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RICHARD BOOTH, CHERYL FERRO
8 and BRETT BURKETT

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 RICHARD BOOTH and CHERYL FERRO,
on behalf of themselves and all others
14 similarly situated, and the general public,

15 Plaintiffs,

16 v.

17 FRITO-LAY, INC., a Delaware corporation;
18 ROLLING FRITO-LAY SALES, LP, a
Delaware limited partnership; FRITO-LAY
19 NORTH AMERICA, INC., a Delaware
corporation; FRITO-LAY SALES, INC., a
20 Delaware corporation; and DOES 1 through
50, inclusive,

21 Defendants.
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Case No. 21STCV46151

Assigned for All Purposes to the Honorable
Curtis Kin, Department 72

**DECLARATION OF SHAUN SETAREH IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS**

Date: December 03, 2024
Time: 8:30 a.m.
Place: Department 72

Reservation ID: 718209228261

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I, Shaun Setareh, declare as follows:

1. I am an attorney in good standing duly admitted to the State Bar of California, the
al attorney at Setareh Law Group, counsel of record for Plaintiffs RICHARD BOOTH,
YL FERRO and BRETT BURKETT (“Plaintiffs”) in this action against Defendants Frito Lay,
olling Frito-Lay Sales, LP, Frito-Lay North America, Inc., and Frito-Lay Sales, Inc.
ndants”) (Plaintiffs and Defendants, collectively, the “Parties”). This declaration is made in
of Plaintiff’s Motion for Preliminary Approval of the Class Action Settlement and Certification
ement Class.

2. Except for those matters stated on information and belief, which I am informed and are true and correct, I have personal knowledge of all matters set forth herein. If called as a , I could and would competently testify thereto.

3. I received my undergraduate degree from UCLA in 1996 and my law degree from Loyola School in 1999. Since being admitted to the State Bar of California in 1999, I have actively practiced civil litigation for the entirety of that time period.

4. Setareh Law Group and I, as its principal attorney, are well-experienced class action attorneys. I, along with the senior attorney assigned to this case, Thomas Segal, have considerable experience in class action litigation. I, and the attorneys at Setareh Law Group, have been involved as class counsel, co-lead class counsel, and other levels of involvement in over 100 wage-and-hour, consumer, and antitrust class action cases. Because of this, Setareh Law Group has more than 250 published citable opinions, including the following noteworthy appellate decisions:

State Appellate Decisions

a. *Troester v. Starbucks Corporation, et al.*, 5 Cal.5th 829 (2018) (reversed summary judgment in favor of Defendants, issuing a landmark published decision that clarified and rejected the application of the widely adopted federal *de minimis* doctrine to California’s wage-and-hour laws). Due to the significance and importance of this seminal victory before the California Supreme Court, I received the California Lawyer of the Year or “CLAY” award from the Daily Journal for my work on the case.

b. *Allen v. Labor Ready Southwest, Inc.* (Cal.App. 2 Dist., 2013) 2013 WL 1910293 (reversing an Order from the Superior Court of Los Angeles County compelling Plaintiff's claims to arbitration, finding that Defendant waived the right to compel arbitration by litigating the merits of Plaintiff's arbitrable federal and state claims).

Setareh Law Group has prevailed in its six most recent Ninth Circuit appeals. Five of the seven cases resulted in reversals of the trial court decision, with the remaining two cases (*Harris* and *Parsittie*) affirming a decision favorable to the Plaintiff. These six cases are listed below:

Ninth Circuit Decisions

c. *Troester v. Starbucks Corp.*, 738 Fed. Appx. 562 (9th Cir. 2018) (Ninth Circuit opinion following the California Supreme Court answering the Ninth Circuit’s certified question).

d. *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. 2019) (vacated district court’s summary judgment in favor of Defendants and remanded for further proceedings, holding that Defendants’ Fair Credit Reporting Act disclosure form lacked sufficient clarity in a published opinion).

e. *Rodriguez v. U.S. Healthworks*, 813 Fed.Appx. 315 (9th Cir. 2020) (reversed district court's summary judgement in favor of Defendants with instructions to remand the action to state court).

f. *Harris v. KM Industrial, Inc.*, 980 F.3d 694 (9th Cir. November 13, 2020) (affirmed the district court’s granting of Plaintiff’s motion to remand, holding in a published opinion that Defendants had failed to establish by a preponderance of the evidence that the amount in controversy exceeded \$5 million as required under the Class Action Fairness Act for removal).

g. *Parsittie v. Schneider Logistics, Inc. et al.*, Case No. 20-55470 (9th Cir. June 9, 2021) (reversed the district court’s dismissal of Plaintiff’s meal and rest break claims, holding that Plaintiff’s security check allegations were sufficient to state a claim for break-time violations and remanding for further proceedings).

