IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

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Eolas Technologies Incorporated,

Plaintiff,

Civil Action No. 6:09-CV-00446-LED

VS.

Adobe Systems Inc., et al.,

JURY TRIAL

Defendants.

DECLARATION OF THOMAS FASONE III IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO SUPPLEMENT THEIR P.R. 3-1 INFRINGEMENT CONTENTIONS FOR HAPPINESS.LAYS.COM

- I, Thomas Fasone III, do state and declare as follows:
- 1. I am an attorney with the law firm of McKool Smith PC (McKool Smith), counsel for Plaintiffs The Regents of the University of California and Eolas Technologies Incorporated (collectively "Plaintiffs") in this action. I make this declaration in support of Plaintiffs' Motion For Leave to Supplement Their Infringement Contentions, filed herewith. Unless otherwise stated, the matters contained in this declaration are of my own personal knowledge and, if called as a witness, I could and would testify competently to the matters set forth herein.
- 2. Plaintiffs first learned about the webpage *happiness.lays.com* during the stay between Plaintiffs and Frito-Lay in 2011 during July and August 2011.
- 3. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs' P.R. 3-1 Infringement Contentions, served on Frito-Lay on March 5, 2010, in this matter.

- 4. Attached hereto as Exhibit 2 is a true and correct copy Plaintiffs' Request for Production Pursuant to Paragraph 11 of the Discovery Order, served on Frito-Lay on April 2, 2010, in this matter.
- 5. Attached hereto as Exhibit 3 is a true and correct copy of an e-mail that I sent to Mr. Joyner, Mr. Yee and Mr. McSwane, counsel for Frito-Lay, dated October 6, 2011, in this matter.
- 6. Attached hereto as Exhibit 4 is a true and correct copy of an e-mail that I sent to Mr. Yee, counsel for Frito-Lay, dated September 28, 2011, in this matter.
- 7. Attached hereto as Exhibit 5 is a true and correct copy of Plaintiff's Second Set of Interrogatories (No. 3) To Be Answered By Frito-Lay, served on September 12, 2011, in this matter.
- 8. Attached hereto as Exhibit 6 is a true and correct copy of Plaintiff's First Amended Second Set of Interrogatories (No. 3) To Be Answered By Frito-Lay, served on September 28, 2011, in this matter.
- 9. Attached hereto as Exhibit 7 is a true and correct copy of an e-mail that I sent to Mr. Yee and Mr. Joyner, counsel for Frito-Lay, dated September 23, 2011, in this matter.
- 10. Attached hereto as Exhibit 8 is a true and correct copy of an e-mail from Mr. Yee, counsel for Frito-Lay to me, dated September 27, 2011, in this matter.
- 11. Attached hereto as Exhibit 9 is a true and correct copy of an e-mail from Mr. Yee, counsel for Frito-Lay to Ms. Engelmann and me, dated October 11, 2011, following a response from Ms. Engelmann to Mr. Yee on October 12, 2011, in this matter.
- 12. Attached hereto as Exhibit 10 is a true and correct copy of a letter that I sent to Mr. Yee and Mr. Joyner, counsel for Frito-Lay, dated October 14, 2011, in this matter.

13. Attached hereto as Exhibit 11 is a true and correct copy of a Frito-Lay Press Release entitled "Lay's Unveils Happiness Exhibit Spotlighting Simple Moments of Happiness as Captured in Consumer Photos," dated March 15, 2011 available at www.fritolay.com/about-us/press-release-20100315.html.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 24, 2011, in Dallas, Texas.

Thomas Fasone III