

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Frito-Lay North America, Inc. "All Natural"
Litigation

)
) Case No. 1:12-MD-02413-RRM-RLM

) **[PROPOSED] FINAL ORDER**
) **APPROVING CLASS ACTION**
) **SETTLEMENT**

This matter came on for hearing upon the joint application of the Parties for the approval of the Settlement set forth in the Class Action Settlement Agreement, dated November 10, 2015 ("Settlement Agreement").

Due and adequate notice having been given to the Class, and the Court having considered the Settlement Agreement, all papers filed and proceedings had herein, and having reviewed the record in this Litigation, and good cause appearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Approval of Settlement Agreement. The Settlement Agreement is approved. As described in further detail below, the Settlement Agreement and the Settlement it incorporates are fair, reasonable, and adequate, with terms that are within the range of reasonableness. The Settlement Agreement was entered into at arm's-length by experienced counsel and after extensive negotiations spanning months, including with the assistance of a third party mediator, the Honorable Richard J. Holwell (Ret.). The Settlement Agreement is not the result of collusion.

2. Defined Terms. The Court, for purposes of this Final Order, adopts all defined terms as set forth in the Settlement Agreement.

3. Jurisdiction. For purposes of the Settlement of the Litigation, the Court has subject matter and personal jurisdiction over the Parties, including all Class Members, and venue is proper. The Court retains exclusive and continuing jurisdiction over the Class Action Administrator, the Settling Parties, and their counsel for all matters relating to the Settlement, including the administration, interpretation, effectuation or enforcement of the Settlement. The Class Action

Administrator, the Settling Parties and their counsel submit to the jurisdiction of the Court for purposes of the Settlement.

4. Class Certification for Settlement Purposes Only. The Court finds and concludes that, for the purposes of approving this Settlement only and for no other purpose and with no effect on the Litigation should the Effective Date not occur, the proposed Rule 23(b)(2) settlement class meets the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the Class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Class; (c) the claims or defenses of the Class Representatives are typical of the claims or defenses of the Class; (d) the Class Representatives and Class Counsel will fairly and adequately protect the interests of the Class; and (e) the Defendant has acted on grounds that apply generally to the Class, so that final injunctive relief is appropriate respecting the Class as a whole.

The Court certifies, for settlement purposes only, a Class consisting of all consumers in the United States and U.S. territories (including, but not limited to, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the other territories and possessions of the United States), who purchased one or more of the Products, identified in Paragraph 1.20 of the Settlement Agreement (and listed below), in the United States or U.S. territories during the period January 1, 2010 through August 24, 2017. Excluded from the Class are: (a) persons or entities who purchased the Products for the purpose of resale or distribution; (b) persons who are employees, directors, officers, and agents of Defendant or its parent or subsidiary companies; (c) governmental entities; (d) persons who timely and properly exclude themselves from the Class; and (e) any judicial officer hearing this Litigation, as well as their immediate family members and employees.

The “Products” in the Settlement include the following Frito-Lay Tostitos, SunChips, or Bean Dip products:

- Tostitos Restaurant Style Tortilla Chips
- Tostitos Bite Size Rounds Tortilla Chips
- Tostitos Crispy Rounds Tortilla Chips
- Tostitos Multigrain Tortilla Chips
- Tostitos Scoops Tortilla Chips
- Tostitos Multigrain Scoops Tortilla Chips
- Tostitos Restaurant Style with a Hint of Lime Flavored Tortilla Chips
- Tostitos Restaurant Style with a Hint of Jalapeño Flavored Tortilla Chips
- Tostitos Restaurant Style with a Hint of Pepper Jack Flavored Tortilla Chips
- Tostitos Artisan Recipes Fire-Roasted Chipotle Flavored Tortilla Chips
- Tostitos Artisan Recipes Baked Three Cheese Queso Flavored Tortilla Chips
- Tostitos Artisan Recipes Roasted Garlic and Black Bean Flavored Tortilla Chips
- Tostitos Artisan Recipes Toasted Southwestern Spices Flavored Tortilla Chips
- SunChips Original Flavored Multigrain Snacks
- SunChips Garden Salsa Flavored Multigrain Snacks
- SunChips French Onion Flavored Multigrain Snacks
- SunChips Harvest Cheddar Flavored Multigrain Snacks
- SunChips Jalapeño Jack Flavored Multigrain Snacks
- SunChips 6 Grain Medley Parmesan & Herb Flavored Multigrain Snacks
- SunChips 6 Grain Medley Creamy Roasted Garlic Flavored Multigrain Snacks
- Fritos Bean Dip