h. *Ahlstrom v. DHI Mortg. Co., Ltd., L.P.*, 21 F.4th 631 (9th Cir. December 29, 2021) (reversed the district court's ruling compelling claims to arbitration, holding that parties cannot delegate issues of formation of an arbitration agreement to the arbitrator for determination).

i. *Allen v. Bedolla*, 787 F.3d 1218 (9th Cir. June 2, 2015) (affirming the district court's Order

denying objector's motion to intervene and remanding to the district court where settlement was granted final approval. Final approval was upheld on a subsequent appeal in the 9th Cir. [*see Bedolla v. Allen*, 736 Fed.Appx. 614 (9th Cir. May 18, 2018)]).

Class Counsel Appointments. The following is a sampling of class actions in which the Setareh Law Group and I have been appointed as class counsel:

Federal Cases

- j. *Cerdenia v. USA Truck, Inc.*, U.S. District Court, Central District of California, Case No. 10-CV-1489-JVS (granted final approval in an action on behalf of truck drivers for meal and rest period violations, off-the-clock pre- and post-shift work, and unauthorized wage deductions).
- k. *Fronza v. Staffmark*, U.S. District Court, Northern District of California, Case No. 15-CV-02315-MEJ (granted final approval in a case involving alleged uncompensated security checks for warehouse workers).
- l. *Garcia v. Am. Gen. Fin. Mgmt. Corp.*, U.S. District Court, Central District of California, Case No. 09-CV-1916 (granted final approval in a case filed on behalf of account managers in case involving, among other things, alleged overtime miscalculations and meal and rest period violations).
- m. *Jones v. Shred-It USA, Inc.*, U.S. District Court, Central District of California, Case No. 11-CV-00526 (granted final approval in a case brought on behalf of customer service representatives and balers for alleged off-the-clock work and meal and rest period violations).
- n. *O'Neill v. Genesis Logistics, Inc.*, U.S. District Court, Northern District of California, Case No. 08-CV-4707 (granted final approval in a case involving claims for failure to provide meal periods to employees who worked as drivers delivering goods to 7-11 stores throughout California and failure to pay final wages in a timely manner to terminated employees).
- o. *Padilla v. UPS*, U.S. District Court, Central District of California, Case No. 08-CV-1590 (granted final approval in a case involving claims for failure to provide meal periods to part time employees engaged in sort operations and failure to pay final wages in a timely manner to terminated employees).
- p. *Pitre v. Wal-Mart Stores, Inc.*, U.S. District Court, Central District of California, Case No. 17-cv-

01281-DOC (granting class certification in a highly contested Action against Wal-Mart for a class of almost 5,000,000 in a Fair Credit Reporting Act action).

- q. *Utne v. Home Depot U.S.A., Inc.*, U.S. District Court, Northern District of California, Case No. 16-cv-01854-RS (granting class certification in a highly contested Action against Home Depot in connection with uncompensated off-the-clock work occurring at the start of all employee shifts and at the end of closing shifts).
- r. *Vang v. Burlington Coat Factory Warehouse Corp.*, U.S. District Court, Central District of California Case No. 09-CV-8061 (granted final approval in a case involving, among other things, vacation pay forfeitures, failures to provide meal and rest periods, and failures to pay overtime wages based on employee misclassification).
- s. *Wilson v. TE Connectivity*, Northern District of California Case No. 3:14-cv-04872-EDL (granted class certification through contested motion in case on behalf of manufacturing facility employees subject to auto-deduction of meal breaks).

State Cases

- t. *Sandoval v. Rite Aid Corp.*, Los Angeles County Superior Court, Case No. BC431249 (granted class certification through contested motion in case on behalf of former pharmacy employees based on late final wage payments in violation of Labor Code §§ 201–203; subsequently granted final approval of class action settlement).
- u. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case No. BC421485 (granted class certification through contested motion in case on behalf of former security workers based on late final wage payments in violation of Labor Code §§ 201–203; subsequently granted preliminary approval of proposed class action settlement).

5. I am the owner and managing attorney of Setareh Law Group. All strategic decisions regarding the selection of clients to represent and the major strategic decisions for each client fall to me to make or approve. I bear all of the risk associated with the operation of a law firm. As a result, my scope of responsibility is substantially greater than an attorney of equal years of experience who does not bear these additional obligations.

6. As the above shows, the Setareh Law Group and I have substantial experience in wage-

1 and-hour class action litigation, including actions alleging failure to provide meal and/or rest periods,
2 failure to pay wages, failure to provide accurate wage statements, failure to provide timely final wage
3 payments, and other related claims. We are knowledgeable about the applicable law and have worked
4 diligently to investigate and identify the potential claims in this action. I will continue to commit my
5 firm's resources to further the interests of the Class. Setareh Law Group and I have no known conflicts
6 of interest with Plaintiffs or with absent Class Members.

