (a) failure

1 to comply with FCRA; (b) claims for statutory or actual damages; (c) claims for  
2 interest, costs, or fees; (d) claims for liquidated damages or punitive damages; or (e)  
3 any other amounts associated with any claims based on causes of action pleaded or  
4 that could have been pleaded based upon the facts asserted in the Action at any time  
5 through the close of the Class Period (whether based on law, contract, or otherwise).

6  
7           With respect to the Released Claims, the Settlement Class Members  
8 stipulate and agree that, upon the Effective Date, the Settlement Class Members  
9 shall be deemed to have, and by operation of the Final Judgment shall have,  
10 expressly waived and relinquished, to the fullest extent permitted by law, the  
11 provisions, rights and benefits of Section 1542 of the California Civil Code, or any  
12 other similar provision under federal or state law, which Section provides:

13  
14           A general release does not extend to claims which the  
15 creditor does not know or suspect to exist in his or her  
16 favor at the time of executing the release, which if known  
17 by him or her must have materially affected his or her  
18 settlement with the debtor.

19  
20           The Settlement Class Members may hereafter discover facts in addition  
21 to or different from those they now know or believe to be true with respect to the  
22 subject matter of the Released Claims, but upon the Effective Date, shall be deemed  
23 to have, and by operation of the Final Judgment shall have, fully, finally, and  
24 forever settled and released any and all of the Released Claims, whether known or  
25 unknown, suspected or unsuspected, contingent or non-contingent, which now exist,  
26 or heretofore have existed, upon any theory of law or equity now existing or coming  
27 into existence in the future, including, but not limited to, conduct that is negligent,  
28

1 intentional, with or without malice, or a breach of any duty, law or rule, without  
2 regard to the subsequent discovery or existence of such different or additional facts.

3  
4 The Settlement Class Members agree not to sue or otherwise make a  
5 claim against any of the Released Parties that is related to the Released Claims.

6  
7 (b) General Release By Named Plaintiff Only. In addition to  
8 the releases made by the Settlement Class Members set forth in paragraph 3 hereof,  
9 Named Plaintiff, as of the Effective Date, makes the additional following general  
10 release of all claims, known or unknown. (The release set forth in this paragraph 4  
11 shall be referred to hereinafter as the "General Release").

12  
13 Named Plaintiff fully releases and discharges the Released Parties from  
14 all claims, demands, rights, liabilities and causes of action of every nature and  
15 description whatsoever, known or unknown, asserted or that might have been  
16 asserted, whether in tort, contract, or for violation of any state or federal statute, rule  
17 or regulation arising out of, relating to, or in connection with any act or omission by  
18 or on the part of any of the Released Parties committed or omitted prior to the  
19 execution hereof. This includes any unknown claims Named Plaintiff does not  
20 know or suspect to exist in her favor, which, if known by her, might have affected  
21 her settlement with, and release of, the Released Parties or might have affected her  
22 decision not to object to the settlement. Nothing in this Agreement shall prevent  
23 Named Plaintiff from filing a charge with, cooperating with, reporting any suspected  
24 whistleblower claim(s) to, or participating in any proceeding before the Securities  
25 and Exchange Commission or other governmental authorities and participating in  
26 any benefits involved in such reporting.



1 With respect to the General Release, Named Plaintiff stipulates and  
2 agrees that, upon the Effective Date, Named Plaintiff shall be deemed to have, and  
3 by operation of the Final Judgment shall have, expressly waived and relinquished, to  
4 the fullest extent permitted by law, the provisions, rights and benefits of Section  
5 1542 of the California Civil Code, or any other similar provision under federal or  
6 state law, which provides:

7  
8 A general release does not extend to claims which the  
9 creditor does not know or suspect to exist in his or her  
10 favor at the time of executing the release, which if known  
11 by him or her must have materially affected his or her  
12 settlement with the debtor.

13  
14 Named Plaintiff may hereafter discover facts in addition to or different  
15 from those she now knows or believes to be true with respect to the subject matter of  
16 the General Release, but Named Plaintiff upon the Effective Date, shall be deemed  
17 to have, and by operation of the Final Judgment shall have, fully, finally, and  
18 forever settled and released any and all of the claims released pursuant to the  
19 General Release, whether known or unknown, suspected or unsuspected, contingent  
20 or non-contingent, which now exist, or heretofore have existed upon any theory of  
21 law or equity now existing or coming into existence in the future, including, but not  
22 limited to, conduct that is negligent, intentional, with or without malice, or a breach  
23 of any duty, law or rule, without regard to the subsequent discovery or existence of  
24 such different or additional facts.

