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10 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

11 JANE ROE, individually, and as a
12 representatives of the class,

13 Plaintiffs,

14 vs.

15 FRITO-LAY, INC.; and DOES 1-10
16 inclusive,

17 Defendants.

) CASE NO.: 3:14-CV-00751-HSG

) **MOTION FOR ATTORNEY’S FEES**

) Judge: Hon. Haywood Gilliam, Jr.

) Courtroom: 15

) Hearing Date: December 8, 2016

) Time: 2:00 P.M.

) Location: Courtroom 15, San Francisco

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1 Accordingly, pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), this Court's order
2 granting preliminary settlement approval, and the parties' settlement agreement,
3 Plaintiff respectfully moves the Court for the following awards:

- 4 • Attorney's fees to Class Counsel in the amount of \$316,666.67
5 representing 33 and 1/3% of the \$950,000 common fund.
- 6 • Litigation expenses to Class Counsel in the amount of \$24,071.95 which
7 includes, but not limited to expert fees, mediator fees, traveling fees,
8 deposition fees and other expenses.
- 9 • Cost of Class Administration by Rust Consulting, Inc. for providing
10 class notices to all 2,931 class members in the amount of \$35,158.
- 11 • \$10,000 to the Named Plaintiff as an incentive award for her assistance
12 in this action.

13 The amount of attorney's fees sought is approximately 34.25% *less* than the
14 counsel's current lodestar. As further detailed below, Class Counsel's combined
15 lodestar total \$481,560. In light of the significant benefits inured to the class and the
16 amount of work performed, Class Counsel respectfully submit that the fees are
17 reasonable.

18
19 **II. LITIGATION EFFORTS**

20
21 The following is a non-exhaustive list of the amount of work conducted in this
22 action:

- 23 • Investigated the Named Plaintiff's potential claims through information
24 procurement devices authorized under the California Labor Code,
25 Investigative Consumer Reporting Agencies Act, and the Fair Credit
26 Reporting Act
- 27 • Reviewed and Analyzed the documents received

- 1 • Obtained the Named Plaintiff's consent and drafted and filed the class
2 action complaint
- 3 • Researched and discussed issues of law with Defendant's counsel which
4 led to the filing of an amended complaint without the need for motion
5 practice under Rule 12(b)(6)
- 6 • Served and reviewed formal written discovery and drafted a mediation
7 brief following the parties' agreement to mediate
- 8 • Conducted a full day of mediation in front of Mr. Mark Rudy of Rudy,
9 Exelrod, Zieff & Lowe, LLP in San Francisco, California
- 10 • The case did not resolve but the parties continued to negotiate a
11 settlement with the assistance of Mr. Rudy
- 12 • The parties reached a settlement agreement based on an understanding of
13 the class size as disclosed through discovery and settlement negotiations
- 14 • The parties drafted and executed a settlement agreement and Class
15 Counsel drafted a motion for preliminary approval
- 16 • Class Counsel received new information concerning an increase of class
17 size which necessitated the withdrawal of the motion for preliminary
18 approval
- 19 • Class Counsel determined that the class would not be reasonably
20 compensated due to the increase in class size
- 21 • The parties resumed litigation and conducted extensive discovery
- 22 • Specifically, multiple depositions were taken, and more were sought
23 which was refused by Defendant resulting in multiple discovery letters
24 and telephonic hearings with Magistrate Judge Kandis A. Westmore
- 25 • Class Counsel propounded numerous additional sets of written discovery
26 in an effort to obtain Defendant's databases which led to the filing of
27 additional discovery dispute letters and telephonic hearings with
28 Magistrate Judge Kandis A. Westmore

- 1 • Class Counsel ultimately received favorable rulings with respect to
2 certain written discovery and deposition requests
- 3 • Subpoenas were served on Defendant’s background screening and
4 applicant tracking system vendors which were met with some resistance
- 5 • Over the course of many meet and confer conferences and written
6 correspondences, multiple databases were produced by these vendors
7 and Defendant
- 8 • Class Counsel examined hundreds of thousands of lines of data and
9 retained a database expert to assist in the analysis of the material
- 10 • The discovery culminated in a motion for class certification which was
11 filed on May 5, 2016
- 12 • Meanwhile, the parties continued to negotiate a class-wide settlement
13 where one was reached
- 14 • The parties negotiated all of the terms of the settlement agreement and
15 sought approval of the settlement with this Court which was granted

