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10 Attorney for Plaintiff  
 DANNY RODRIGUEZ

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

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16 DANNY RODRIGUEZ,

CASE NO. 1:09-CV-01380-AWI-GSA

17

Plaintiff,

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v.

**STIPULATED PROTECTIVE ORDER**

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FRITO LAY and DOES 1 TO 25,  
inclusive,

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Defendants.

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Trial Date: October 19, 2010

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The Defendant Frito-Lay, Inc. and Plaintiff Danny Rodriguez, through their undersigned  
 24 attorneys of record, enter into this stipulation and protective order to facilitate open exchange of  
 25 information relating to this litigation. The parties assert that the exchange of certain records and  
 26 information in this litigation may require the parties to disclose records and information that they  
 27 consider confidential and/or proprietary, the disclosure of which is protected by the laws  
 28 governing trademarks or confidential business information and/or the privacy rights of the parties

1 and/or third parties (hereafter referred to as “Confidential Information”). To protect the privacy  
2 and confidentiality of these records and the information contained therein, the parties stipulate as  
3 follows:

4           1.       Any party who conveys or receives, and any non-party who conveys, information  
5 in connection with this action may designate any record, which the party reasonably and in good  
6 faith within the meaning of Federal Rule of Civil Procedure 26(g) believes to be confidential, as  
7 Confidential Information by marking any such documents with the words, “Confidential.”  
8 Confidential Information includes responses to discovery requests, documents produced in  
9 response to a request for production, deposition testimony (subject to Paragraph 2), or any other  
10 information a party or non-party exchanges in discovery in connection with this action that the  
11 party or non-party claims in good faith to constitute Confidential Information. Stamping the  
12 legend “CONFIDENTIAL” on the cover of any multi-page document shall designate all pages of  
13 the document as confidential, unless otherwise indicated by the producing party. Material  
14 designated as confidential under this Order, the information contained therein, and any summaries,  
15 copies, abstracts, or other documents derived in whole or in part from material designated as  
16 confidential shall be used only for the purpose of the prosecution, defense, or settlement of this  
17 action, and for no other purposes.

18           2.       In order to designate deposition testimony as confidential, counsel, the witness, or  
19 the party whose Confidential Information is to be, or was, disclosed, must state on the record at  
20 the deposition what testimony is to be treated as Confidential Information. Any document that  
21 was previously marked as Confidential that is introduced as an exhibit at a deposition shall be  
22 treated as Confidential Information. In addition, a party or non-party deponent, may designate  
23 testimony as Confidential information in writing within 30 days from the date the court reporter  
24 transmits the deposition transcript for review and for certification. After any such written  
25 designation, counsel for all the parties shall be responsible for marking the designated material in  
26 all previously unmarked copies of transcripts. Prior to the expiration of the 30-day period, all  
27 information disclosed during a deposition shall constitute Confidential Information, unless  
28 otherwise agreed by the parties and the witness, or ordered by the Court. Upon expiration of the

1 30-day period, only that information that has been designated as Confidential will constitute  
2 Confidential Information.

3 3. Prior to receiving any Confidential Material, each person shall be shown a copy of  
4 this Order and shall execute a nondisclosure agreement in the form of Attachment A, a copy of  
5 which shall be provided forthwith to counsel for each other party and for the parties, prior to  
6 receiving the confidential information. Each person receiving such disclosure shall be bound by  
7 this Order. Counsel making such disclosure shall be responsible for maintaining a log of the  
8 originals of such statements. This Order is enforceable in contempt proceedings.

9 4. The parties may further designate certain discovery material or testimony of a  
10 highly confidential and/or proprietary nature as “CONFIDENTIAL –ATTORNEY’S EYES  
11 ONLY” (hereinafter “Attorney’s Eyes Only Material”), in the manner described in paragraphs 1  
12 and 2 above. Attorney’s Eyes Only Material, and the information contained therein shall be  
13 disclosed only to the Court, to counsel for the parties (including necessary legal office staff  
14 employed by such counsel and shall *not* be disclosed to a party, or to an officer, director or  
15 employee of a party, unless available to the party, officer, director, or employee by other means or  
16 otherwise agreed or ordered. If disclosure of Attorney’s Eyes Only Material is made pursuant to  
17 this paragraph, all other provisions in this Order with respect to confidentiality shall also apply.

18 5. The parties and their counsel shall preserve the confidentiality and privacy of all  
19 Confidential Information.

20 6. Confidential Information and Attorney’s Eyes Only Material shall be made  
21 available only to those individuals permitted by this Order and only once the person to whom the  
22 information will be disclosed has signed the nondisclosure agreement, Attachment A. This Order  
23 binds any person who receives or reviews Confidential Information.

