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 16 Fry's Electronics, Inc.

17  
 18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 IN AND FOR THE COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

20  
 21 WHITNEY R. LEEMAN, Ph.D. )

CASE NO. HG 06-0253774

22 Plaintiff, )

23 v. )

SETTLEMENT AGREEMENT

24 FRY'S ELECTRONICS, INC.; and DOES 1 )  
 through 150, )

25 Defendants. )  
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**1. INTRODUCTION**

**1.1 Plaintiff and Settling Defendant.** This settlement agreement (hereinafter "Settlement Agreement") is entered into by and between Plaintiff Whitney R. Leeman, Ph.D., (hereafter "Plaintiff") and Fry's Electronics, Inc. (hereafter "Fry's"), with Plaintiff and Fry's collectively referred to as the "Parties" and each being a "Party."

**1.2 Plaintiff.** Dr. Leeman is an individual residing in California whose complaint alleges that she seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

**1.3 General Allegations.** Plaintiff alleges that Fry's has distributed and/or sold in the State of California glass soda bottles and other glassware with colored artwork containing lead on the exterior surface, as well as lead within the beverage itself. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Sections 25249.6 *et seq.*, ("Proposition 65"), and known to cause birth defects and other reproductive harm. Lead is referred to herein as the "Listed Chemical."

**1.4 Product Descriptions.** The products that are covered by this Settlement Agreement are defined as follows: (a) glass containers used to bottle soda; and (b) the soda contained in such bottles, some of which contains lead within the beverage itself, including but not limited to the following brands: A&W, 7 UP, Diet Dr. Pepper, Dr. Pepper, Mexican Coca-Cola, Nehi Grape, Nehi Orange, and Nehi Peach. Such products collectively are referred to herein as the "Products."

**1.5 Notices of Violation.** Beginning on November 23, 2005 Dr. Leeman alleges she served Fry's and various public enforcement agencies with documents, each entitled "60-Day Notice of Violation" ("Notice"), that provided Fry's and such public enforcers with notice that alleged that Fry's was in violation of Health & Safety Code Section 25249.6 for failing to warn purchasers that the Products that it sold exposed users in California to lead.

**1.6 Complaint.** On February 3, 2006, Plaintiff, alleging that she was acting in the interest of the general public in California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the Superior Court for the County of Alameda against Fry's and

1 Does 1 through 150, alleging violations of Health & Safety Code Section 25249.6 based on the  
2 alleged exposures to the Listed Chemical contained in the Products sold by Fry's.

3 **1.7 No Admission.** Fry's denies the material factual and legal allegations contained in  
4 Plaintiff's Notice and Complaint and maintains that all products that it has sold in California,  
5 including the Products, have been and are in compliance with all laws. Nothing in this Settlement  
6 Agreement shall be construed as an admission by Fry's of any fact, finding, issue of law, or  
7 violation of law, nor shall compliance with this Agreement constitute or be construed as an  
8 admission by Fry's of any fact, finding, conclusion, issue of law or violation of law. However, this  
9 Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Fry's  
10 under this Settlement Agreement.

11 **1.8 Consent to Jurisdiction.** For purposes of this Settlement Agreement only, the  
12 Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the  
13 Complaint and personal jurisdiction over Fry's as to the acts alleged in the Complaint, that venue is  
14 proper in the County of Alameda, that this Court has jurisdiction to approve and enforce the terms  
15 of this Settlement Agreement as a full and final settlement and resolution of the allegations  
16 contained in the Complaint and of all claims which were or could have been raised based on the  
17 facts alleged therein or arising therefrom, and to enforce the provisions thereof, as set forth herein.

18 **1.9 Effective Date.** For purposes of this Settlement Agreement, the "Effective Date"  
19 shall be January 31, 2008, except as otherwise provided for herein.

## 20 **2. INJUNCTIVE RELIEF: PROPOSITION 65**

21 **2.1** After the Effective Date, FRY'S shall make commercially reasonable efforts to  
22 ensure that it does not utilize or sell Products unless such Products comply with standards set forth  
23 in Section 2.2.

