

1 **DHF LAW, P.C.**
2 Devin H. Fok, Esq. (SBN #256599)
3 devin@devinfoklaw.com
4 234 E. Colorado Blvd., 8th Floor
5 Pasadena, CA 91101
6 Ph: (888) 651-6411
7 Fax: (818) 484-2023

8 Attorneys for Plaintiffs and the Proposed Class

9 *[Additional counsels on signature page]*

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
) **DECLARATION OF DEVIN H.**
) **FOK IN SUPPORT OF**
) **PLAINTIFF’S 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

18
19
20 **DECLARATION OF DEVIN H. FOK IN SUPPORT**

21
22 I, DEVIN H. FOK, declare:

23 1. I am one of the lead counsels of record for Plaintiff Jane Roe. I make
24 this Declaration in support of Plaintiffs’ Motion for Attorney’s Fees. I am over 21
25 years of age, of sound mind, capable of executing this Declaration, and have personal
26 knowledge of the facts stated herein, and they are all true and correct.

CLASS NOTICE PROVIDED TO CLASS MEMBERS

1
2
3 2. Since the grant of preliminary approval of the Settlement and as direct
4 by the Court, the Parties have provided mail notices to the Class. The Court's
5 appointed third-party administrator, Rust Consulting, Inc. confirmed that mail notices
6 were provided to 2,931 class members.

7 3. I was presented with a written activity log, demonstrating that 2,931
8 notices were mailed. Of the 2,931 notices, 464 were returned. Of these, 411 were
9 skip-traced and remailed.

10 4. On October 12, 2016, I was informed that of the 461 returned notices, no
11 updated addresses could be obtained for 65 class members through tracing.

12 5. I inquired as to whether there was anything further that could be done to
13 locate the updated addresses of these 65 class members.

14 6. I was informed that an additional level of manual tracing by Rust's
15 researchers could potentially locate up to 25% of the 65 members at \$5 per search.

16 7. I consulted with my co-counsels and Defendant. With their consent, I
17 authorized the additional tracing.

18 8. Subsequently, I was informed that updated addresses were found for 50
19 of the 65 members and the notices have been remailed to their updated addresses.

20 9. As ordered by this Court, the mailed notices disclosed that: 1) a total of
21 \$950,000 settlement funds will be distributed to class members; 2) the amount the
22 class member will receive will vary depending on the amount of attorney's fees,
23 expenses, and costs of settlement administration; 3) that each class member is to
24 receive approximately \$200.00 following these deductions; 4) the date of the final
25 approval hearing is disclosed including the intent for Class Counsel's request to seek
26 up to 33 1/3% of the settlement fund and \$10,000 payment to the Named Plaintiff; 5)
27 class members may opt out or object; 6) if they do not do so, they will automatically
28

1 receive the estimated \$200.00 payment; 7) with a possible second distribution of
2 uncashed checks within 60 days of the mailing of the first payment.

3 10. The long form, short form, as well as Spanish-translated version of the
4 long form notice as well as other pertinent documents have been made available on
5 fritolayfcrasettlement.com.

6 11. A toll-free phone bank has always been maintained by Rust.

7 12. I was informed that 34 calls were received and there were 143 unique
8 visitors to the settlement website.

9 13. Of all the activities recorded, there were no opt-outs or objections
10 received.

11 14. I believe that the parties have fully complied with the Court's
12 Preliminary Approval Order dated August 5, 2016.

13
14 **CLASS NOTICE PROVIDED TO CLASS MEMBERS**

15
16 15. I first became aware of the Named Plaintiff through a referral by the East
17 Bay Community Law Center ("EBCLC") located in Berkeley, California. One of the
18 services that EBCLC provide to its clients is the expungement of criminal records.
19 Through my colleagues in EBCLC, I learned that the Named Plaintiff was unlawfully
20 denied employment due to a conviction that has already been dismissed.

21 16. Following receipt of the file, I began investigation of the Named
22 Plaintiff's potential claims which culminated to the filing of this class action. I
23 learned that the Named Plaintiff was never provided with any "pre-adverse action
24 notice." Rather, she was provided with post-adverse action notice involving the
25 denial of her employment without the benefit of an opportunity to contest the error
26 before the job was lost.

1 17. Based on my experience, I knew that many employers, regardless of
2 size, routinely failed to provide “pre-adverse action notice” as mandated by the Fair
3 Credit Reporting Act (“FCRA”).

4 18. FCRA cases present significant risks and challenges. First, actual
5 damages are hard to demonstrate for violation of a procedural requirement such as the
6 one at issue. Thus, in most cases, only statutory damages are sought. However, to
7 obtain statutory damages, Plaintiff must demonstrate a *willful* violation of the statute
8 which is always difficult to do. *See* 15 U.S.C. §1681n.