24 7. Persons receiving Confidential Information shall use it solely for the purpose of  
25 this litigation. Confidential Information may be disclosed to persons only to the extent necessary  
26 for the preparation or trial of this case. Confidential Information shall not be disclosed directly or  
27 indirectly to any other person other than as provided in this Order, except by written agreement of  
28 the party or non-party designating the information Confidential Information. Unauthorized

1 disclosure of the substance, a summary, or any portion of a confidential document constitutes a  
2 violation of this Order.

3           8.       This Order shall be without prejudice to the right of the parties (i) to bring before  
4 the Court at any time the question of whether any particular document or information is  
5 confidential or whether its use should be restricted or (ii) to present a motion to the Court under  
6 FRCP 26(c) for a separate protective order as to any particular document or information, including  
7 restrictions differing from those as specified herein. This Order shall not be deemed to prejudice  
8 the parties in any way in any future application for modifications of this Order. Prior to bringing a  
9 motion under (i) above, a party must first object to the Confidential Information designation by  
10 notifying all parties in writing of that objection and specifying the designated material to which  
11 the objection is made. Within fifteen (15) days of the date of the written objection, the parties  
12 shall meet and confer verbally or in writing, or both, regarding the objection. If the objection is  
13 not resolved, the party contesting the Confidential Information designation shall either file and  
14 serve a motion challenging the designation of the records as Confidential Information pursuant to  
15 this order, or otherwise request judicial intervention to resolve the parties' dispute. The party  
16 contesting the designation of the information or record as Confidential Information shall bear the  
17 burden of proof on whether good cause exists for the information to be un-designated as  
18 confidential. If no such motion is filed or request for judicial intervention is not made, the  
19 material will be considered Confidential Information until further order of the Court or written  
20 agreement of the parties.

21           9.       This Order shall survive the final termination of this action, to the extent that the  
22 information contained in Confidential Material is not or does not become known to the public, and  
23 the Court shall retain jurisdiction to resolve any dispute concerning the use of information  
24 disclosed hereunder. Upon termination of this case, counsel for the parties shall assemble and  
25 return to each other all documents, material and deposition transcripts designated as confidential  
26 and all copies of same, or shall certify the destruction thereof.

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1           10.     If there is any unauthorized disclosure of any documents or records subject to this  
2 Order by any person, said person shall be subject to sanctions and contempt for violation of this  
3 Order. Counsel for the parties agree to forward a copy of this protective order to their clients prior  
4 to, or concurrently with, providing Confidential Information to them. The parties are bound by  
5 this protective order.

6           11.     Inadvertent failure to designate documents as Confidential Information shall not  
7 constitute of waiver of an otherwise valid claim for protection so long as such claim is asserted  
8 within 14 calendar days of the discovery of the inadvertent failure.

9           12.     If a party to this action receives a court order or subpoena for documents that have  
10 been designated Confidential Information, that party shall (a) promptly notify counsel of record  
11 for the party or non-party claiming the confidential treatment of the documents, and (b) furnish  
12 that counsel with a copy of the subpoena or other process or order.

13          13.     All documents marked as Confidential or Attorneys' Eyes Only Material for which  
14 the time has passed under Paragraph 8 to object to such designation are authorized to be filed  
15 under seal, and the party seeking to file such document must file the document under seal and in  
16 accordance with Local Rule 141 (Fed. R. Civ. P. 39), unless the parties have stipulated in writing  
17 that the documents need not be filed under seal.

18          14.     All documents marked as Confidential or Attorneys' Eyes Only for which the time  
19 has not passed under Paragraph 8 to object to such designation are authorized to be conditionally  
20 filed under seal, and the party seeking to file such document must file the document conditionally  
21 under seal and in accordance with Local Rule 141 (Fed. R. Civ. P. 39), unless the parties have  
22 stipulated in writing that the documents need not be filed under seal. If pursuant to the procedures  
23 set forth in paragraph 8, the Court deems the document should be undesignated as Confidential or  
24 Attorney's Eyes Only Material, the document may be filed publicly; if the Court deems the  
25 document should remain designated as Confidential or Attorneys' Eyes Only Material, the  
26 document shall be filed under seal and in accordance with Local Rule 141 (Fed. R. Civ. P. 39).

27          15.     This Order is entered solely for the purpose of facilitating the exchange of  
28 documents and information between the parties to this action without involving the Court



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ATTACHMENT A  
NONDISCLOSURE AGREEMENT

I, \_\_\_\_\_ do solemnly swear that I am fully familiar with the terms of the Stipulated Protective Order entered in *Danny Rodriguez v. Frito-Lay, Inc.*, United State District Court for the Eastern District of California, Case No. 1:09-CV-01380-AWI-GSA, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

Dated: \_\_\_\_\_, 2010

By \_\_\_\_\_