16 The Named Class representative has also been extremely committed to the
17 prosecution of this matter. Although it was explained to her that she could potentially
18 receive actual damages greater than she would have received for the class action, Ms.
19 Roe nevertheless voluntarily gave up those rights so that Defendant will change its
20 employment practices and that other class members can potentially receive recovery.
21 *See* Declaration of Jane Roe (“Roe Decl.”), P. 1, ¶6. Ms. Roe consistently made
22 herself available for questions and had always thoroughly reviewed the legal
23 materials presented to her. Roe Decl., P.2 ¶¶9—10. Ms. Roe asked very probing
24 questions of material terms of both of the class settlements to ensure that the interest
25 of the class members are protected. Roe Decl., P.2, ¶13. Ms. Roe also made herself
26 available by phone during mediation as well as subsequent settlement discussions.
27 Class Counsel sincerely believes that none of the 2,931 class members would have
28 received any money but for the contributions of Ms. Roe over the last three years.

1 Accordingly, Class Counsel respectfully requests this Court to approval an incentive
2 award of \$10,000 for her efforts and contribution into this litigation.

3
4 **III. ARGUMENT**

5
6 **A. The Requested Attorney’s Fees Are Reasonable And Should Be**
7 **Awarded**

8
9 It is well-settled that plaintiff’s attorneys in a class action lawsuit may petition
10 the court for compensation for the benefits they obtained for the class. *See, e.g.*
11 *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980). Rule 23, too, expressly states that
12 “the court may award reasonable attorney’s fees and nontaxable costs that are
13 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

14 Further, FCRA itself is a fee-shifting statute, *Holman v. Experian Info. Sols.,*
15 *Inc.*, No. 11-cv-0180 CW (DMR), 2014 WL 7186207, at *3 (N.D. Cal. Dec. 12,
16 2014), meaning that it authorizes a court to award the prevailing party attorneys’ fees,
17 15 U.S.C. §1681n, and is intended to “encourage private litigants to enforce the laws
18 that protect the public in areas like civil rights, consumer protection and the
19 environment.” *Holman*, 2014 WL 7186207, at *3 (citing *City of Riverside v. Rivera*,
20 477 U.S. 561, 574-575 (1986)).

21 Courts in this Circuit have evaluated fee petitions under two primary methods:
22 the lodestar method and the percentage-of-recovery method. *In re Online DVD-*
23 *Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015). Importantly, however, it is
24 “[t]he lodestar method [that] is appropriate in class actions brought under fee-shifting
25 statutes...” *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941-42 (9th
26 Cir. 2011) (internal citations and quotations omitted). Moreover, the Ninth Circuit has
27 held that the lodestar method for calculating attorneys’ fees is presumptively
28 reasonable and appropriate. *See Jordan v. Multnomah County*, 815 F.2d 1258, 1262

1 (9th Cir. 1987) (“A ‘strong presumption’ exists that the lodestar figure represents a
2 ‘reasonable’ fee”) (citing *Pennsylvania v. Delaware Valley Citizens’ Council for*
3 *Clean Air*, 478 U.S. 546, 564 (1986)).

4 The lodestar figure itself is calculated by multiplying the number of hours
5 attorneys reasonably expended on the litigation by a reasonable hourly rate for the
6 region and for the experience of the lawyer. *Staton v. Boeing Co.*, 327 F.3d 938, 965
7 (9th Cir. 2003). Although the lodestar figure is presumptively reasonable, courts
8 verify its reasonableness or adjust it upward or downward based on a variety of
9 factors, including: “the quality of representation, the benefit obtained for the class,
10 the complexity and novelty of the issues presented, and the risk of nonpayment...” *In*
11 *re Bluetooth*, 654 F.3d at 942 (quoting *Hanlon*, 150 F.3d at 1029).

12 Here, under the lodestar method and factors listed above, and given the
13 relevant facts pertaining to Class Counsel’s fees and the parties’ settlement, the
14 requested fee award is eminently reasonable and should be granted.

15
16 **B. The Requested Amount is Less than Class Counsel’s Lodestar, and the**
17 **Lodestar is Nonetheless Reasonable**

18
19 Class Counsel prosecute almost all of their cases on a contingency basis
20 including the subject action. Class Counsel rely on awards for attorney’s fees and
21 costs in order to continue their work for the advancement of consumer’s rights. To
22 date, Class Counsel have received no compensation for their time or expenses
23 invested in this case, and if they do not prevail, they will receive no compensation
24 whatsoever, and will sustain significant financial loss.