25  
26 4. Allocation of Settlement Fund. The Settlement Fund shall be  
27 allocated among these elements:  
28

1 (a) the Fees Award (as hereinafter defined) to Settlement  
2 Class Counsel as approved by the Court;

3  
4 (b) the Costs Award (as hereinafter defined) to Settlement  
5 Class Counsel, as approved by the Court;

6  
7 (c) the Service Award (as hereinafter defined) to Named  
8 Plaintiff, in an amount not to exceed \$10,000.00 (Ten Thousand Dollars And No  
9 Cents), subject to the Court's approval;

10  
11 (d) reasonable settlement administration expenses.  
12

13 The amount that remains after the Service Award, claims  
14 administration expenses, and attorneys' fees and costs have been deducted from the  
15 Settlement Fund shall be called the "Payout Fund" which will be allocated as  
16 Settlement Awards (as defined below) and distributed to Settlement Class Members  
17 as described below.

18  
19 5. Plan of Allocation for Payment to Settlement Class Members.

20 Within seven (7) days after the Effective Date, and solely for purposes of this  
21 Settlement, Frito-Lay shall wire the amount of the Settlement Fund into an account  
22 set up by the Settlement Administrator for distribution in accordance with the  
23 following eligibility and settlement formula requirements:

24  
25 (a) Excluded from becoming Settlement Class Members are  
26 those Plaintiffs who submit valid and timely requests for exclusion pursuant to the  
27 terms and procedures of the Notice of Pendency and Settlement of Class Action;  
28

1 Settlement Hearing; and Exclusion Procedures (“Notice”) (attached as Exhibit 1  
2 hereto).

3  
4 (b) All Settlement Class Members are entitled to receive a  
5 payment from the Payout Fund calculated as follows:

6  
7 (i) After deducting the amount of Fees Award, the  
8 Costs Award, the Service Award, and claims administration expenses that are all  
9 finally approved by the Court, the remaining Payout Fund will be allocated to the  
10 Settlement Class Members;

11  
12 (ii) To arrive at these amounts, the Payout Fund will be  
13 divided equally pro-rata amongst all Settlement Class Members to obtain each  
14 Settlement Class Member’s “Settlement Award.”

15  
16 (iii) All settlement checks that remain uncashed after  
17 sixty (60) days following the first distribution will revert to the Payout Fund.

18  
19 (iv) All Settlement Class Members who timely cash  
20 their initial Settlement Award checks within sixty (60) days after their mailing will  
21 receive their pro-rata share of the balance of the Payout Fund (“Second  
22 Distribution”), if and only if each Settlement Class Member’s pro-rata share of this  
23 Second Distribution will meet or exceed \$5.00 (Five Dollars and No Cents).

24  
25 (v) If the Payout Fund after sixty (60) days of the initial  
26 distribution does not contain sufficient funds to guarantee a second Settlement  
27 Award check of at least \$5.00 (Five Dollars and No Cents) for each Settlement  
28 Class Member who has timely cashed his or her initial Settlement Award check, no

1 second distribution shall be made. Such amounts will be referred to as "Remaining  
2 Funds." Remaining Funds shall be distributed *cy pres* to the National Consumer  
3 Law Center ("NCLC").

4  
5 (vi) One Hundred percent (100%) of all Individual  
6 Settlement Awards to Settlement Class Members will be representative of penalties  
7 sought in the Action and will be afforded IRS Form 1099 tax treatment.

8  
9 (vii) The Settlement Administrator shall be responsible  
10 for issuing the payments and any required tax documentation.

11  
12 6. Fees Award, Costs Award, and Incentive Award. Settlement  
13 Class Counsel will request, and Frito-Lay will not oppose, an award of attorneys'  
14 fees ("Fees Award") of up to thirty-three and one-third percent (33 1/3%) of the  
15 Gross Settlement Amount, subject to Court approval. Settlement Class Counsel  
16 shall request, and Frito-Lay will not oppose, an award of reasonable costs ("Costs  
17 Award"), subject to Court approval. Settlement Class Counsel's Fees Award and  
18 Costs Award shall be deducted from the Gross Settlement Amount. Any Fees  
19 Award and Costs Award shall be paid by the Settlement Administrator to Settlement  
20 Class Counsel within twenty (20) days of the Effective Date. Settlement Class  
21 Counsel will be issued an IRS Form 1099 for their award of attorneys' fees and  
22 costs. If the Court awards attorneys' fees and costs less than said amount, the  
23 unawarded amounts shall revert to the Settlement Fund. Settlement Class Counsel  
24 shall not be permitted to petition the Court for, or accept, any additional payments  
25 for fees, costs, or interest, and the Fees Award shall be for all claims for attorneys'  
26 fees and costs past, present and future incurred in the Action.