24 **2.2 Reformulation Standards.** The following Products shall be deemed to comply  
25 with Proposition 65 and be exempt from any Proposition 65 warning requirements:

26 Products with exterior decorations that contain six one-hundredths of one percent (0.06%),  
27 or less, lead by weight as measured either before or after the material is fired onto (or  
28 otherwise affixed to) the Products using a test method of sufficient sensitivity to establish a  
limit of quantitation of less than 600 parts per million ("ppm"); and two one-hundredths of  
one percent (0.02%), or less, lead by weight in decorations which extend into the top 20

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millimeters of a Product using a sample size of the materials in question measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.<sup>1</sup> (Hereinafter such Products shall be referred to as "Reformulated" Products.)

**2.3 Reformulation Certification.** FRY'S can show that its Products are Reformulated by making commercially reasonable efforts to contact each of its distributors of the Products by certified mail or email quarterly for the next two (2) years seeking confirmation that the Products that FRY'S is utilizing or selling in its California stores comply with the standards set forth in subsection 2.2 above. The letter or email shall require the distributor to specifically identify each Product sold as being Reformulated. In the event that the distributor cannot certify that a Product is Reformulated, or fails to respond within 30 days of FRY'S sending of the request, FRY'S will make commercially reasonable efforts to suspend sales of such Products in its California stores until certification is provided or unless it otherwise has obtained test results from an independent laboratory in the United States confirming that the Products are Reformulated. FRY'S will provide a copy of each letter sent to its distributors to Whitney Leeman at the address required pursuant to section 11 below, within fourteen (14) calendar days of it being sent. FRY'S shall also provide plaintiff with a copy of each distributor response (or, if a distributor fails to respond and FRY'S otherwise intends to continue to sell or offer for use the Product(s) in question, laboratory test results), quarterly within forty (40) days of the date the aforementioned copies of the letter to distributors is sent to Whitney Leeman.

**2.4 Reformulation Commitment.** FRY'S hereby commits to make commercially reasonable efforts to ensure that all Products that it offers for sale, or that it utilizes in its stores, in California after April 15, 2008 shall qualify as Reformulated Products.

**2.5 Interim Warnings.** Fry's shall maintain in place its existing Proposition 65 warnings that Fry's now has in its stores from the Effective Date and continuing for six months. The current warning messages states:

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<sup>1</sup>If the decoration is tested after it is affixed to the Glassware Food/Beverage Products, the percentage of the Listed Chemical by weight must relate only to the decorating material and must not only include any quantity attributable to non-decorating material (e.g., the glass substrate).

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**“Prop. 65 WARNING”**

**(Cal. Health & Safety Code Section 25249.6)**

The painted designs and/or lettering on glass soda bottles sold in Fry’s café contain lead and/or cadmium chemicals known to the State of California to cause birth defects or other reproductive harm. Handling of these bottles may expose the handler to lead.”

After this six-month period, Fry's can remove the warnings unless it then, or sometime after, renews selling the Products, in which case Fry's will provide the following warnings:

(a) Warning message. The following warning message shall be used:

The colored artwork or designs used on this bottled-soda product contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

(b) Warning method. The warning shall set forth on a sign at least 10

inches high by 10 inches wide, with the word "WARNING" centered three-quarters of an inch from the top of the sign in ITC Garamond bold condensed type fact all in one-inch capital letters. Three-sixteenths of an inch from the base of the word "warning" shall be a line extending from left to right across the width of the sign one-sixteenth of an inch in thickness. Centered one-half inch below the line shall be the body of the warning message in ITC Garamond bold condensed type face. For the body of the warning message, left and right margins of at least one-half of an inch, and a bottom margin of at least one-half inch shall be observed. Larger signs shall bear substantially the same proportions of type size and spacing to sign dimension as the sign 10 inches high by 10 inches wide.

(c) Warning location. Any sign must be:

(i) located in close proximity to where the Products are offered

for sale, and to where the Products are stored following receipt and pending store display.

(ii) not located at any of the following locations: on an entrance

or exit door, on a window, on a restroom door, in a restroom, in a hallway that leads only to restrooms, on a refuse container.

