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**COPY**

OCT 2 2009



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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
11 IN AND FOR THE COUNTY OF MARICOPA

13 THE STATE OF ARIZONA ex rel. TERRY  
14 GODDARD, the Attorney General, and THE  
15 CIVIL RIGHTS DIVISION OF THE ARIZONA  
16 DEPARTMENT OF LAW,

17 Plaintiff,

18 vs.

19 FRITO-LAY, INC., a Delaware Corporation, and  
20 FRITO-LAY NORTH AMERICA, INC., a  
21 Delaware Corporation,

22 Defendants.

No.

CV2009-031172

COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF  
(Employment Discrimination)

23  
24 Plaintiff, the State of Arizona, ex rel. Terry Goddard, the Attorney General, and the  
25 Civil Rights Division of the Arizona Department of Law (collectively the "State"), for its  
26 Complaint, alleges as follows:

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## INTRODUCTION

12 This is an action brought under the Arizona Civil Rights Act to correct an unlawful  
13 employment practice, to provide appropriate relief to an aggrieved person, and to vindicate the  
14 public interest. Specifically, the State brings this matter to redress the injury sustained because  
15 Defendants Frito-Lay, Inc., and Frito-Lay North America, Inc. (collectively, "Frito-Lay")  
16 discriminated against Shelly Reyes ("Ms. Reyes") by subjecting her to a hostile work  
17 environment because of her sex (female) and/or race (Caucasian) and by subjecting her to  
18 different terms and conditions of employment, including threatened termination, demotion and  
19 reduction in pay, because of her sex (female) and/or race (Caucasian). A.R.S. § 41-1463(B)(1)  
20 & (2).

## JURISDICTION AND VENUE

21 3. This Court has jurisdiction over this matter pursuant to A.R.S. § 41-1481(D).

22 4. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

## PARTIES

23 5. The Civil Rights Division of the Arizona Department of Law is an administrative  
24 agency established by A.R.S. § 41-1401 to enforce the provisions of the Arizona Civil Rights  
25 Act, A.R.S. § 41-1401 *et seq.*

26 6. The State brings this action on its own behalf and on behalf of Ms. Reyes, an  
aggrieved person, as provided by A.R.S. §§ 41-1481(D) and (G).

7. At all relevant times, Defendants were Delaware corporations authorized to do,  
and doing, business in Arizona. Frito-Lay maintained a place of business at 1450 W.  
Maricopa Highway in Casa Grande, Arizona 85222 ("Casa Grande facility").

8. At all relevant times, Frito-Lay was an employer within the meaning of A.R.S. §  
41-1461(4)(a).

9. At all relevant times, Ms. Reyes was an employee of Frito-Lay within the  
meaning of A.R.S. § 41-1461(3)(a).



1           20. In overturning two of Mr. Gutierrez' write-ups of Ms. Reyes, Frito-Lay Potato  
2 Chip Business Unit Leader Jeff Hadwin wrote to Ms. Reyes that her "skills as a PMO are not  
3 in question."

4           21. On or about April 24, 2008, Ms. Reyes complained to Carlos Nunez, Frito-Lay's  
5 Human Resources Manager for the Casa Grande facility, about Mr. Gutierrez' harassment, and  
6 told Mr. Nunez that she was considering filing for a restraining order against him. Mr. Nunez  
7 told Ms. Reyes that if she did, it would be she who was fired and not Mr. Gutierrez.

8           22. In the spring of 2008, Ms. Reyes bid for a transfer from a third shift potato chip  
9 PMO to a first shift corn chip PMO position. Ms. Reyes bid for this transfer to make it easier  
10 to care for her young son, who has special needs.

11           23. Ms. Reyes was granted the bid in late April 2008, but not allowed to begin work as  
12 a corn chip PMO until early June 2008. As a corn chip PMO, Ms. Reyes made over \$22 an  
13 hour.

14           24. Because some of the machines in Frito-Lay's corn packaging department were  
15 different from those she was used to working on in the potato chip packaging department, Ms.  
16 Reyes repeatedly requested training on the corn packaging machines. Frito-Lay's Financial  
17 Manager, Crystal Freidrichsen, repeatedly refused Ms. Reyes' requests for training.

