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VENTURA
SUPERIOR COURT
FILED

APR 18 2022

BRENDA L. McCORMICK
Executive Officer and Clerk
By: _____, Deputy

D. HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

10 **DUSTIN TYNES, on behalf of the State of**
11 **California, as a private attorney general,**

13 Plaintiff,

14 vs.

15 **ROLLING FRITO-LAY SALES, LP, a**
16 **Limited Partnership; and DOES 1 through 50,**
17 **inclusive,**

18 Defendants.

Case No. 56-2022-00564969-CU-OE-VTA

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).

By FAX

1 Plaintiff Dustin Tynes (“PLAINTIFF”), on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
4 and belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants and Rolling Frito-Lay Sales,
8 LP (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for himself,
9 and on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Rolling Frito-Lay Sales, LP (“DEFENDANT”) is a limited partnership
24 that at all relevant times mentioned herein conducted and continues to conduct substantial
25 business in the state of California.

26 5. DEFENDANT’s business encompasses all aspects of the food and beverage
27 market, including manufacturing, distribution, and marketing of its products.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from April of 2020
2 to June of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
3 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
4 of minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
10 the time period of November 10, 2020 until a date as determined by the Court (the "PAGA
11 PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
16 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
17 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
18 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
19 the meaning of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
26 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
27 responsible in some manner for one or more of the events and happenings that proximately
28 caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. PLAINTIFF and the AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a

1 condition of employment, required these employees to submit to mandatory temperature checks
2 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
3 timekeeping system for the workday. As a result, PLAINTIFF and the AGGRIEVED
4 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
5 by working without their time being correctly recorded and without compensation at the
6 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and the
7 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
8 records.

9 12. State law provides that employees must be paid overtime and meal and rest break
10 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
11 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
12 to specific elements of an employee's performance.

13 13. The second component of PLAINTIFF's and the AGGRIEVED EMPLOYEES'
14 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
15 and the AGGRIEVED EMPLOYEES incentive wages based on their performance for
16 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
17 hourly basis with incentive compensation when the employees met the various performance
18 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
19 overtime and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
20 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
21 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
22 break premium pay. Management and supervisors described the incentive program to potential
23 and new employees as part of the compensation package. As a matter of law, the incentive
24 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included
25 in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime
26 compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
27 EMPLOYEES by DEFENDANT.

28 14. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED

1 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
2 and were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
3 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
4 for more than five (5) hours during some shifts without receiving a meal break. Further,
5 DEFENDANT from time to time failed to provide PLAINTIFF and the AGGRIEVED
6 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
7 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
8 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
9 the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore
10 forfeit meal breaks without additional compensation and in accordance with DEFENDANT's
11 corporate policy and practice.

12 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
13 were also required from time to time to work in excess of four (4) hours without being provided
14 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
15 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
16 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
17 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
18 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
19 PLAINTIFF and the AGGRIEVED EMPLOYEES were also not provided with one hour wages
20 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
21 provide employees with off-duty rest periods, which the California Supreme Court defined as
22 time during which an employee is relieved from all work related duties and free from employer
23 control. In so doing, the Court held that the requirement under California law that employers
24 authorize and permit all employees to take rest period means that employers must relieve
25 employees of all duties and relinquish control over how employees spend their time which
26 includes control over the locations where employees may take their rest period. Employers
27 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
28 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED

1 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
2 states PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
3 their rest period.

4 16. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
5 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
6 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
7 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all
8 time worked, meaning the time during which an employee was subject to the control of an
9 employer, including all the time the employee was permitted or suffered to permit this work.
10 DEFENDANT required these employees to work off the clock without paying them for all the
11 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
12 known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under compensated for all
13 time worked. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited time
14 worked by working without their time being accurately recorded and without compensation at
15 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
16 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
17 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
18 1197.1.

19 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
20 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
21 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
22 provides that every employer shall furnish each of his or her employees with an accurate
23 itemized wage statement in writing showing, among other things, gross wages earned and all
24 applicable hourly rates in effect during the pay period and the corresponding amount of time
25 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
26 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during
27 the pay period and the total hours worked, and the applicable pay period in which the wages
28 were earned pursuant to California Labor Code Section 226(a). The wage statements

1 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify
2 such information. More specifically, the wage statements failed to identify the accurate total
3 hours worked each pay period. When the hours shown on the wage statements were added up,
4 they did not equal the actual total hours worked during the pay period. Aside, from the
5 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
6 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
7 As a result, DEFENDANT from time to time provided PLAINTIFF and the AGGRIEVED
8 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

9 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
10 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
11 wages are paid not more than seven calendar days following the close of the payroll period.
12 Cal. Lab. Code § 210 provides:

13 [I]n addition to, and entirely independent and apart from, any other penalty provided in
14 this article, every person who fails to pay the wages of each employee as provided in
15 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
16 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

17 19. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
18 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
19 Lab. Code § 204(d).

20 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED
21 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
22 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
23 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
24 underpaid sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of
25 pay.

26 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
27 employees be calculated by dividing the employee's total wages, not including overtime
28 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days

1 of employment.

2 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
3 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
4 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
5 was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED
6 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
7 Code Section 246.

8 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
9 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
10 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
11 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
12 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
13 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

14 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
15 to collect or receive from an employee any part of wages theretofore paid by said employer to
16 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and the
17 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
18 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
19 deductions from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
20 and thereby failed to pay these employees all wages due at each applicable pay period and upon
21 termination.

22 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
23 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
24 the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging
25 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
26 are required to indemnify employees for all expenses incurred in the course and scope of their
27 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
28 her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
2 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
3 believed them to be unlawful."

4 26. In the course of their employment PLAINTIFF and the AGGRIEVED
5 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
6 cellular phones as a result of and in furtherance of their job duties as employees for
7 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
8 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
9 PLAINTIFF and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use their
10 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
11 PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
12 which included, but were not limited to, costs related to the use of their personal cellular phones
13 all on behalf of and for the benefit of DEFENDANT.

14 27. All of the conduct and violations alleged herein occurred during the PAGA
15 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
16 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
17 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018.

18 **JURISDICTION AND VENUE**

19 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure, Section 410.10.

21 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
23 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
24 in this County and/or conducts substantial business in this County, and (ii) committed the
25 wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED
26 EMPLOYEES.

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1 now commence a representative civil action under PAGA pursuant to Section 2699 as the
2 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
3 defined.

4 34. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
6 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
7 properly record and provide legally required meal and rest periods, (c) failed to pay
8 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
9 reimburse for required expenses, and (f) failed to pay wages when due, all in violation of the
10 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
11 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
12 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
13 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
14 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
15 Attorney General Act of 2004 as the representative of the State of California for the illegal
16 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
19 severally, as follows:

20 1. On behalf of the State of California and with respect to all AGGRIEVED
21 EMPLOYEES:

22 A) Recovery of civil penalties as prescribed by the Labor Code Private
23 Attorneys General Act of 2004; and,

24 B) An award of attorneys' fees and cost of suit, as allowable under the
25 law, including, but not limited to, pursuant to Labor Code §2699.

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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1
2 Dated: April 18, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

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5 By:

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7 Norman B. Blumenthal
8 Nicholas J. De Blouw
9 Attorneys for Plaintiff
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