25 As of today, Mr. Devin H. Fok, the principal of DHF Law, P.C spent 452 hours
26 in this action. Mr. Joshua E. Kim, the principal litigation attorney at A New Way of
27 Life Reentry Project and co-lead counsel of this matter spent 391.8 hours. Mr. John
28 A. Girardi, the shareholder of Girardi Keese spent 6 hours whereas Mr. V. Andre

1 Sherman of the same firm spent 45 hours on this matter. The billing rate for each of
2 the attorneys is \$600, \$450, \$800, and \$650 respectively.² The billing rates for Mr.
3 Fok and Mr. Kim have recently been approved on September 30, 2016 as reasonable
4 “compared to other rates this Court has seen in similar cases in this community” by
5 Judge Cynthia Bashant of the United States District Court, Southern District of
6 California in a similar FCRA action. *Watkins v. HireRight, Inc.*, 3:13-cv-01432-BAS-
7 BLM, Doc. #153, P.6. Judge Bashant found that “counsel is skillful and experienced
8 and negotiated an excellent result for the class, obtaining both monetary and
9 injunctive relief, and that the counsel obtained this relief despite raising a novel legal
10 issue and assuming significant up-front costs for bankruptcy counsel.” *Id.* Mr. Girardi
11 and Mr. Sherman’s rates are also reasonable in light of their experience. They are
12 trial lawyers that have received numerous awards as well as very significant jury
13 verdicts and settlements for their clients.

14 In this motion, Class Counsel seeks \$24,071.95 in costs which includes
15 mediator fees, expert fees, deposition fees, travel expenses, courier fees, filing fees
16 and copying fees. Based on the length and the extensive effort employed in this
17 litigation, Class Counsel believes that the amount sought to be reasonable.

18 Class Counsel also seek \$35,158 to reimburse Rust Consulting, Inc. (“Rust”)
19 for its efforts in the mailing and tracing of class member address information.
20 Following preliminary approval, Rust also maintained a phone line and website
21 (fritolayfcrasettlement.com) for class member inquiries and information. The bid
22 submitted by Rust was the lowest of the bids received from three reputable class
23 action administrative firms. This amount has been reduced from the original estimate
24 due to Mr. Kim’s negotiation with Rust consulting in an effort to maximize recovery
25 for class members.

26 //

27 //

28 _____
² Total lodestar is therefore \$481,560.

1 **C. The Requested Attorney’s Fees Are Reasonable In Light Of The**
2 **Relevant Factors**

3
4 The benefit counsel obtained for the class is foremost in courts’ consideration
5 of the reasonableness of requested fees. *In re Bluetooth*, 654 F.3d at 942. Here, the
6 benefit of the class takes the form of significant monetary relief and more than
7 justifies the requested fee award.

8 As noted by this Court in its August 5, 2016 preliminary approval order (Doc.
9 #103), the \$950,000 common fund to be paid by Defendant “which constitutes about
10 32.4% of Defendant’s potential statutory damage exposure, is reasonable given the
11 stage of the proceedings and the defenses asserted in this action.” Doc. #103, P. 12.
12 As fully set forth in Plaintiff’s Motion for Final Approval, the net recovery of each
13 class member will be \$198.52.³ This is consistent with Plaintiff’s estimate at
14 preliminary approval where this Court held that “the approximately \$200.00 recovery
15 is more than sufficient for the Court to grant preliminary approval given the merits of
16 Plaintiff’s claims.” *Id.* P. 12.

17 Plaintiff’s claims involved significant risks. As noted by this Court, “Plaintiff
18 would be required to successfully move for class certification under Rule 23, survive
19 summary judgment, and receive a favorable verdict capable of withstanding a
20 potential appeal. The risks and costs associated with class action litigation weigh
21 strongly in favor of settlement.” *Id.* Moreover, the fact that there are no opt-outs or
22 objections strongly suggests that the settlement is fair, reasonable, and adequate.

23 Thus, based on the foregoing, Class Counsel sincerely believes that the benefit
24 inured to the class justify the requested award of attorneys. This is particularly so
25 where the requested fees are lower than the Class Counsel’s lodestar.

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28 ³ This assumes all checks are cashed. Any uncashed funds will be redistributed pro-
rata to class members assuming that they are in excessive of \$5.00.

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E-FILING ATTESTATION

By his signature below, counsel for Plaintiff attests that he has on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/s/) within this e-filed document and any document e-filed concurrently herewith.

DATED: November 4, 2016

DHF LAW, P.C.

By: /s/ Devin H. Fok

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