7 *Complaint*

8 7. Plaintiff Booth filed this lawsuit against Defendants in the Superior Court for the
9 State of California, County of Los Angeles on December 17, 2021. On February 9, 2023, the First
10 Amended Complaint was filed adding Plaintiff Ferro as a named Plaintiff. On September 16, 2024,
11 the parties filed a joint stipulation to file a Second Amended Complaint ("The Operative
12 Complaint") adding named Plaintiff Burkett and alleging causes of action for violation of the
13 portions of the California Code relating to: providing meal periods, providing rest breaks, paying
14 minimum wages for all hours worked, paying overtime wages, paying vacation wages, furnishing
15 accurate itemized wage statements, reimbursements for business expenses, unlawful pay deductions,
16 record-keeping violations, and timely paying all wages during employment and upon the conclusion
17 of employment. The Operative Complaint also alleges derivative claims for restitution under the
18 California Business and Professions Code section 17200 et seq. (the "Unfair Competition Law" or
19 "UCL"), and derivative claims for civil penalties under the Labor Code Private Attorneys General
20 Act of 2004 ("PAGA"). The Operative Complaint seeks to pursue Plaintiffs' Labor Code, UCL, and
21 PAGA claims on behalf all persons employed by Defendants as hourly-paid and/or non-exempt
22 employees at any time within the applicable statute of limitations.

23 *Investigation, Discovery and Mediation*

24 8. The Parties have conducted an extensive investigation of the facts and the law,
25 including, *inter alia*, Defendants providing Named Plaintiffs with all employment policies and
26 procedures for Plaintiffs and the putative class members, and Defendants providing Named Plaintiffs
27 with a random sample of time and pay records for approximately 800 putative class members.
28 Overall, Defendants produced over 76,000 pages of documents in this matter. Counsel for the Parties

1 further investigated the applicable law as applied to the facts discovered regarding the alleged claims
2 of Plaintiffs and potential defenses thereto and the damages claimed by Plaintiffs.

3 9. Plaintiffs propounded Requests for Production of Documents and both Special and Form
4 Interrogatories upon Defendants as to its policies, procedures, and practices with respect to the alleged
5 wage and hour claims during the Class Period, as to the identification of and time and payroll records for
6 the putative class members, and as to Plaintiffs.

7 10. Plaintiffs hired an expert to analyze the produced data with respect to potential damages
8 and penalties in preparation for mediation. From the data and other documents obtained from
9 Defendants pertaining to the Class and Defendants' policies, Plaintiffs' expert was able to analyze the
10 data sampling, and Plaintiffs were then able to thoroughly assess the merits of each claim.

11 11. The Parties agreed to mediate Plaintiffs' alleged wage and hour and PAGA claims
12 and selected David Rotman to serve as mediator. The Parties attended two full day mediations with
13 Mr. Rotman. Following the mediation sessions, the parties engaged over a month of additional
14 settlement discussions. Ultimately, the parties reached an agreement to settle all claims on a class-wide
15 basis. Each of the Parties, represented by its respective counsel, recognized the risk of an adverse result
16 in the Action. The parties agreed to settle the Action and resolve all claims alleged against Defendants in
17 Plaintiffs' Second Amended Complaint. I believe the proposed settlement is fair, reasonable, and
18 adequate in light of the complexities of the case, the uncertainties of further litigation, and that it
19 represents a fair and reasonable recovery for the Settlement Class. The Parties have not engaged in any
20 collusion or improper negotiations. The Parties do not have any agreements regarding the proposed
21 Settlement that are not reflected in the Settlement.

22 At the time of mediation, Defendants provided certain data points that included payroll data for a
23 random sample of 800 of the putative class during the relevant class period. This enabled Plaintiffs'
24 damages expert to review the data and to prepare a comprehensive damage analysis for the purposes of
25 mediation.