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1       **3.       MONETARY RELIEF**

2               **3.1       Payments Pursuant to Health & Safety Code §25249.7(b)**

3 Pursuant to Health & Safety Code Section 25249.7(b), FRY's shall pay a total of \$15,000 in civil  
4 penalties. The penalty payment shall be made payable to "Hirst & Chanler LLP in Trust For Dr.  
5 Whitney R. Leeman," and shall be delivered to Plaintiff's counsel, within seven (7) days of the  
6 Court approving this Settlement Agreement as provided in Section 6 below, at the following  
7 address:

8                               HIRST & CHANLER LLP  
9                               Attn: Proposition 65 Controller  
10                              2560 Ninth Street  
11                              Parker Plaza, Suite 214  
12                              Berkeley, CA 94710

13               (a)       **Apportionment of Penalties Received.** After Court approval of this  
14 Settlement Agreement pursuant to Section 6, all penalty monies received shall be apportioned by  
15 Plaintiff in accordance with Health & Safety Code Section 25192, with 75% of these funds  
16 remitted to the State of California's Office of Environmental Health Hazard Assessment and the  
17 remaining 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code  
18 Section 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State  
19 of California the appropriate civil penalties paid in accordance with this Section.

20       **4.       REIMBURSEMENT OF FEES AND COSTS**

21               4.1       The Parties acknowledge that Leeman and her counsel offered to resolve this dispute  
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
23 this fee issue to be resolved after the material terms of the agreement had been settled. Fry's then  
24 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
25 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due  
26 to Leeman and her counsel under the private attorney general doctrine codified at California Code  
27 of Civil Procedure §1021.5 for all work performed through the Court's approval of this  
28 agreement. Under the private attorney general doctrine, Fry's shall reimburse Leeman and her  
counsel for fees and costs incurred as a result of investigating, bringing this matter to Fry's  
attention, litigating and negotiating a settlement in the public interest and seeking the Court's

1 approval of the settlement agreement. Fry's shall pay Leeman and her counsel \$120,000 for all  
2 attorneys' fees, expert and investigation fees, litigation and related costs. The payment shall be  
3 made payable to HIRST & CHANLER LLP and shall be delivered,  
4 within seven (7) days of the Court approving this Settlement Agreement as provided in Section 6  
5 below, at the following address:

6 HIRST & CHANLER LLP  
7 Attn: Proposition 65 Controller  
8 2560 Ninth Street  
9 Parker Plaza, Suite 214  
10 Berkeley, CA 94710-2565

## 5. RELEASE OF ALL CLAIMS

11 **5.1 Plaintiff's Release of Fry's.** As to the Products, this Settlement Agreement is a  
12 full, final and binding resolution between the Plaintiff, acting on behalf of the public interest  
13 pursuant to Health and Safety Code Section 25249.7(d), on the one hand, and Fry's, on the other  
14 hand, of any violation of Proposition 65, of all claims made or which could have been made in the  
15 Notice and/or the Complaint, and, to the fullest extent permitted by law including but not limited to  
16 California Code of Regulations Title 11, Section 3204, of any other statutory, regulatory or  
17 common law claim that could have been asserted against Fry's and/or its affiliates, subsidiaries,  
18 divisions, successors, assignees, and/or customers for failure to provide clear, reasonable, and  
19 lawful warnings of exposure to lead contained in or otherwise associated with Products  
20 manufactured, sold or distributed by, for, or on behalf of Fry's. Compliance with the terms of this  
21 Settlement Agreement resolves any issue, now and in the future, concerning compliance by Fry's  
22 and/or its affiliates, subsidiaries, divisions, successors, and assigns with the requirements of  
23 Proposition 65 with respect to the Products.