1 Frito-Lay's payment of the Settlement Fund to the Settlement  
2 Administrator shall constitute full satisfaction of the obligation to pay any amounts  
3 to any person, attorney or law firm for attorneys' fees, expenses or costs in the  
4 Action incurred by any attorney on behalf of the Named Plaintiff and/or the  
5 Settlement Class, and shall relieve Frito-Lay, the Settlement Administrator, and  
6 Frito-Lay's Counsel of any other claims or liability to any other attorney or law firm  
7 for any attorneys' fees, expenses and/or costs to which any of them may claim to be  
8 entitled on behalf of the Named Plaintiff and the Plaintiff Class in connection with  
9 this litigation.

10  
11 Settlement Class Counsel may apply for a Service Award in an amount  
12 not to exceed a total of \$10,000.00 (Ten Thousand Dollars and No Cents) ("Service  
13 Award"), to be paid to the Named Plaintiff for her time and effort spent pursuing the  
14 Action. Frito-Lay agrees not to oppose such an application, so long as it is  
15 consistent with the provisions of this Agreement. Any Service Award shall be paid  
16 by the Settlement Administrator to the Named Plaintiff within twenty (20) days of  
17 the Effective Date. Named Plaintiff will be issued an IRS Form 1099 for the  
18 Service Award. If the Court approves a service award less than said amount, the  
19 unawarded amounts shall revert to the Settlement Fund.

20  
21 7. Responsibilities of Frito-Lay. Frito-Lay shall:

22  
23 (a) Pay, or cause to be paid, the Settlement Administrator for  
24 costs and expenses of administering the Notice Procedure;

25  
26 (b) Deposit, or cause to be deposited, the Settlement Fund  
27 within seven (7) days of the Effective Date;

28

1 (c) Provide, within seven (7) days after Preliminary Approval,  
2 the Settlement Administrator a "Class List and Data Report" showing each  
3 Plaintiff's name, most current mailing address and telephone number, email address  
4 (to the extent available), and social security number. The Settlement Administrator  
5 shall not share this information with Settlement Class Counsel. Frito-Lay shall  
6 provide the list in an electronic format reasonably acceptable to the Settlement  
7 Administrator. The Settlement Administrator will keep the list confidential, and  
8 will use it only for the purposes described herein;

9  
10 8. Operation of the Settlement Fund.

11  
12 (a) The Settlement Administrator will calculate the Settlement  
13 Amounts to be paid to the Settlement Class Members from the Payout Fund in  
14 accordance with the terms and provisions of this Agreement.

15  
16 (b) The Settlement Administrator shall have the authority and  
17 obligation to make payments, credits and disbursements, including payments and  
18 credits in the manner set forth herein, to the Named Plaintiff, Settlement Class  
19 Members, and Settlement Class Counsel from the Settlement Fund calculated in  
20 accordance with the methodology set out in this Agreement and orders of the Court,  
21 and shall do so.

22  
23 (c) To the extent any tax returns must be filed for the  
24 Settlement Fund pursuant to this Agreement, the Settlement Administrator shall  
25 cause to be timely and properly filed all informational and other tax returns, if any,  
26 necessary with respect to the Settlement Fund. Such returns shall be consistent with  
27 this paragraph. Any taxable income generated by the Settlement Fund shall accrue  
28 to the benefit of the Settlement Class. If any taxable income is generated by the

1 Settlement Fund, in all events the tax returns filed shall reflect that all taxes payable  
2 on the taxable income of the Settlement Fund, if any, shall be paid from the  
3 Settlement Fund. Any expenses consisting of the expenses and costs incurred in  
4 connection with the operation and implementation of this paragraph (including,  
5 without limitation, reasonable expenses of tax attorneys, accountants or other  
6 designees retained by the Settlement Administrator as required for the preparation  
7 and filing of tax returns described in this paragraph) shall be treated as, and  
8 considered to be, a cost of administration of the Settlement.

9  
10 (d) No person shall have any claim against Frito-Lay, Frito-  
11 Lay's Counsel, Named Plaintiff, the Settlement Class, Settlement Class Counsel or  
12 the Settlement Administrator based on distributions and payments made in  
13 accordance with this Agreement.