26 The following chart provides the estimated potential recovery on a class basis that Plaintiffs
27 believe they could reasonably achieve *if they were to prevail on all their causes of action*:
28

Plaintiffs' Estimated Potential Recovery

Assumptions During Class Period (based on time/payroll data provided by Defendants)

1. Average rate of pay for RSRs and RSAs during the class period (\$34.68)
2. Average rate of pay for non-RSRs and non-RSAs during the class period (\$23.56)
3. No. of shifts that were meal period eligible
Non-RSR/RSA shifts (1,459,312)
4. No. of shifts that were rest break eligible
Non-RSR/RSA shifts (1,502,867)
5. No. of former employees (1,366 RSRs/RSAs and 4,938 non-RSRs/RSAs)
6. No. of PAGA members (3,901 RSRs/RSAs and 8,967 non-RSRs/RSAs)
7. No. of PAGA pay periods (313,797 for RSRs/RSAs and 323,093 for non-RSRs/RSAs)
8. No. of class members (3,917 RSRs/RSAs and 9,054 non-RSRs/RSAs) = 12,508 total
9. No. of class pay periods (319,497 for RSRs/RSAs and 327,525 for non-RSRs/RSAs)
= 647,022 total workweeks

Cause of Action	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Meal Period Premiums	\$6,788,719.42	1,459,312 Shifts Where Meal Periods Required assuming 20% Meal Period Violation Rate x \$23.56 Avg. Reg. Rate
Rest Period Premiums	\$3,540,754.65	1,502,867 Shifts Where Rest Periods Required assuming 10% Rest Period Violation Rate x \$23.56 Avg. Reg. Rate
Vacation Pay	\$924,372	Expert calculation based on pay records of accrued but forfeited vacation hours.
Failure to Properly Calculate the Regular Rate of Pay	\$527,970	Expert calculation based on pay records of overtime underpaid due to failure to include holiday premiums in regular rate of pay
Failure to Reimburse Business Expenses Cell phone reimbursement	\$784,776	Since RSAs/ RSRs are provided with company phones, they are not included in the months potentially eligible for cellphone reimbursement. There are 78,477.6 months worked by non RSA/ RSRs. This estimate assumes that on average Frito-Lay owed \$10 a month for unreimbursed cellphone expenses.

Failure to Reimburse Business Expenses	\$954,480	During the class period, there were 15,908 full time equivalent employees. This estimate assumes that each had to spent \$60 on uniform expenses.
Uniform Expenses		
Failure to Reimburse Business Expenses	\$2,119,003.6	Plaintiff Booth was not reimbursed for mileage expenses. However, Defendant has written policies providing for mileage reimbursement. Additionally, some settlement class members drove company vehicles all or part of the time. Therefore, this number assumes that on average settlement class members drove 5 miles a week that they were not reimbursed for, at the current IRS mileage reimbursement rate of 65.5 cents per mile. The total weeks during the class period are 647,024.
Mileage		
Subtotal Damages for Labor Code Violations	\$15,640,435.67	
Wage Statement Violations	\$8,087,800	Assuming that 25% of pay periods had a potential violation 161,756 Pay Periods x \$50 penalty
Waiting Time Penalties	\$43,951,488	6340 terminated employees times 8 hours of work a day times 30 days times an average straight time rate of \$29.05.
Sub-Total Potential Including Derivative Penalties (Excluding PAGA)	\$67,679,723.67	

PAGA Penalties	\$65,763,100
TOTAL	\$133,442,823.67

\$100 per pay period penalty for violation of Labor Code section 512 (meal and rest breaks) with 115,000 pay periods. \$11,500,000.

\$100 per pay period for violation of Labor Code section 226.7 (meal and rest breaks) with 115,000 pay periods. \$11,500,000.

\$100 per pay period penalty for violation of Labor Code section 226(a) for failure to provide accurate wage statements with 347,400 pay periods. \$34,740,000.

\$100 per pay period penalty for violation of Labor Code section 2802 for failure to reimburse for 80,231 pay periods (assuming monthly reimbursement). \$8,023,100.

Despite a total potential recovery of \$67 million on their class claims, Plaintiffs recognize the challenges they face in certifying a class action and establishing liability on the underlying wage and hour claims. Plaintiffs estimate that their likelihood of prevailing on all their causes of action (on the derivative Labor Code section 203 and 226 claims, in particular) are extremely low and thus their likelihood of recovering the maximum possible exposure on behalf of a class is very unlikely.

Settlement class members were subject to an arbitration agreement. If the arbitration agreement were enforced, the case could not proceed on a classwide basis, and settlement class members would receive nothing.

For those claims, if any, that are certified for class treatment, Plaintiffs must prevail at a trial on the merits. In addition to having to prove that Plaintiffs and other workers were not paid for all hours worked, Plaintiffs must establish willfulness with respect to their waiting time penalties claim under Labor Code Section 203 as well as a knowing and intentional violation under Labor Code Section 226 for wage statement penalties.