18           25. On or about June 28, 2008, Ms. Reyes injured her left hand while cleaning corn  
19 chips from a fallas conveyor. Ms. Reyes received first aid at the plant and then was  
20 transported to a hospital, where she required surgery.

21           26. On or about July 1, 2008, Ms. Reyes was called to the plant to talk to the accident  
22 investigation team. During this meeting, Ms. Reyes expressed her belief that the accident was  
23 caused in part by unsafe conditions relating to the corn chips fallas conveyor.

24           27. On July 8, 2008, Ms. Reyes was called to a meeting attended by Mr. Hadwin and  
25 Jason Gray, technical manager at the Casa Grande facility. Mr. Hadwin and Mr. Gray  
26 informed Ms. Reyes that she had committed a major safety rules violation and, as a result, she

1 was being demoted from her first shift PMO position to a second shift packer position, which  
2 meant a decrease in pay to just over \$15 an hour. Ms. Reyes was also informed that she would  
3 not be eligible to bid on any PMO position for the remainder of her career at Frito-Lay.

4 28. Mr. Hadwin and Mr. Gray informed Ms. Reyes that if she did not accept the  
5 demotion her employment would be terminated.

6 29. Ms. Reyes accepted the demotion, but appealed the discipline on or about July 15,  
7 2008.

8 30. In her written appeal, Ms. Reyes argued, among other things, that (1) the Log-Out  
9 Tag-Out requirement Ms. Reyes allegedly violated did not apply to the falla conveyor that she  
10 was cleaning; (2) the method of cleaning the falla conveyor that she was employing when she  
11 was injured was standard operating procedure for all Frito-Lay employees; and (3) the falla  
12 conveyor mechanism had no warning label and, per Frito-Lay policy, the machine guard for  
13 the conveyor mechanism was not locked.

14 31. On or about July 17, 2008, Casa Grande facility director Bryan Birrell denied Ms.  
15 Reyes' appeal and upheld the demotion and other discipline.

16 32. On or about July 18, 2008, Ms. Reyes made a safety complaint to the Industrial  
17 Commission of Arizona Division of Occupational Safety and Health ("ADOSH") concerning  
18 the unsafe conditions that she had described in her written appeal.

19 33. On or about July 24, 2008, Ms. Reyes appealed the denial of her appeal to Frito-  
20 Lay's Mountain Region Vice-President of Operations, Jaime Chon.

21 34. On or about August 5, 2008, Ms. Reyes filed a complaint of discrimination  
22 pursuant to A.R.S. § 23-425 with ADOSH concerning the demotion and other discipline she  
23 received following her accident.

24 35. On or about August 13, 2008, Mr. Chon upheld the demotion and other discipline  
25 of Ms. Reyes.  
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1           36. As a result of its investigation of Ms. Reyes' complaint of safety violations,  
2 ADOSH cited Frito-Lay for safety violations relating to the operation of the falla conveyor in  
3 the corn packaging area.

4           37. ADOSH also concluded that Frito-Lay had discriminated against Ms. Reyes in  
5 violation of A.R.S. § 23-425 by demoting her and otherwise disciplining her following the  
6 accident and by upholding the demotion and other discipline after Ms. Reyes appealed them.

7           38. ADOSH found, for example, that while Ms. Reyes was on modified duty  
8 following the accident, she was required to do make work that was inconsistent with her work  
9 restrictions, which prohibited her from working with food or machines. Specifically, Ms.  
10 Reyes was required to trim and pare potatoes with a plastic bag over her injured hand.

11           39. ADOSH also found that while Ms. Reyes was on "ramp up" status when she  
12 returned to regular work as a packer, she was assigned to do humiliating tasks, such as  
13 performing janitorial duties in the cafeteria and hallways, that were not on Frito-Lay's guide  
14 sheet of ramp up duties for packers.

15           40. As a result of Frito-Lay's conduct, Reyes was exposed to a hostile work  
16 environment that changed the terms and conditions of her employment based on sex and/or  
17 race and she suffered extreme anxiety and emotional and physical distress.

18           41. After demoting Ms. Reyes, Frito-Lay gave her former corn chip PMO position to a  
19 less senior Hispanic male PMO.

20           42. After demoting Ms. Reyes, Frito-Lay employed 20 male PMOs but only 4 female  
21 PMOs at its Casa Grande facility.