14  
15 9. No Injunctive Relief. As part of this Settlement, Frito-Lay shall  
16 not be required to enter into any consent decree, nor shall Frito-Lay be required to  
17 agree to any provision for injunctive relief, or to modify or eliminate any of its  
18 practices.

19  
20 10. Notice/Approval of Settlement and Settlement Implementation.  
21 As part of this Settlement, the Parties agree to the following procedures for  
22 obtaining preliminary Court approval of the Settlement, notifying Plaintiffs,  
23 obtaining final Court approval of the Settlement, and processing the settlement  
24 payments:

25  
26 (a) CAFA Notice. Pursuant to CAFA, within ten (10) days  
27 after the date Named Plaintiff files her Motion for Preliminary Approval, Frito-Lay  
28 will mail the CAFA Notice to the Attorney General of the United States, the

1 Attorney General of the State of California, and the Attorney General of each other  
2 state where Plaintiffs reside according to Frito-Lay's records. The cost of such  
3 notices shall not be deducted from the Gross Settlement Fund.

4  
5 (b) Preliminary Settlement Hearing. Plaintiffs and Frito-Lay  
6 shall appear before this Court on July 28, 2016, at 2:00 p.m., to request Preliminary  
7 Approval of the Settlement.

8  
9 (c) Preliminary Approval Order. In conjunction with this  
10 hearing, Named Plaintiff will submit this Agreement, which sets forth the terms of  
11 this Settlement, and will include proposed forms of all notices and other documents  
12 as attached hereto necessary to implement the Settlement. Simultaneous with the  
13 filing of the Stipulation of Settlement and solely for purposes of this Settlement,  
14 Plaintiffs will request the Court to enter a Preliminary Approval Order, preliminarily  
15 approving the proposed Settlement, and setting a date for a Settlement Hearing to  
16 determine final approval of the Settlement. The Order shall provide for notice of the  
17 Settlement and related matters to be sent to Plaintiffs as specified herein.

18  
19 (d) Notice to Plaintiffs. Notice of the Settlement shall be  
20 provided to Plaintiffs using the following procedures:

21  
22 (1) Settlement Administrator. The Settlement  
23 Administrator shall be responsible for preparing, printing and mailing the Notice of  
24 Settlement of Class Action; Settlement Hearing; and Exclusion Procedures  
25 ("Notice") (attached as Exhibit 1 hereto) (the "Notice Packet") as directed by the  
26 Court to the Plaintiffs; keeping track of opt-outs; drafting and mailing Settlement  
27 Award checks to Settlement Class Members; creating and maintaining a settlement  
28 website containing necessary settlement documents including a Long Form Notice



1 (attached as Exhibit 2 hereto); maintaining live telephone assistance to assist  
2 Settlement Class Members; and for such other tasks as the Parties mutually agree or  
3 the Court orders the Settlement Administrator to perform. The Parties each  
4 represent they do not have any financial interest in the Settlement Administrator or  
5 otherwise have a relationship with the Settlement Administrator that could create a  
6 conflict of interest.

7  
8 (1) Statement of Costs for the Notice Procedure.

9 Within ten (10) days after the Preliminary Approval of this Settlement, the  
10 Settlement Administrator will provide to Settlement Class Counsel a detailed  
11 statement of the costs that will be incurred as part of the notice process as described  
12 in Section 10(d). Subject to approval of Settlement Class Counsel, the Settlement  
13 Administrator shall invoice this amount to Frito-Lay, and Frito-Lay shall promptly  
14 pay it to the Settlement Administrator. Any disputes relating to this subsection shall  
15 be brought to the Magistrate Judge assigned to this litigation, for resolution.

16  
17 (2) Notice By First-Class Mail. Within thirty (30) days

18 after the Preliminary Approval of this Settlement, the Settlement Administrator shall  
19 mail a jointly prepared Notice Packet to Plaintiffs via first-class regular U.S. mail.  
20 Plaintiffs will have forty-five (45) days from the mailing of the Notice Packet to opt  
21 out of, or object to, the settlement. Prior to mailing, the Settlement Administrator  
22 will electronically check and update the mailing addresses against the USPS  
23 National Change of Address database, to the extent such information exists and can  
24 be systematically retrieved from such databases. For any Settlement Class Member  
25 without a known or valid mailing address, the Settlement Administrator shall also  
26 obtain his or her most current address by skip-tracing his or her social security  
27 number. For up to thirty days (30) calendar days following the mailing of these  
28 notices, the Settlement Administrator shall promptly forward the original Notice

