

license agreement raised, for the first time, a fundamental issue with the terms of the settlement. At that point, the Parties realized that they may be unable to finalize a written settlement and license agreement. Accordingly, Eolas respectfully requests the following stayed deadlines be set as to Frito-Lay.

<u>Event</u>	<u>New Deadline Requested by this Motion</u>
Complete fact discovery	August 26, 2011
Parties to Identify Trial Witnesses	August 26, 2011
Parties with burden of proof designate expert witnesses	August 31, 2011
Parties to Identify Rebuttal Trial Witnesses	September 9, 2011
Parties designate rebuttal expert witnesses	September 16, 2011

Frito-Lay opposes this motion and seeks a continuance for the trial. Frito-Lay does not offer a counter-proposal for these deadlines requested that would allow the Parties to proceed to trial as scheduled. Frito-Lay's request for a continuance of the trial is directly contrary to its prior representation to the Court in seeking the stay. Frito-Lay (and Eolas) stated that:

“The Parties agree that this Motion is not made for the purpose of delay and does not affect the date of trial, jury selection or the pretrial conference.”

Dkt No. 751 at 1; Dkt. No. 784 at 1. The Parties made this representation to the Court with the full understanding that a written settlement may not be finalized. In fact, Frito-Lay should have known over six weeks ago when Eolas sent the draft license agreement that the Parties had a fundamental difference of opinion related to the proposed settlement terms. Consistent with the Parties' representation to the Court in seeking the stay, Eolas requests the above deadlines so the Parties can proceed to trial as scheduled.

Respectfully submitted,

McKool Smith, P.C.

/s/ Mike McKool

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A) on this August 15, 2011.

/s/ John B. Campbell
John B. Campbell

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Eolas Technologies Incorporated conferred with counsel for Frito-Lay, Inc. on August 12, 2011, regarding the foregoing motion, who represented that Frito-Lay, Inc. opposes this motion.

Dated: August 15, 2011

/s/ John B. Campbell
John B. Campbell