24 In further consideration of the promises and agreements herein contained, and for the  
25 payments to be made pursuant to Sections 3 and 4, Plaintiff, on behalf of herself, her past and  
26 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
27 general public, hereby waive all rights to institute or participate in, directly or indirectly, any form  
28 of legal action and releases all claims, including, without limitation, all actions, causes of action, in  
law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or

1 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any  
2 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),  
3 against Fry's and each of its customers, owners, purchasers, users, parent companies, corporate  
4 affiliates, subsidiaries and their respective officers, directors, attorneys, representatives,  
5 shareholders, agents, and employees (collectively "Fry's Releasees") arising under Proposition 65,  
6 Business & Professions Code Section 17200 et seq., and Business & Professions Code Section  
7 17500 et seq., related to Fry's or Fry's Releasees' alleged failure to warn about exposures to or  
8 identification of any Listed Chemical contained in or on the Products.

9 The Parties further agree and acknowledge that this Settlement Agreement is a full, final,  
10 and binding resolution of any violation of Proposition 65, Business & Professions Code Sections  
11 17200 et seq., Business & Professions Code Sections 17500 *et seq.*, and, to the fullest extent  
12 permitted by law including but not limited to California Code of Regulations Title 11, Section  
13 3204, any other statute, regulation or common law claim that have been or could have been  
14 asserted in the Complaints against Fry's for its alleged failure to provide clear and reasonable  
15 warnings of exposure to or identification of the Listed Chemical in or on the Products.

16 In addition, Plaintiff, on behalf of herself, her attorneys, and her agents, waives all rights to  
17 institute or participate in, directly or indirectly, any form of legal action and releases all Claims  
18 against the Fry's Releasees arising under Proposition 65, Business & Professions Code Sections  
19 17200 *et seq.*, Business & Professions Code Sections 17500 *et seq.*, and, to the fullest extent  
20 permitted by law including but not limited to California Code of Regulations Title 11, Section  
21 3204, any other statute, regulation or common law claim related to each of the Fry's Releasees'  
22 alleged failures to warn about exposures to or identification of any Listed Chemical contained in or  
23 on the Products and for all actions or statements made by Fry's or its attorneys or representatives,  
24 in the course of responding to alleged violations of Proposition 65, Business & Professions Code  
25 Sections 17200, or Business & Professions Code Sections 17500 by Fry's. It is agreed, however,  
26 that Plaintiff shall remain free to institute any form of legal action to enforce the provisions of this  
27 Settlement Agreement. It is specifically understood and agreed that the Parties intend that Fry's  
28 compliance with the terms of this Settlement Agreement resolves all issues and liability, now and



1 in the future (so long as Fry's complies with the terms of the Settlement Agreement ) concerning  
2 Fry's and the Fry's Releasees' compliance with the requirements of Proposition 65, Business and  
3 Professions Code Sections 17200 *et seq.*, and Business & Professions Code Sections 17500 *et seq.*,  
4 as to the Products. Plaintiff expressly waives all of the rights and benefits of Section 1542 of the  
5 California Civil Code (and any similar or equivalent statute or law under the law of any state or  
6 jurisdiction), which provides as follows:

7 "**§1542. General Release—Claims Extinguished.** A general release does not extend to claims  
8 which the creditor does not know or suspect to exist in his or her favor at the time of executing the  
9 release, which if known by him or her must have materially affected his or her settlement with the  
10 debtor." The Parties understand and agree that the release provided by Plaintiff herein shall  
11 not extend upstream to the Product manufacturers or to any distributor or supplier from whom  
12 Fry's purchased directly or indirectly any of the Products including, but not limited to, The Coca-  
13 Cola Company, Dr. Pepper Bottling Company of West Jefferson North Carolina, and Real Soda in  
14 Real Bottles, Inc.

15 **5.2 Fry's Release of Plaintiff.** Fry's waives all rights to institute any form of legal  
16 action and all claims against Plaintiff, or her attorneys or representatives, for all actions taken or  
17 statements made by Plaintiff and her attorneys or representatives, in the course of seeking  
18 enforcement of Proposition 65, Business & Professions Code Sections 17200 *et seq.* or Business &  
19 Professions Code Sections 17500 *et seq.* in this action.