With respect to the claims asserted on behalf of the Settlement Class in this case, there are significant risks that support the reduced compromise amount. These risks include, but are not limited to, the following:

1 (i) The risk that Plaintiffs would not be able to prove liability for alleged failure to provide
2 compliant meal periods and rest breaks; or that to establish liability for the failure to provide compliant
3 meal periods and rest breaks would require an individualized inquiry that would prevent these issues
4 from being resolved on a class and/or collective basis. For example, Plaintiffs alleged that Defendant did
5 not maintain accurate records of the start and end times for meal periods taken by employees but that,
6 instead, employees regularly worked through their meal periods (and rest breaks) in order to complete
7 their job duties. Defendant alleges that many employees took their meal periods and rest breaks and that
8 in order to prove whether each employee took their meal periods and/or rest breaks would require an
9 individualized inquiry that would prevent this issue from being resolved on a class and/or collective
10 basis.

11 (ii) The risk that Plaintiffs would not recover waiting time and wage statement penalties
12 pursuant to Labor Code sections 203 and 226. Plaintiff might not prove that Defendant acted with the
13 intent necessary for the alleged claims for penalties under Labor Code sections 203 and 226.
14 Specifically, section 203 requires that a plaintiff show the employer committed a “willful” violation of
15 the law in withholding wages. “A good faith dispute that any wages are due will preclude imposition of
16 waiting time penalties under Section 203.” 8 Cal. Code Regs. § 13520. Similarly, penalties pursuant to
17 section 226 require a “knowing and intentional” violation. Defendants contends that it would present
18 several good faith defenses that would preclude a finding of willfulness under section 203. *See Choate v.*
19 *Celite Corp.* (2013) 215 Cal.App.4th 1460 (reversing award of section 203 penalties based on good faith
20 defense where underlying wage claim presented issue of first impression). Any such good faith dispute
21 could preclude penalties.

22 (iii) The risk that Defendants’ challenged employment policies might not ultimately support
23 class certification or a class-wide liability finding, *see, Duran*, 59 Cal.4th at 14 & fn. 28 (citing Court of
24 Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability
25 of proposition). Defendants have contended, for example, that it did not have a purported policy of not
26 paying required compensation, but rather a policy of paying compensation and of requiring employees to
27 report any unpaid compensable time, and that any failures to report by employees cannot be legally
28 charged to Defendants and, in any event, involve such highly individualized circumstances as to prevent

1 class and collective certification should this case be litigated. *See, e.g., Morillion v. Royal Packing Co.*
2 (2000) 22 Cal.4th 575, 585 (employer not required to pay employees for time spent performing work of
3 which the employer had no knowledge).

4 (iv) For the same reasons, liability, damages recovery, and certification risks are heightened
5 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendants' policies and
6 practices could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2)
7 the risk that individual differences between settlement Class Members could be construed as pertaining
8 to liability, and not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class or
9 collective treatment could be deemed improper as to one or more claims except for settlement purposes.

10 (v) The risk that recovery could not be achieved on a classwide basis due to arbitration
11 agreements that Defendants allege are binding;

12 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
13 discretion, which would materially impact the recovery by the Class. *See* Labor Code section 2699(e)(1).

14 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification
15 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
16 opposed to unpredictable litigation.

17 (viii) Although the PAGA penalties calculated by Plaintiffs' expert amounts to an extravagant
18 \$65,763,100 that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision
19 as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states:
20 "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision
21 (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this
22 part if, based on the facts and circumstances of the particular case, to do otherwise would result in an
23 award that is unjust, arbitrary and oppressive, or confiscatory." Subdivision (a) states, "Notwithstanding
24 any other provision of law, any provision of this code that provides for a civil penalty to be assessed and
25 collected by the Labor and Workforce Development Agency or any of its departments, divisions,
26 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be
27 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and
28 other current or former employees pursuant to the procedures specified in Section 2699.3." Subdivision

1 (f) specifies the penalties in instances where the underlying statute does not specify any civil penalty. In
2 other words, where the facts and circumstances of the particular case demonstrate that an unreduced
3 award would be “unjust, arbitrary and oppressive, or confiscatory,” the court (or arbitrator) may reduce
4 the award so as to ameliorate any such finding.

5 (ix) The risk that meal breaks were provided in accordance with the wage order, due to a
6 finding that some or all of them met the test for exemption under the applicable Wage Order. This is
7 further compounded by the individualized inquiry that could be necessary to make this determination for
8 each employee based on his or her particular circumstances, including but not limited to co-workers,
9 employees, site, and working conditions.

10 In these respects, Defendants strongly denies any liability and the propriety of class certification
11 for any reason other than settlement. Continued litigation of this lawsuit presented Plaintiffs and
12 Defendants with substantial legal risks that were (and continue to be) very difficult to assess.

13 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
14 reasonable recovery for the Class Members. The Settlement amount is, of course, a compromise figure.
15 By necessity, it took into account risks related to liability, damages, class action certification, and all the
16 defenses asserted by Defendants as to all such matters. Moreover, each settlement Class Member will be
17 given the opportunity to opt out of the Settlement, allowing those who feel they have claims that are
18 greater than the benefits they can receive under this Settlement to pursue their own claims.