1 Packet to the updated address via first-class regular U.S. mail indicating on the  
2 original Notice Packet the date of such re-mailing, to the extent that the Settlement  
3 Administrator receives address change notifications from the U.S. Postal Service.  
4

5           Within seven (7) days after the Opt-Out Deadline, the Settlement  
6 Administrator will prepare a declaration to be provided to Class Counsel and Frito-  
7 Lay's Counsel for filing in support of the Named Plaintiff's motion for final  
8 approval attesting to the following: (i) its mailing efforts regarding the Class Notice;  
9 and (ii) its receipt of valid requests for exclusion, and its inability to deliver the  
10 Class Notice to Settlement Class Members, if any. No less than twenty (20) days  
11 before the Final Approval Hearing, the Settlement Administrator will prepare and  
12 submit to Settlement Class Counsel and Counsel for Frito-Lay for filing in support  
13 of the motion any supplemental declaration as applicable, including proof of  
14 creating and maintaining the settlement website, and maintaining a live telephone  
15 support line.  
16

17           (e)     Procedure for Payment of Settlement Awards. All  
18 Settlement Class Members shall receive a Settlement Award, distributed by the  
19 Settlement Administrator within thirty (30) days of the Effective Date.  
20

21           Checks paid to Settlement Class Members shall remain valid and  
22 negotiable for sixty (60) days from the date of their issuance ("Check Stale Date")  
23 and shall thereafter automatically be canceled if not cashed by a Settlement Class  
24 Member within that time, at which time the Settlement Class Member's claim will  
25 be deemed void and of no further force and effect. The funds corresponding to  
26 voided checks pursuant to this paragraph shall revert to the Settlement Fund and  
27 shall be paid to Settlement Class Members who have timely cashed their initial  
28 Settlement Award checks in a Second Distribution, so long as each Settlement Class

1 Member's share of the Second Distribution equals or exceeds five dollars (\$5.00).  
2 Uncashed checks remaining after the Second Distribution, or remaining after the  
3 Initial Distribution if a Second Distribution cannot be made, shall be distributed *cy*  
4 *pres* to the NCLC.

5  
6 (f) Procedure for Objecting to or Requesting Exclusion From  
7 Class Action Settlement.

8  
9 (1) Procedure for Objecting. The Notice shall provide  
10 that Class Members who wish to object to the Settlement must file with the Court  
11 and serve on counsel for the Parties a written statement objecting to the Settlement.  
12 Such written statement must be filed with the Court and served on counsel for the  
13 Parties no later than forty-five (45) days after the date the Notice is first mailed (the  
14 "Opt-Out Deadline"). No Class Member shall be entitled to be heard at the final  
15 Settlement Hearing (whether individually or through separate counsel) or to object  
16 to the Settlement, and no written objections or briefs submitted by any Settlement  
17 Class Member shall be received or considered by the Court at the Settlement  
18 Hearing, unless written notice of the Class Member's intention to appear at the  
19 Settlement Hearing, and copies of any written objections or briefs, shall have been  
20 filed with the Court and served on counsel for the Parties on or before the Opt-Out  
21 Deadline. The Parties will be permitted to respond in writing to such objections  
22 prior to the Final Approval Hearing. Settlement Class Members who fail to file and  
23 serve timely written objections in the manner specified above shall be deemed to  
24 have waived any objections and shall be foreclosed from making any objection  
25 (whether by appeal or otherwise) to the Settlement.

26  
27 (2) Procedure for Requesting Exclusion. The Notice  
28 shall provide that Plaintiffs who wish to exclude themselves from the Settlement

1 Class must submit a written statement requesting exclusion from the Settlement  
2 Class on or before the Opt-Out Deadline. The Opt-Out Request must additionally  
3 state in substance:

4 "I have read the Class Notice and I wish to opt out of the class action  
5 and the settlement of the following case: *Roe v. Frito-Lay, Inc.*, Case  
6 No. 4:14-cv-00751."

7 Such written request for exclusion must contain the name, address,  
8 telephone number and last four digits of Social Security number of the person  
9 requesting exclusion, must be returned by mail to the Settlement Administrator at a  
10 specified address, and must be postmarked on or before the Opt-Out Deadline. The  
11 date of the postmark on the return mailing envelope shall be the exclusive means  
12 used to determine whether a request for exclusion has been timely submitted. Any  
13 individual who opts-out of the Settlement Class will not be entitled to any recovery  
14 under the Settlement and will not be bound by the Settlement or have any right to  
15 object, appeal or comment thereon. Plaintiffs who fail to submit a valid and timely  
16 request for exclusion on or before the Opt-Out Deadline shall be Settlement Class  
17 Members and shall be bound by all terms of the Settlement and any Final Judgment  
18 entered in this Action if the Settlement is approved by the Court.