## 20 **6. COURT APPROVAL**

21 This Settlement Agreement is not effective until it is approved by the Court, and this  
22 Settlement Agreement shall be null and void if, for any reason, it is not approved within one year  
23 after it has been fully executed by all Parties. Upon the above-mentioned approval, Fry's will make  
24 the payments set forth in Section 3 and Section 4 above. The Parties further agree that Plaintiff  
25 will not seek to enter this Settlement Agreement as a judgment unless Fry's remains in material  
26 breach of the terms of this Settlement Agreement after being provided with notice and an  
27 opportunity to cure as set forth in Section 7 below, or the California Attorney General demands that  
28 this Settlement Agreement be entered as a judgment in which case the Parties agree that this

1 Settlement Agreement may be entered as a judgment.

2 **7. ENFORCEMENT OF SETTLEMENT TERMS**

3 **7.1** Before moving to enforce the terms and conditions of Section 2 of this Settlement  
4 Agreement against Fry's with respect to an alleged violation occurring at a retail store located in  
5 California, Plaintiff and others must follow the procedures set forth in Sections 7.2 through 7.3.

6 **7.2** In the event that Plaintiff and/or her attorneys, agents, assigns, or any other person  
7 acting in the public interest under Health & Safety Code Section 25249.7(d) (hereinafter "Notifying  
8 Person") identifies one or more retail stores in California owned and operated by Fry's at which the  
9 Products are sold (hereinafter "retail outlet") for which the warnings for those Products required  
10 under Section 2 of this Settlement Agreement are not being given, such Notifying Person shall  
11 notify, in writing, Fry's of such alleged failure to warn (the "Notice of Breach"). The Notice of  
12 Breach shall be sent by first class mail, with proof of service, to the persons identified in Section 11  
13 of this Settlement Agreement, and must be served within sixty days of the date the alleged violation  
14 was observed. The Notice of Breach shall identify the date the alleged violation was observed and  
15 the retail outlet in question, and reasonably describe the nature of the alleged violation with  
16 sufficient detail to allow Fry's to determine the basis of the claim being asserted and the identities  
17 of the Products to which those assertions apply.

18 **7.3** The Notifying Person shall take no further action against Fry's unless the Notifying  
19 Person discovers, at least thirty (30) days after service of the Notice of Breach served pursuant to  
20 Section 7.2, another failure to warn for that Product at the same retail outlet(s) identified in the  
21 Notice of Breach served pursuant to Section 7.2. In the event that Fry's remains or is again in  
22 breach of Section 2 more than thirty (30) days after service of the Notice of Breach, Plaintiff shall  
23 have the right to have the Court enter this Settlement Agreement as a judgment pursuant to Code of  
24 Civil Procedure Section 664.6 upon noticed motion to the Court.

25 **7.4** Before moving to enforce any other Section of this Settlement Agreement, Plaintiff  
26 will also provide Fry's with notice and an opportunity to cure any alleged breach as follows: In the  
27 event that Plaintiff believes that Fry's is in breach of any provisions of this agreement other than  
28 Section 2, discussed above, Plaintiff shall notify, in writing, Fry's of such alleged breach (the

1 "Notice of Breach"). The Notice of Breach shall be sent by first class mail, with proof of service,  
 2 to the persons identified in Section 11 of this agreement. The Notice of Breach shall identify with  
 3 as much specificity as possible the facts supporting Plaintiff's claim of breach. Plaintiff shall take  
 4 no further action against Fry's unless Fry's fails to cure said breach within fourteen (14) days of  
 5 service of the Notice of Breach, in which event Plaintiff shall have the right to have the Court enter  
 6 this Settlement Agreement as a judgment upon noticed motion to the Court.

7 **8. SEVERABILITY**

8 If, subsequent to court approval of this Settlement Agreement, any of the provisions of this  
 9 Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable  
 10 provisions remaining shall not be adversely affected.

11 **9. ATTORNEYS' FEES**

12 In the event that, after Court approval: (1) a dispute arises with respect to any provision of  
 13 this Settlement Agreement; (2) either party or any third party seeks modification of this Settlement  
 14 Agreement pursuant to Section 16 below; or (3) Leeman takes reasonable and necessary steps to  
 15 enforce the terms of this Settlement Agreement, the prevailing party in any such dispute shall be  
 16 entitled to his or its reasonable attorneys' fees pursuant to CCP §1021.5.