19 12. Under these standards, Plaintiffs’ claims are typical of those of the class members. Like
20 Class Members, Plaintiffs were hourly non-exempt employees of Defendants in California. Plaintiffs
21 allege they were not paid for all hours worked, were not provided with compliant meal periods and rest
22 breaks, and did not receive accurate wage statements. *See Classen, supra*, 145 Cal. App. 3d at 46
23 (representative plaintiffs need not have all claims or identical interests with class members; they need
24 only have claims that are “typical of the class”); *see also B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*
25 (1987) 191 Cal. App. 3d 1341, 1347 (representative plaintiffs need not suffer all of the exact same
26 damages as every class member). Accordingly, Plaintiffs pursue claims typical of the class they seek to
27 represent. Plaintiffs have no conflict of interest with the Settlement Class Members and have agreed to
28 place the Classes interests above their own. Setareh Law Group also has no conflicts of interest with the

1 Settlement Class Members.

2 ***Service Award***

3 13. The requested service award of \$5,000 each to Plaintiffs Richard Booth, Cheryl Ferro
4 and Brett Burkett is warranted. Plaintiffs spent considerable time speaking with their counsel, gathering
5 documents, participating in discussions regarding settlement, and reviewing the Settlement. Plaintiffs
6 also took on the risk of facing intrusive discovery, facing a potential costs award, and the risk that being
7 involved in litigation would be viewed unfavorably by potential employers.

8 ***Settlement Agreement***

9 14. A true and correct copy of the Joint Stipulation and Settlement of Class and
10 Representative Claims (the "Settlement") executed by the Parties is attached hereto as **Exhibit A**. A true
11 and correct copy of the Notice of Class Action Settlement is attached as **Exhibit 1** to the Settlement.

12 ***Attorneys' Fees***

13 15. The amount of Class Counsel's fee request (33¹/₃% of the Gross Settlement Amount) is
14 reasonable as a percentage of the settlement fund. I have been awarded attorneys' fees equaling
15 approximately one-third of the fund in several recent wage and hour class actions, including, but not
16 limited to: *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No.
17 CIVRS1107056 (one-third of settlement fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County
18 Superior Court, Case No. BC439558 (one-third of settlement fund); *Perez v. Southwest Dealer Services,*
19 *Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of settlement fund); *Alvarez v.*
20 *Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of
21 settlement fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-
22 CU-OE-CTL (one-third of settlement fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior
23 Court, Case No. CIVRS1001579 (one-third of settlement fund); *Huynh v. Carefusion Resources, LLC, et*
24 *al*, San Diego County Superior Court, Case No. 37-2009-00103277-CU-OE-CTL (one-third of
25 settlement fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles County Superior Court, Case No.
26 BC456080 (one-third of settlement fund); *Sandoval v. Thrifty Payless, Inc.*, Los Angeles County
27 Superior Court, Case No. BC431249 (one-third of settlement fund); *Tucker v. Maly's West, Inc.*, Los
28 Angeles County Superior Court, Case No. BC483920 (one-third of settlement fund); *Tiwari v. Merrill's*

1 *Packaging*, San Mateo Superior Court, Case No. 519070 (one-third of settlement fund); *Montgomery v.*
2 *Del Monte Corp., et al*, Kings County Case No. 13C0204 (one-third of settlement fund); *Adams v.*
3 *Medical Staffing Network, et al*, Sacramento County Case No. 34-2012-00137491-CU-OE-GDS (33% of
4 gross settlement fund).

5 ***Settlement Administrator***

6 16. The Parties propose Phoenix Class Action Administration Solutions (“Phoenix”) as the
7 administrator in this matter. Phoenix is an experienced class action settlement administrator. Based on
8 my experience, \$50,000 is a reasonable amount for a settlement of this size.

9 ***LWDA Notice***

10 17. On the day of filing the motion for preliminary approval, my firm uploaded copies of the
11 Settlement and the Motion for Preliminary Approval of Class Action Settlement and Certification of
12 Settlement Class to the California Labor Workforce and Development Agency (“LWDA”).

13 ***Uncashed checks***

14 18. Per the Settlement Agreement, funds associated with uncashed checks will be
15 transferred by Defendants to the California State Controller with the identity of the Class Member to
16 whom the funds belong, to be held for the Class Member per the California Unclaimed Property
17 Law, in the interest of justice. The money paid to the California State Controller will remain the
18 Class Member’s property. This allows Class Members who did not cash their checks to collect their
19 Individual Settlement Payment at any time in the future. Therefore, there will be no unpaid residue
20 or unclaimed or abandoned Class Member fund and the California Code of Civil Procedure Section
21 384 shall not apply.