19  
20 The Settlement Administrator shall provide counsel for all Parties with  
21 the number of Plaintiffs who timely and validly opt-out of the Settlement Class.  
22 The Settlement Administrator shall provide counsel for Frito-Lay with the names of  
23 all Plaintiffs who timely and validly opt-out of the Settlement Class but shall not  
24 share this information with Plaintiff's Counsel.

25  
26 (g) No Solicitation of Settlement Objections or Exclusions.

27 The Parties agree to use their best efforts to carry out the terms of this Settlement.  
28 At no time shall any of the Parties or their counsel seek to solicit or otherwise

1 encourage Plaintiffs to submit written objections to the Settlement or requests for  
2 exclusion from the Settlement Class, or appeal from the Court's Final Judgment.

3  
4 (h) Option to Terminate Settlement. If, after the Opt-Out  
5 Deadline Date and before the Settlement Hearing referenced in paragraph 10(i)  
6 below, the number of Plaintiffs who have timely filed with the Court requests for  
7 exclusion total in number more than the number specified in a separate  
8 Supplemental Agreement between the Parties, Frito-Lay shall have the option to  
9 terminate this Settlement in accordance with the procedures set forth in the  
10 Supplemental Agreement. The Supplemental Agreement will not be filed with the  
11 Court unless and until a dispute arises among the parties concerning its  
12 interpretation or application or the Court so orders, and in either event it shall be  
13 filed and maintained by the Court under seal. The Parties agree that if the class size  
14 exceeds four thousand (4,000) individuals as identified by Frito-Lay, Named  
15 Plaintiff may at her option, elect to terminate the settlement.

16  
17 (i) Final Settlement Approval Hearing and Entry of Final  
18 Judgment. Upon expiration of the Claim Period, with the Court's permission, a  
19 Settlement Hearing shall be conducted to determine final approval of the Settlement  
20 along with the amount properly payable for (i) the Fees Award and Costs Award,  
21 (ii) the Named Plaintiff's Service Award, and (iii) the costs of administration. Upon  
22 final approval of the Settlement by the Court at or after the Settlement Hearing, the  
23 Parties shall present a Final Judgment and Order of Dismissal with Prejudice to the  
24 Court for its approval. After entry of the Final Judgment, the Court shall have  
25 continuing jurisdiction solely for purposes of addressing: (i) settlement  
26 administration matters and (ii) such post-Final Judgment matters as may be  
27 appropriate under court rules or as set forth in this Agreement.

1 Administration of the Settlement shall be completed on or before the  
2 date two hundred (200) days after the Effective Date. Upon completion of  
3 administration of the Settlement, Frito-Lay shall provide written certification, under  
4 penalty of perjury, of such completion to the Court and the Settlement Class  
5 Counsel. Also upon completion of administration of the Settlement, the Settlement  
6 Administrator shall provide written certification, under penalty of perjury, of such  
7 completion to the Court and counsel for all Parties, as provided herein.

8  
9 (j) Administration Costs. All of Frito-Lay's own legal fees,  
10 costs and expenses incurred in this Action shall be borne by Frito-Lay. In  
11 accordance with paragraph 5, claims administration expenses will be deducted from  
12 the Gross Settlement Amount. The Parties agree to cooperate in the Settlement  
13 administration process and to make all reasonable efforts to control and minimize  
14 the costs and expenses incurred in administration of the Settlement.

15  
16 (k) Nullification of Settlement Agreement. In the event: (i)  
17 the Court does not enter the Order specified herein; (ii) the Court does not finally  
18 approve the Settlement as provided herein; (iii) the Court does not enter a Final  
19 Judgment as provided herein which becomes final as a result of the occurrence of  
20 the Effective Date; or (iv) the Settlement does not become final for any other reason,  
21 this Settlement Agreement shall be null and void and any order or judgment entered  
22 by the Court in furtherance of this Settlement shall be treated as void *ab initio*. In  
23 such a case, the Parties and any funds to be awarded under this Settlement shall be  
24 returned to their respective statuses as of the date and time immediately prior to the  
25 execution of this Agreement, and the Parties shall proceed in all respects as if this  
26 Settlement Agreement had not been executed, except that any fees already incurred  
27 by the Settlement Administrator shall be paid for by Frito-Lay and shall not be  
28 repaid to Frito-Lay. In the event an appeal is filed from the Court's Final Judgment,

1 or any other appellate review is sought prior to the Effective Date, administration of  
2 the Settlement shall be stayed pending final resolution of the appeal or other  
3 appellate review.