17 **10. GOVERNING LAW**

18 The terms of this Settlement Agreement shall be governed by the laws of the State of  
 19 California and apply within the State of California. In the event that Proposition 65 is repealed or  
 20 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,  
 21 then Fry's shall have no further injunctive obligations pursuant to this Settlement Agreement with  
 22 respect to, and to the extent that, those Products are so affected.

23 **11. NOTICES**

24 All correspondence and notices required to be provided pursuant to this Settlement  
 25 Agreement shall be in writing and personally delivered or sent by: (1) first-class, registered,  
 26 certified mail, return receipt requested or (ii) overnight courier on either Party by the other at the

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1 following addresses. (Either Party, from time to time, may, pursuant to the methods prescribed  
 2 above, specify a change of address to which all future notices and other communications shall be  
 3 sent.)

4 To Fry's :

5 Kathryn J. Kolder, Executive Vice President  
 6 FRY'S ELECTRONICS, INC.  
 7 600 E. Brokaw Road  
 8 San Jose, CA 95112

8 With a copy to:

9 Shawn D. Parrish, Esq.  
 10 SCHIFF HARDIN LLP  
 11 One Market, Spear Street Tower  
 12 Thirty-Second Floor  
 13 San Francisco, CA 94105

13 William H. Curtis, Esq.  
 14 FRY'S ELECTRONICS, INC.  
 15 600 E. Brokaw Road  
 16 San Jose, CA 95112

15 To Plaintiff:

16 HIRST & CHANLER LLP  
 17 Attn: David Lavine, Esq.  
 18 2560 Ninth Street, Suite 214  
 19 Berkeley, CA 94710

20 With a copy to:

21 Gregory M. Sheffer, Esq.  
 22 The Sheffer Law Firm  
 23 222 Rush Landing Road  
 24 Novato, CA 94945

24 **12. NO ADMISSIONS**

25 Nothing in this Settlement Agreement shall constitute or be construed as an admission by  
 26 Fry's of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with  
 27 this Settlement Agreement constitute or be construed as an admission by Fry's of any fact, finding,  
 28 conclusion, issue of law, or violation of law, such being specifically denied by Fry's. Fry's

1 reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or  
 2 otherwise. However, this Section shall not diminish or otherwise affect Fry's obligations,  
 3 responsibilities and duties under this Settlement Agreement.

4 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

5 This Settlement Agreement may be executed in counterparts and by facsimile, each of  
 6 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
 7 the same document.

8 **14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

9 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
 10 Safety Code Section 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff  
 11 shall present this Settlement Agreement to the California Attorney General's Office within two (2)  
 12 days after receiving all of the necessary signatures. A noticed motion for approval of this  
 13 Settlement Agreement will then be served on the Attorney General's Office at least forty-five (45)  
 14 days prior to the date a hearing is scheduled on such motion in the Superior Court for the County of  
 15 Alameda unless the Court allows a shorter period of time.

16 **15. ADDITIONAL POST EXECUTION ACTIVITIES**

17 **15.1** The Parties shall mutually employ their best efforts to obtain approval of this  
 18 Settlement Agreement by the Court in a timely manner. The Parties acknowledge that, pursuant to  
 19 Health & Safety Code Section 25249.7, a noticed motion is required to obtain judicial approval of  
 20 the settlement provided for herein. Accordingly, the Parties agree to file a Joint Motion to Approve  
 21 the Settlement ("Joint Motion"), the first draft of which Plaintiff's counsel shall prepare, within a  
 22 reasonable period of time after the Execution Date (*i.e.*, not to exceed thirty days unless otherwise  
 23 agreed to by the Parties' counsel based on unanticipated circumstances). Plaintiff's counsel shall  
 24 prepare a declaration in support of the Joint Motion which shall, inter alia, set forth support for the  
 25 fees and costs to be reimbursed pursuant to Section 4. Fry's shall have no additional responsibility  
 26 to Plaintiff's counsel pursuant to Code of Civil Procedure Section 1021.5 or otherwise with regard  
 27 to reimbursement of any fees and costs incurred with respect to the preparation and filing of the  
 28 Joint Motion and its supporting declaration or with regard to Plaintiff's counsel appearing for a

1 hearing or related proceedings thereon, or for providing any Notice of Breach of this Settlement  
2 Agreement as set forth herein.