- Fritos Hot Bean Dip

5. Adequacy of Representation. The Court reaffirms the appointment of Plaintiffs Julie Gengo, Chris Shake, Valarie Zuro, and Deborah Lawson as Class Representatives, and finds that these Plaintiffs have adequately represented the Class for purposes of entering into and implementing the Settlement Agreement. The Court reaffirms the appointment of Milberg LLP and Reese LLP as Class Counsel and finds that Class Counsel has adequately represented the Class.

6. Class Notice. The Court finds that the dissemination of the Notice to Class Members in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order constituted the best notice practicable under the circumstances and fully met the requirements of Due Process. The Class Members have received proper notice of: (i) the pendency of this class action; (ii) the terms of the proposed Settlement, including the Release; (iii) their rights under the proposed Settlement; (iv) their right to exclude themselves from the Class and the proposed Settlement; (v) their right to object to any aspect of the proposed Settlement; (vi) their right to appear at the Fairness Hearing; (vii) information concerning attorneys' fees and expenses and case contribution awards that would be applied for at the Fairness Hearing, including how to review those applications in advance of the deadlines to object or request exclusion; and (viii) the binding effect of the Final Judgment and Order in this Litigation.

7. CAFA Notice. The Court finds that Defendant provided notice of the proposed Settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715.

8. Requests for Exclusion. Attached hereto as Exhibit 1 is the list of persons who submitted valid Requests for Exclusion from the Class. The Court finds that only those persons listed in Exhibit 1 are excluded from the Class. All other Class Members are bound by the Settlement.

9. Final Settlement Approval. The terms and provisions of the Settlement Agreement have been entered into in good faith and are hereby fully and finally approved as fair, reasonable,

and adequate as to, and in the best interests of, the Plaintiffs and the Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, CAFA, the United States Constitution (including the Due Process Clause of the Fifth and Fourteenth Amendments), and any other applicable law. The Court finds that the Settlement is fair, adequate and reasonable based on the following factors, among other things:

(a) There is no fraud or collusion underlying this settlement, and it was reached as a result of extensive arm's-length negotiations, occurring over the course of several months, including in-person mediation sessions with a respected mediator, the Honorable Richard J. Holwell (Ret.), warranting a presumption in favor of approval.

(b) The complexity, expense and likely duration of the litigation favor settlement—which provides substantial benefits on a much shorter time frame than otherwise possible—on behalf of the Class.

(c) The support of Class Counsel, who are highly skilled in class action litigation such as this, and the Plaintiffs, who have participated in this litigation and evaluated the Settlement, also favor final approval.

(d) The Settlement provides meaningful injunctive relief to the Class and falls within the range of reasonable recoveries by the Class.

The Settlement is approved and all objections to the Settlement are overruled.

10. Binding Effect. The terms of the Settlement Agreement and of this Final Order shall be forever binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

11. Settlement Consideration. Defendant will provide the Class with injunctive relief by way of the modification of its labeling policies and practices for the Products as set forth in Section 4 of the Settlement Agreement and hereby expressly incorporated into this Final Order.

12. Releases.

(a) Plaintiffs and each of the Class Members, by operation of this Final Judgment and Order, are deemed to have fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims.

- (i) “Released Persons” means Frito-Lay and all of its predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, and current and former directors, officers, and employees.
- (ii) “Released Claims” means all causes of action, claims, suits, debts, damages, judgments, liabilities, demands and controversies whatsoever—whether matured or unmatured, now known or unknown, liquidated or unliquidated, at law or in equity, whether before a local, state or federal court, or state or federal administrative agency, commission, arbitrator(s) or otherwise—that the class members now have or may have, and for all times up to and including the date of final approval of the settlement, for all claims that were or could have been asserted relating to the use of the word “natural” in describing the Products or presence of GMOs in the Products, except for claims of personal injury or wrongful death.

(b) Frito-Lay (on behalf of itself and the Released Persons), by operation of this Final Judgment and Order, are deemed to have fully, finally, and forever released, relinquished, and discharged the Plaintiffs, the Class and Class Counsel and other counsel representing plaintiffs in the Litigation for all claims that were or could have been asserted relating to the institution, prosecution, or settlement of the Litigation.