4  
5 (l) Appraisal and Certification By Settlement Administrator.

6 The Settlement Administrator shall keep all Parties and their counsels apprised of all  
7 distributions from the Settlement Fund and upon completion of administration of  
8 that portion of the Settlement, the Settlement Administrator shall provide written  
9 certification, under penalty of perjury, of such completion to the Court and counsel  
10 for all Parties.

11  
12 11. Privacy of Documents and Information. The Named Plaintiff  
13 and her counsel agree that none of the documents and information provided to them  
14 by Frito-Lay shall be used for any purpose other than prosecution of this Action.

15  
16 12. Publicity. The Parties agree that they shall come to a resolution  
17 on the issue of the publicity of this settlement prior to the Parties' Preliminary  
18 Approval Hearing on July 28, 2016, which they will submit to the Court in a  
19 Supplemental Stipulation and Settlement Agreement. In the interim, however, aside  
20 from the filing of court papers with the Court related to the Settlement, the Parties  
21 shall not, nor shall they cause any other person, to make any public statement with  
22 regard to the settlement or any terms thereof, without the express written  
23 authorization of the other Parties, until such time as the terms of the Settlement are  
24 made public as a result of Court-ordered notice to the Settlement Class, at which  
25 time the publication, if any, will be governed by the Parties' supplemental  
26 agreement on this topic.

1                   Notwithstanding anything contained herein, or any other confidentiality  
2 provision to which Named Plaintiff may be or may have been subject to with Frito-  
3 Lay, nothing shall prevent her from communicating with government authorities  
4 concerning any possible legal violations. Frito-Lay nonetheless asserts and does not  
5 waive its attorney-client privilege over any information appropriately protected by  
6 the privilege.

7  
8                   13.   No Admission By the Released Parties. Frito-Lay and the  
9 Released Parties deny any and all claims alleged in this Action and deny all  
10 wrongdoing whatsoever. This Agreement is not a concession or admission, and  
11 shall not be used against Frito-Lay or any of the Released Parties as an admission or  
12 indication with respect to any claim of any fault, concession or omission by Frito-  
13 Lay or any of the Released Parties. Whether or not the Settlement is finally  
14 approved, neither the Settlement, nor any document, statement, proceeding or  
15 conduct related to this Agreement, nor any reports or accounts thereof, shall in any  
16 event be:

17  
18                   (a)    construed as, offered or admitted in evidence as, received  
19 as, or deemed to be evidence for any purpose adverse to the Released Parties,  
20 including, but not limited to, evidence of a presumption, concession, indication or  
21 admission by any of the Released Parties of any liability, fault, wrongdoing,  
22 omission, concession or damage; or

23  
24                   (b)    disclosed, referred to or offered or received in evidence  
25 against any of the Released Parties, in any further proceeding in the Action, or any  
26 other civil, criminal or administrative action or proceeding except for purposes of  
27 settling this Action pursuant to this Agreement.

28



1           14.    CIRCULAR 230 DISCLAIMER.  EACH PARTY TO THIS  
2 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE  
3 "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT  
4 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")  
5 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS  
6 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE  
7 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND  
8 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH  
9 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED  
10 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF  
11 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART  
12 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED  
13 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND  
14 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN  
15 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO  
16 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY  
17 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER  
18 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY  
19 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER  
20 TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE  
21 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY  
22 OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION  
23 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S  
24 OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH  
25 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
26 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX  
27 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION  
28 CONTEMPLATED BY THIS AGREEMENT.

1           15.   Exhibits and Headings. The terms of this Agreement include the  
2 terms set forth in any attached Exhibits 1-4, which are incorporated by this reference  
3 as though fully set forth herein. Any Exhibits to this Agreement are an integral part  
4 of the Settlement. The descriptive headings of any paragraphs or sections of this  
5 Agreement are inserted for convenience of reference only and do not constitute a  
6 part of this Agreement.

7  
8           16.   Interim Stay of Proceedings. The Parties agree to hold all  
9 proceedings in the Action, except such proceedings necessary to implement and  
10 complete the Settlement, in abeyance pending the Settlement Hearing to be  
11 conducted by the Court.