9 19. Second, most employers including Frito-Lay do not have standardized
10 procedures for compliance with the FCRA. Thus, this presents a significant
11 ascertainability problem as different branches of the same employer may utilize
12 different procedures for compliance with the FCRA.

13 20. Third, the Named Plaintiff’s experience could have been unique.
14 Specifically, in this action, Defendant argued that Plaintiff should have never been
15 hired because she had failed an interview before the procurement of the report.
16 Although I am confident that we can overcome this defense, it nevertheless presents a
17 potential for risk and uncertainty.

18 21. With these risks in mind, my co-counsel and I nevertheless undertook to
19 litigate this case on a purely contingency fee basis advancing all costs of litigation.

20 22. I am a solo practitioner and my colleague Mr. Joshua Kim is one of the
21 few attorneys working in a small non-profit that operates in South Central Los
22 Angeles. Thus, this action presents a significant financial risk to Mr. Kim’s
23 organization and mine.

24 23. With these risks in mind, we nevertheless proceeded to litigate this
25 action until we reached a settlement in 2015 based on an understanding of a certain
26 class size. Following submission of the preliminary approval motion, I learned that
27 the class size had substantially and significantly increased.

28

1 24. In order to protect the interest of the class, we immediately withdrew the
2 motion and recommenced formal discovery.

3 25. The discovery process was hard fought as neither Defendant nor its
4 vendors initially disclosed all electronic data contained its various databases.
5 Numerous meet and confer attempts were made and multiple discovery dispute letters
6 were required to be submitted to Magistrate Judge Kandis A. Westmore.

7 26. Defendant also resisted multiple attempts to depose key witnesses which
8 required further meet and confer and further involvement of Judge Westmore.

9 27. Though we were able to obtain discovery rulings in our favor, Defendant
10 continued to resist production of the databases which ultimately led to the filing of a
11 motion for sanctions. Under the leverage of this motion, we were able to obtain a
12 more complete production of records (databases) allowing us to ascertain with
13 certainty the identity of the class members in this action.

14 28. Along with the assistance of a retained expert, we analyzed each of the
15 databases produced which involved hundreds of thousands of lines of raw data. The
16 data consisted of information maintained by the background screening and the
17 applicant tracking system vendor.

18 29. We also questioned the background screening company's own database
19 expert so as to understand the underlying structure of their databases.

20 30. We also took deposition of Defendant's Person Most Knowledgeable as
21 well as the key human resource personnel familiar with Plaintiff's employment
22 application.

23 31. Our discovery efforts culminated into the filing of a motion for class
24 certification which was pending prior to the parties' second settlement.

25 32. Based on the settlement and the result of the notices provided to the
26 class, each class member will receive automatic payment of \$198.52 *after* deduction
27
28

1 of fees, costs, and incentive awards. Class members will potentially receive a higher
2 amount due to redistribution of uncashed checks.

3 33. I sincerely believe that this is fair, reasonable, and adequate recovery for
4 class members who have been denied employment without first receive pre-adverse
5 action notice.

6
7 **EXPERIENCE AND QUALIFICATIONS**
8

9 34. I am the owner and proprietor of Law Offices of Devin H. Fok now
10 d.b.a. DHF Law, P.C., and I am a graduate of the University of California Los
11 Angeles School of Law.

12 35. My practice relates exclusively to background check issues including
13 violations arising out of: 1) the Fair Credit Reporting Act (“FCRA” 15 U.S.C. § 1681
14 *et seq.*); 2) its California state equivalent, the California Investigative Consumer
15 Reporting Agencies Act (“ICRAA” Cal. Civ. C. § 1786 *et seq.*); 3) the California
16 Consumer Credit Reporting Agencies Act (“CCRAA” Cal. Civ. C. §1785.2 *et seq.*);
17 and 4) California Labor Code.

18 36. I am an attorney in good standing with the California State Bar and have
19 been admitted to practice in the Supreme Court of California as well as various
20 federal courts including the United States District Courts in the Northern, Central,
21 and Southern Districts as well as the Ninth Circuit Court of Appeals.

22 37. Following my graduation from Law School in 2007, I was hired as an
23 associate at Girardi & Keese, one of the most prestigious consumer law firms in
24 Southern California. I litigated many plaintiff-side individual actions to resolution
25 with an extremely high success rate. I started my current practice in 2011 prosecuting
26 exclusive FCRA individual and class actions. My office currently represents
27 consumers across the country in no less than ten pending class actions for violations
28

1 of the FCRA as well as additional class cases that have yet to be filed and/or
2 resolved.

3 38. For example, recently, I was appointed as class counsel in *Roe v.*
4 *Intellicorp Records, Inc.*, Case No. 1:12-CV-02288-JG (N.D. Ohio 2012) and was
5 part of a team that was instrumental in reaching a \$18.6 million settlement which
6 represented one of the largest class action settlements in the history of the FCRA.