22           43. Frito-Lay has never demoted or threatened with termination of employment any  
23 other worker at the Casa Grande facility who has suffered an industrial accident on the job.

24           44. One long-time male Frito-Lay employee stated that the number of women PMOs  
25 employed by Frito-Lay had decreased in recent years because of Frito-Lay's practice of  
26 subjecting female PMOs' work performance to stricter scrutiny and more severe discipline

1 than male PMOs. This employee stated that one female PMO told him that she quit her job  
2 with Frito-Lay because maintenance personnel refused to provide her with necessary  
3 assistance and because she was given unwarranted write-ups by Frito-Lay supervisors.

4 45. On or about August 18, 2008, Ms. Reyes filed a timely charge of discrimination on  
5 the basis of sex and race against Frito-Lay, and the Civil Rights Division commenced an  
6 investigation of the charge.

7 46. At the conclusion of the investigation, the Civil Rights Division determined that  
8 there was reasonable cause to believe that Defendant discriminated against Ms. Reyes because  
9 of her sex (female) and/or race (Caucasian).

10 47. The Civil Rights Division issued its Reasonable Cause Determination on July 30,  
11 2009, and since that time, the Division, Ms. Reyes and Defendant have not entered into a  
12 Conciliation Agreement. On October 1, 2009, the Division notified Frito-Lay in writing that  
13 conciliation had failed effective October 2, 2009. The parties having thus exhausted their  
14 administrative remedies, the State is authorized to file this Complaint pursuant to A.R.S. § 14-  
15 1481(D).

## 16 STATEMENT OF CLAIMS

### 17 **COUNT ONE**

#### 18 **[Harassment in Violation of the Arizona Civil Rights Act, A.R.S. §41-1463(B)(1)]**

19 48. The State re-alleges and incorporates by reference the allegations contained in  
20 paragraphs 1 through 47 of this Complaint.

21 49. Under A.R.S. § 41-1463(B)(1), it is an unlawful employment practice for an  
22 employer to discriminate against any individual with respect to compensation, terms,  
23 conditions, or privileges of employment because of sex and/or race.

24 50. Defendant unlawfully discriminated against Reyes in violation of A.R.S. § 41-  
25 1463(B)(1) by subjecting her to severe or pervasive conduct which changed the terms and  
26

1 conditions of Reyes' employment and created a hostile work environment because of her sex  
2 (female) and/or race (Caucasian).

3 51. As a result of Defendants' discrimination, Reyes suffered monetary damages for  
4 which she should be compensated in an amount to be determined at trial pursuant to A.R.S. §  
5 41-1481(G).

6 52. The State also is entitled to injunctive relief against Defendants' actions pursuant  
7 to A.R.S. § 41-1481(G).

8 **COUNT TWO**

9 **[Disparate Treatment in Violation of the Arizona Civil Rights Act, A.R.S. § 41-  
10 1463(B)(2)]**

11 53. Plaintiff re-alleges and incorporates by reference the allegations contained in  
12 paragraphs 1 through 52 of this Complaint.

13 54. Under A.R.S. § 41-1463(B)(2), it is an unlawful employment practice for an  
14 employer to limit, segregate or classify employees or otherwise discriminate against any  
15 individual with respect to the individual's compensation, terms, conditions or privileges of  
16 employment because of the individual's sex and/or race.

17 55. Here, Defendants violated A.R.S. § 41-1463(B)(2) by, among other things,  
18 subjecting Reyes' work performance to heightened scrutiny, giving her unwarranted  
19 disciplinary write-ups, threatening her with termination when she complained about  
20 workplace harassment, refusing to provide her necessary training, threatening her with  
21 termination and then demoting her because she was involved in an industrial accident  
22 attributable to Defendants' unsafe working conditions, prohibiting her from bidding on the  
23 position from which she was demoted for the duration of her career at Frito-Lay, and  
24 requiring her to perform humiliating make work while she was on modified duty following an  
25 industrial accident, all because of her sex (female) and/or race (Caucasian).



1 Dated this 2nd day of October, 2009.

2  
3 TERRY GODDARD  
Attorney General

4  
5 By 

6 Ann Hobart  
7 Assistant Attorney General  
8 Civil Rights Division  
9 Attorneys for Plaintiff

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