12  
13           17.   Amendment or Modification. This Agreement may be amended  
14 or modified only by a written instrument signed by counsel for all Parties or their  
15 successors-in-interest.

16  
17           18.   Entire Agreement. With the exception of the separate  
18 Supplemental Agreement referenced in paragraph 10(h), this Agreement and any  
19 attached Exhibits constitute the entire agreement among these Parties, and no oral or  
20 written representations, warranties or inducements have been made to any Party  
21 concerning this Agreement or its Exhibits other than the representations, warranties  
22 and covenants contained and memorialized in such documents.

23  
24           19.   Authorization to Enter Into Settlement Agreement. Counsel for  
25 all Parties warrant and represent they are expressly authorized by the Parties whom  
26 they represent to negotiate this Agreement and to take all appropriate action required  
27 or permitted to be taken by such Parties pursuant to this Agreement to effectuate its  
28 terms, and to execute any other documents required to effectuate the terms of this

1 Agreement. The Parties and their counsel will cooperate with each other and use  
2 their best efforts to effect the implementation of the Settlement.

3  
4 20. Binding on Successors and Assigns. This Agreement shall be  
5 binding upon, and inure to the benefit of, the successors or assigns of the Parties  
6 hereto, as previously defined.

7  
8 21. California Law Governs. All terms of this Agreement and the  
9 Exhibits hereto shall be governed by and interpreted according to the laws of the  
10 State of California.

11  
12 22. Counterparts. This Agreement may be executed in one or more  
13 counterparts. All executed counterparts and each of them shall be deemed to be one  
14 and the same instrument provided that counsel for the Parties to this Agreement  
15 shall exchange among themselves original signed counterparts.

16  
17 23. This Settlement is Fair, Adequate and Reasonable. The Parties  
18 believe this Settlement is a fair, adequate and reasonable settlement of this Action  
19 and have arrived at this Settlement in arms-length negotiations, taking into account  
20 all relevant factors, present and potential. This Settlement was reached after  
21 extensive negotiations.

22  
23 24. Jurisdiction of the District Court. The Court shall retain  
24 jurisdiction with respect to the interpretation, implementation and enforcement of  
25 the terms of this Agreement and all orders and judgments entered in connection  
26 therewith, and the parties and their counsel hereto submit to the jurisdiction of the  
27 Court for purposes of interpreting, implementing and enforcing the settlement  
28

1 embodied in this Agreement and all orders and judgments entered in connection  
2 therewith.

3  
4 25. Cooperation and Drafting. Each of the parties has cooperated in  
5 the drafting and preparation of this Agreement. Hence, in any construction made to  
6 this Agreement, the same shall not be construed against any of the parties.

7  
8 26. Invalidity of Any Provision. Before declaring any provision of  
9 this Agreement invalid, the Court shall first attempt to construe the provisions valid  
10 to the fullest extent possible consistent with applicable precedents so as to define all  
11 provisions of this Agreement valid and enforceable.

12  
13 27. Named Plaintiff's Waiver of Right to be Excluded and Object.  
14 Named Plaintiff agrees to sign this Agreement and by signing this Agreement is  
15 bound by the terms herein stated and further agrees not to request to be excluded  
16 from the Settlement Class and agrees not to object to any of the terms of this  
17 Agreement. Non-compliance by Named Plaintiff with this paragraph shall be void  
18 and of no force or effect. Any such request for exclusion or objection shall therefore  
19 be void and of no force or effect.

20  
21 NAMED PLAINTIFF

22 Date: \_\_\_\_\_

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PLAINTIFFS' COUNSEL

DHF LAW, P.C.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Devin Fok  
Attorneys for Plaintiffs

A NEW WAY OF LIFE REENTRY PROJECT

Date: \_\_\_\_\_

By: \_\_\_\_\_

Joshua Kim  
Attorneys for Plaintiffs

GIRARDI KEESE

Date: \_\_\_\_\_

By: \_\_\_\_\_

V. Andre Sherman  
Attorneys for Plaintiffs

DEFENDANT

FRITO-LAY, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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DEFENDANT’S COUNSEL

SHEPPARD MULLIN RICHTER &  
HAMPTON LLP

Date: \_\_\_\_\_

By: \_\_\_\_\_

Samantha D. Hardy  
Ashley T. Hirano  
Attorneys for Defendant  
Frito-Lay, Inc.

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**LIST OF EXHIBITS**

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