7 39. I was counsel in *Dowell v. General Information Services, Inc.*, 2:14-cv-
8 03412-PBT (E.D. Pa 2012), subsequently consolidated with *King v. General*
9 *Information Services, Inc.*; 2:10-cv-06850-PBT where final class approval has been
10 granted and my attorney's fees approved.

11 40. In *Smith v. Harbor Freight Tools USA, Inc.*, Case No. 2:13-cv-06262-
12 JFW (C.D. Ca 2013), an action involving the employer's failure to provide pre-
13 adverse action notice under §1681b(b)(3) as well as defective notification forms
14 under §1681b(b)(2) where the case was ultimately resolved in a class-wide basis. I
15 was approved as class-counsel.

16 41. In *Watkins v. HireRight, Inc.*, Case No. 3:13-cv-01432-MMA-BLM
17 (C.D. Ca 2013), I am one of the attorneys litigating a class action against the second
18 largest background check company in the country for its role in adjudicating
19 consumers as ineligible for employment on grounds that violate state equal
20 employment opportunity rules and regulations as well as its failure to provide
21 consumers with full file disclosures as required under 15 U.S.C. §1681g. Final
22 approval was granted and I was designated class counsel along with my colleagues.

23 42. Today, on November 4, 2016, Judge William Alsup granted preliminary
24 approval of a class-wide settlement in *Hawkins v. S2Verify, Inc.*, Case No. 3:15-cv-
25 03502-WHA (C.D. Ca 2015) involving the allegedly knowing disclosure of dismissed
26 arrests older than 7-years old.

27
28

1 43. I am also one of the lead attorneys in *Moran v. The Screening Pros,*
2 *LLC.*, No. 12-57246 (9th Cir.), a case in which the Consumer Financial Protection
3 Bureau (“CFPB”) joined by the Federal Trade Commission (“FTC”) submitted
4 amicus curiae brief relating to an issue of first impression under the FCRA having to
5 do with criminal background checks.

6 44. I have also actively worked with the U.S. Office of Federal Contract
7 Compliance Programs (“OFCCP”) along with the United States Equal Employment
8 Opportunity Commission (“EEOC”) to investigate and prosecute Title VII violations
9 in connection with the denial and termination of employment to consumers with
10 criminal records.

11 45. I have spoken in numerous professional contexts on legal issues relating
12 to employment background checks, including the following topics: 1) EEOC
13 enforcement guidance on the consideration of arrest and conviction records in
14 employment decisions under Title VII of the Civil Rights Act; 2) California’s
15 restriction on the use of credit reports by employers; and 3) employer compliance
16 requirements for the procurement and use of background check reports. I have
17 presented in front of the California Orange County Bar Association Labor and
18 Employment Section and I also presented to numerous California non-profits at the
19 2012 Annual Reentry Legal Symposium.

20 46. Recently, I was also included in the 2015 and 2016 Rising Stars list by
21 the Super Lawyer magazine for the work that I have done in the area of the FCRA as
22 well as the ICRAA.

23
24 **CLASS COUNSEL’S LODESTAR AND EXPENSES**

25
26 47. I am the sole attorney of DHF Law, P.C., and all work performed by my
27 firm were performed by me.
28

1 48. I use a web-based software to track all of my hours and expenses. They
2 have been tracked on a contemporaneous basis. Pursuant to Local Rule 54-5(b), I can
3 readily furnish an abstract of the contemporary time records for inspection upon
4 request.

5 49. Based on my records, I have spent 452 attorney hours in this action at an
6 hourly rate of \$600 per hour totaling \$271,200.00

7 50. I have also obtained detailed records from my co-counsel Joshua Kim
8 which reflected 391.8 attorney hours at a rate of \$450 per hour totaling \$176,310.00.

9 51. Mr. John A. Girardi informed me that he spent 6 hours in this action at
10 an hourly rate of \$800 per hour and Mr. V. Andre Sherman of the same firm spent 45
11 hours in this matter at a rate of \$650 per hour.

Attorney	Hours	Hourly Rate	Total
Devin H. Fok	452	\$600	\$271,200.00
Joshua E. Kim	391.8	\$450	\$176,310.00
John A. Girardi	6	\$800	\$4,800.00
V. Andre Sherman	45	\$650	\$29,250.00
Total	894.8		\$481,560.00

19
20 52. Although Class Counsel's total lodestar total \$481,560.00, we are
21 requesting 33 1/3% of the settlement fund which is approximately \$316,666.67.

22 53. Based on my review of my records as well as detailed records provided
23 by my co-counsels, the expenses total \$24,071.95.

24 54. I also seek an award of \$35,158 for costs of class administration
25 conducted by Rust Consulting, Inc.

1 I declare under the penalty of perjury under the laws of the United States that
2 the foregoing is true and correct. Executed June 23, 2016 at Pasadena, California.

3
4 November 4, 2016

/s/ Devin H. Fok
Declarant, Devin H. Fok

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28