(c) After entering into this Settlement Agreement, the Settling Parties may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the claims released by this Settlement, but they intend to release fully, finally and forever the claims released by this Settlement. In furtherance of such intention, the releases will remain in effect notwithstanding the discovery or existence of any such additional or different facts. Plaintiffs (on behalf of themselves and the Class Members), through their counsel, and Frito-Lay (on behalf of itself and the Released Persons) expressly, knowingly, and voluntarily

waive the provisions of Section 1542 of the California Civil Code (and any similar State laws).

California Civil Code § 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(d) The Parties acknowledge, and the Settling Parties by operation of law shall be deemed to have acknowledged, that the waiver of the provisions of Section 1542 of the California Civil Code (and any similar State laws) with respect to the claims released by this Settlement was separately bargained for and was a key element of the Settlement.

(e) For the avoidance of doubt, the mutual releases above in this section include only claims related to the Products and do not include claims related to potato chip products.

(f) In addition, Plaintiffs Julie Gengo, Chris Shake, Valarie Zuro, and Deborah Lawson (on behalf of themselves only and not the other Class Members, by operation of this Final Judgment and Order, are deemed to have fully, finally, and forever released, relinquished, and discharged all claims of any kind or character against Frito-Lay and all of its predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, and current and former directors, officers, and employees arising on or before the Effective Date.

(g) Upon the Effective Date: (i) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Class Members; and (ii) Plaintiffs and Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting against the Released Persons in any federal or state court or tribunal any and all Released Claims.

13. Enforcement of Settlement. Nothing in this Final Order or in the accompanying Final Judgment shall preclude any action to enforce the terms of the Settlement.

14. No Admissions. Neither this Final Order nor the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the

Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendant or any other Released Person; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant or any other Released Person in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Litigation or any other Released Person may file this Settlement Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. Dismissal of Litigation. The Litigation, including actions in the MDL (*Shake v. Frito-Lay North America, Inc., et al.*, No. 12-cv-00408-RRM-RLM (E.D.N.Y.); *Gengo v. Frito-Lay North America, Inc.*, No. 12-cv-00854-RRM-RLM (E.D.N.Y.); *Zuro v. Frito-Lay North America, Inc.*, No. 12-cv-00885-RRM-RLM (E.D.N.Y.); *Schwartz v. Frito-Lay North America, Inc.*, No. 12-cv-04638-RRM-RLM (E.D.N.Y.); *Foust v. Frito-Lay North America, Inc.*, No. 12-cv-05017-RRM-RLM (E.D.N.Y.); *Berkowitz v. Frito-Lay North America, Inc.*, No. 12-cv-06106-RRM-RLM (E.D.N.Y.); *Fleishman v. Frito-Lay North America, Inc.*, No. 12-cv-06107-RRM-RLM (E.D.N.Y.); *Altman v. Frito-Lay North America, Inc.*, No. 12-cv-06105-RRM-RLM (E.D.N.Y.); *Roman v. Frito-Lay North America, Inc.*, No. 12-cv-06108-RRM-RLM (E.D.N.Y.); *Patrick v. Frito-Lay North America, Inc.*, No. 12-cv-06279-RRM-RLM (E.D.N.Y.); *Patrick v. Frito-Lay North America, Inc.*, No. 12-cv-06281-RRM-RLM (E.D.N.Y.); *Deaton v. Frito-Lay North America, Inc., et al.*, No. 13-cv-04470-RRM-RLM (E.D.N.Y.); *Mooney v. Frito-Lay North America, Inc., et al.*, No. 13-cv-04471-RRM-RLM (E.D.N.Y.)), is hereby dismissed with prejudice on the merits. The Litigation was filed in good faith, was not frivolous, and was in compliance with Rule 11 of the Federal Rules of Civil Procedure.

16. Attorneys' Fees and Expenses and Case Contribution Awards. The Court hereby awards attorneys' fees and expenses to Class Counsel to compensate Class Counsel for their time incurred and expenses advanced. The Court approves Class Counsel's Fee Application and awards to Class Counsel the sum of \$1,900,000 in fees, which the Court finds to be fair and reasonable, and \$200,000 in reimbursement of expenses. These amounts shall be paid to Class Counsel as provided in the Settlement Agreement. This award shall be allocated among Class Counsel and other counsel representing plaintiffs in the Litigation in a fashion which, in the opinion of Class Counsel, reflects the contributions of such counsel to the prosecution and settlement of the Litigation with Defendant.