3           **15.2** Fry's and its counsel agree to cooperate with Plaintiff and her counsel in  
4 preparation of Plaintiff's case against Real Soda in Real Bottles, Ltd., whether toward settlement or  
5 trial resolution. On an ongoing basis and until the case is finally resolved, Fry's and its counsel  
6 will, upon reasonable request, provide Plaintiff and her counsel any non-privileged, non-protected  
7 documents (including those protected by Fry's trade secret protections and rights of privacy) which  
8 are discoverable pursuant to Code of Civil Procedure Section 2017.010 et seq. in Fry's possession,  
9 custody or control, and will, upon reasonable request by Plaintiff, provide truthful and complete  
10 declarations and/or testimony by witnesses as to matters which are discoverable pursuant to Code  
11 of Civil Procedure Section 2017.010 et seq. Fry's and its counsel will also expeditiously provide  
12 true and responsive answers to case-related inquiries informally and reasonably posed by Plaintiff  
13 or her counsel, whether via letter, electronic mail, telephone or in-person interview as to matters  
14 which are discoverable pursuant to Code of Civil Procedure Section 2017.010 et seq. Fry's agrees  
15 at all times to use its best efforts to fulfill this pledge of cooperation.

16       **16. MODIFICATION**

17           This Settlement Agreement may be modified only by written agreement of the Parties. The  
18 Attorney General shall be served with notice of any proposed modification to this Settlement  
19 Agreement at least fifteen days in advance of its consideration by the Court.

20       **17. AUTHORIZATION**

21           The undersigned are authorized to execute this Settlement Agreement on behalf of their  
22 respective Parties and have read, understood and agree to all of the terms and conditions of this  
23 Settlement Agreement.

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AGREED TO:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

FRY'S ELECTRONICS, INC.

By: \_\_\_\_\_  
Plaintiff Whitney R. Leeman, Ph.D

By: \_\_\_\_\_  
Its: \_\_\_\_\_.

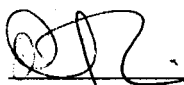
APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: Jan 28, 2008

Date: \_\_\_\_\_

HIRST & CHANLER LLP

By:  \_\_\_\_\_  
David Lavine, Esq.  
Attorney for Plaintiff  
WHITNEY R. LEEMAN, Ph.D.

By: \_\_\_\_\_  
William H. Curtis, Esq.  
Legal Counsel for Defendant  
FRY'S ELECTRONICS, INC.

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AGREED TO:

Date: 1/29/08

By: Whitney R. Leeman  
Plaintiff Whitney R. Leeman, Ph.D

APPROVED AS TO FORM:

Date: \_\_\_\_\_

HIRST & CHANLER LLP

By: \_\_\_\_\_  
David Lavine, Esq.  
Attorney for Plaintiff  
WHITNEY R. LEEMAN, Ph.D.

AGREED TO:

Date: \_\_\_\_\_

FRY'S ELECTRONICS, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
William H. Curtis, Esq.  
Legal Counsel for Defendant  
FRY'S ELECTRONICS, INC.



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AGREED TO:

AGREED TO:

Date: \_\_\_\_\_

Date: 1/28/08

By: \_\_\_\_\_  
Plaintiff Whitney R. Leeman, Ph.D

FRY'S ELECTRONICS, INC.  
By:   
Its: EVP

APPROVED AS TO FORM:

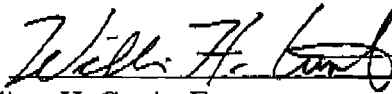
APPROVED AS TO FORM:

Date: \_\_\_\_\_

Date: January 28, 2008

HIRST & CHANLER LLP

By: \_\_\_\_\_  
David Lavine, Esq.  
Attorney for Plaintiff  
WHITNEY R. LEEMAN, Ph.D.

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William H. Curtis, Esq.  
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FRY'S ELECTRONICS, INC.