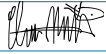
22 ***Class Size***

23 19. Defendants estimate that the settlement class is made up of 12,971 individuals.
24 Defendants estimates that there are 12,868 PAGA Members.

25 20. In preparing the preliminary approval papers, Defendants represented the following
26 updated workweek counts, which are within the 10% escalator clause the parties agreed to: the
27 number of workweeks covered by the Settlement is 647,022, comprised of 327,525 workweeks
28 worked by employees who were not DOT-regulated Route Sales Representatives or Route Sales

1 Associates, and 319,497 workweeks worked by employees who were DOT-regulated Route Sales
2 Representatives or Route Sales Associates.

3 I declare under the penalty of perjury of the laws of the State of California that the foregoing is
4 true and correct to the best of my knowledge. Executed September 19, 2024 in California.

5 
ID sr7cnJgGdZ5RzaNypcbED6Yu

6 Shaun Setareh

eSignature Details

Signer ID:	sr7cnJgGdZ5RzaNypcbED6Yu
Signed by:	Shaun Setareh
Sent to email:	shaun@setarehlaw.com
IP Address:	174.205.96.113
Signed at:	Sep 20 2024, 9:36 am PDT

EXHIBIT A

1 I. **Definitions.** The following terms and definitions will be used in this Stipulation and
2 Settlement of Class and Representative Claims. Additional terms are defined throughout the document
3 as well.

4 A. **“Named Plaintiffs”** mean Richard Booth, Cheryl Ferro and Brett Burkett.

5 B. **“Defendants”** means Frito-Lay, Inc.; Rolling Frito-Lay Sales, LP; Frito-Lay
6 North America; and Frito-Lay Sales, Inc.¹

7 C. **“Plaintiffs”** means all hourly-paid and/or non-exempt employees employed by
8 Rolling Frito-Lay Sales, LP and Frito-Lay, Inc. in California at any time during the Class Period,
9 excluding any weeks covered by the settlements in *Lopez v. Frito Lay, Inc.*, Los Angeles Superior Court
10 Case No. 21STCV01652 and *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y.).

11 D. **“Parties”** means Named Plaintiffs and Defendants, collectively, as defined
12 above.

13 E. **“Plaintiffs’ Counsel” or “Class Counsel”** means Shaun Setareh, Thomas Segal,
14 and Farrah Grant of the Setareh Law Group.

15 F. **“Defendants’ Counsel”** means Samantha D. Hardy and Carina L. Novell of
16 Sheppard, Mullin, Richter & Hampton LLP.

17 G. **“Action” or “Class Action”** means the lawsuit filed in the Superior Court of the
18 State of California for the County of Los Angeles entitled *Booth and Ferro v. Frito-Lay, Inc.; Rolling*
19 *Frito-Lay Sales, LP; Frito-Lay North America; and Frito-Lay Sales, Inc.*, Los Angeles Superior Court
20 Case No. 21STCV46151.

21 H. **“Operative Complaint”** means the Second Amended Complaint filed by
22 Plaintiffs in the Action.

23 I. **“Court”** means the Superior Court of the State of California for the County of
24 Los Angeles.

25
26 ¹ Defendant Frito-Lay North America, Inc. does not employ any non-exempt or hourly
27 employees in California, and has not employed any non-exempt or hourly employees in
28 California during the Class Period. Frito-Lay North America (without “Inc.”) and Frito-
Lay Sales, Inc. are not existing legal entities.

1 J. **“Class Members”** means all Plaintiffs who do not elect to exclude themselves by
2 following steps set forth in Section I.B.5.b below.

3 K. **“Class Period”** means the time period beginning on August 16, 2020, and ending
4 on October 17, 2023, excluding any weeks covered by the settlements in *Lopez v. Frito Lay, Inc.*, Los
5 Angeles Superior Court Case No. 21STCV01652 and *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-
6 00802 (S.D.N.Y).

7 L. **“Unlocated Plaintiff”** means any Plaintiff whose Notice has been returned as
8 undeliverable after all of the procedures in Section I.B.4.c have been followed. Unlocated Plaintiffs will
9 not be sent individual settlement awards, but will remain Class Members.