17. In making this award of attorneys' fees and expenses, the Court has considered and found that:

(a) Class Counsel achieved a favorable result for the Class and created a benefit with a substantial value to the Class by obtaining Frito-Lay's agreement to modify the labeling policies and practices challenged in this lawsuit;

(b) After an agreement was reached among the Settling Parties as to all principal terms and conditions of the Settlement, the Settling Parties entered into arm's-length discussions regarding attorneys' fees and expenses for Class Counsel, including extensive discussions through and with the assistance of a third-party mediator, the Honorable Richard J. Holwell (Ret.);

(c) The Settlement created a benefit with a substantial value to the Class;

(d) Notice was disseminated to the Class indicating that Class Counsel were moving for attorneys' fees in the amount of \$1,900,000, for reimbursement of expenses in an amount of up to \$200,000, and for case contribution awards to the Class Representatives and Class Counsel filed and posted their Fee Application in time for the Class to make a meaningful decision whether to object to the Fee Application, and no objections were filed;

(e) The action involves complex factual and legal issues and was actively prosecuted over four years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(f) Had Class Counsel not achieved the Settlement there would remain a significant risk that no relief would have been obtained;

(g) Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(h) Class Counsel devoted substantial effort to pre-and post-filing investigation, legal analysis, and litigation;

(i) Class Counsel prosecuted the class claims on a contingent fee basis, investing significant time and accumulating costs with no guarantee that they would receive compensation for their services or recover their expenses;

(j) Class Counsel employed their knowledge of and experience with class action litigation in achieving a valuable settlement for the Class, in spite of Frito-Lay's possible legal defenses and its experienced and capable counsel;

(k) Class Counsel's rates and hours billed are reasonable; and

(l) Class Counsel have devoted over 7,900 hours, with a lodestar value of well over \$4 million, to achieve the Settlement.

18. Class Representative Julie Gengo is hereby awarded \$5,000, Class Representative Chris Shake is hereby awarded \$5,000, Class Representative Valarie Zuro is hereby awarded \$5,000, and Class Representative Deborah Lawson is hereby awarded \$2,500. These awards are for their contributions to the prosecution of the Litigation and for the time, effort, and risk they undertook as representatives of the Class.

19. Frito-Lay shall pay the fee and expense awards to Class Counsel and the case contribution awards to the Class Representatives in accordance with the terms of the Settlement Agreement.

20. Notwithstanding any other provision in the Settlement Agreement, all proprietary or confidential documents or information that have been previously provided to Class Counsel or Plaintiffs, as of the Effective Date, including under the Stipulated Protective Order entered in the Litigation on September 27, 2013, shall be returned or destroyed, as provided for in that Order, with certification of the return or destruction to be provided to the producing party within sixty (60) days of the Effective Date.

21. In the event that the Effective Date does not occur, certification of the Class shall be automatically vacated and this Final Order and the accompanying Final Judgment, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

IT IS SO ORDERED.

DATED: November 14, 2017

s/Roslynn R. Mauskopf

Roslynn R. Mauskopf
UNITED STATES DISTRICT JUDGE

Exhibit 1 — List of Persons Who Have Properly Requested Exclusion

Kelli Altman	Parkland, Florida
Allen Bedynek	Madison, Wisconsin
Steve Berkowitz	Aspen, Colorado
Quincy Butler	Lovelady, Texas
David Fouts	Miami, Florida
Lyndsey Erin Marsh	Lake View, New York
Robin Jean Marsh	Lake View, New York
Robert Eugene Marsh	Lake View, New York
Cecil Max-George	Lovelady, Texas
Jeffrey Gleason	Westville, Indiana
Tamara Nachreiner	Friendship, Wisconsin
Sandra Payton	Fort Wayne, Indiana
Steven Pribula	Toms River, New Jersey
Arthur Pribula	Toms River, New Jersey
Leeann Pribula	Toms River, New Jersey
Lori Pribula	Toms River, New Jersey
Samantha Pribula	Toms River, New Jersey
Karen Rose	Nottingham, Maryland
Alyssa Schwartz	San Francisco, California
Matthew E. Schmid	Green Bay, Wisconsin
Scott Shofield	Colorado Springs, Colorado
Gary Tober	Daytona Beach, Florida