10 M. **“Effective Date”** means the date by which this settlement is finally approved as
11 provided herein and the Court’s Final Judgment (“Final Judgment or “Judgment”) becomes final. For
12 purposes of this Section, the Court’s Final Judgment becomes final upon the latter of: (1) if no appeal is
13 filed, the expiration date and time for the filing or noticing of any appeal from the Court’s judgment [the
14 earlier of 60 day from the date a Notice of Entry of Judgment or a file-stamped copy of the judgment is
15 served on counsel, or if no such notice is served, 180 days from entry of judgment, unless the time to
16 appeal is extended by the filing and service of a valid notice of intention to move for a new trial, or a
17 valid motion to vacate judgment, or a valid motion for judgment notwithstanding the verdict]; (ii) the
18 date of affirmance of an appeal of the judgment becomes final under the California Rules of Court [30
19 days after the date a court of appeal’s decision is filed unless (1) the court of appeal grants a petition for
20 rehearing which by rule vacates the decision and sets the case “at large in the Court of Appeal,” or (2)
21 certifies its opinion for publication or partial publication after filing its decision, which resets the finality
22 period from the filing date of the order for publication], the expiration of the time for a petition for review
23 of the Final Judgment or of any court of appeal decision relating to the Final Judgment [10 days after the
24 Court of Appeal's decision is final], and, if review is granted, the date of final affirmance of the Final
25 Judgment following review pursuant to that grant; or (iii) the date of final dismissal of any appeal from
26 the Judgment or the final dismissal of any proceeding on review of any decision relating to the Judgment.
27 To clarify, if any motion challenging the Settlement is filed, the Parties will assume an appeal of any
28

1 such motion will be filed, and the Effective Date will not occur until (1) the time for appeal of that motion
2 has passed, or (2) the appeal has been resolved, pursuant to the provisions contained herein.

3 II. **Settlement Agreement.** This Stipulation and Settlement of Class Claims (“Settlement,”
4 “Stipulation,” or “Agreement”) is made between Named Plaintiffs on behalf of themselves and each of
5 the other Plaintiffs, on the one hand, and Defendants, on the other hand, in the Action and subject to
6 approval of the Court. In the event the Settlement does not become effective by the terms of this
7 Stipulation or for any other reason, any orders entered pursuant to this Stipulation shall be vacated and
8 rendered null and void, and the Parties shall revert to their respective positions existing on the date of
9 their second mediation on October 19, 2023.

10 III. **Procedural History.** Named Plaintiff Booth filed this lawsuit against Defendants in the
11 Superior Court for the State of California, County of Los Angeles on December 17, 2021. On February
12 9, 2023, Plaintiff Booth filed a first amended complaint adding Plaintiff Ferro as a named Plaintiff.
13 Named Plaintiffs filed the Operative Complaint, adding named Plaintiff Burkett and alleging causes of
14 action for violation of the portions of the California Code relating to: providing meal periods, providing
15 rest breaks, paying minimum wages for all hours worked, paying overtime wages, paying vacation
16 wages, furnishing accurate itemized wage statements, reimbursements for business expenses, unlawful
17 pay deductions, record-keeping violations, and timely paying all wages during employment and upon
18 the conclusion of employment. The Operative Complaint also alleges derivative claims for restitution
19 under the California Business and Professions Code section 17200 et seq. (the “Unfair Competition Law”
20 or “UCL”), and derivative claims for civil penalties under the Labor Code Private Attorneys General Act
21 of 2004 (“PAGA”). The Operative Complaint seeks to pursue Plaintiffs’ Labor Code, UCL, and PAGA
22 claims on behalf all persons employed by Defendants as hourly-paid and/or non-exempt employees at
23 any time within the applicable statute of limitations. The Parties mediated the case before mediator David
24 A. Rotman on July 26, 2023. The Parties could not reach an agreement at the mediation and attended a
25 second mediation before Mr. Rotman on October 19, 2023.

26 IV. **Investigation in the Class Action.** The Parties have conducted an extensive investigation
27 of the facts and the law, including, *inter alia*, Defendants providing Named Plaintiffs with all
28 employment policies and procedures for Plaintiffs and the putative class members, and Defendants

1 providing Named Plaintiffs with a random sample of time and pay records for approximately 800
2 putative class members. Overall, Defendants produced over 76,000 pages of documents in this matter.
3 Counsel for the Parties further investigated the applicable law as applied to the facts discovered regarding
4 the alleged claims of Plaintiffs and potential defenses thereto and the damages claimed by Plaintiffs.

5 V. **Plaintiffs' Claims.** Named Plaintiffs have claimed, and continue to claim, that the
6 Released Claims (as defined in Section X.B below) have merit and give rise to liability on the part of
7 Defendants. Neither this Agreement, the documents referred to or contemplated herein, nor any action
8 taken to carry out this Agreement is, or may be construed or used as, an admission, concession, or
9 indication by or against Named Plaintiffs, Plaintiffs, or Class Counsel as to the merits or lack thereof of
10 the claims asserted.

11 VI. **Defendants' Denial of Wrongdoing.** Defendants have denied, and continue to deny,
12 each of the claims and contentions alleged by Named Plaintiffs in the Action. Defendants have repeatedly
13 asserted, and continue to assert, defenses thereto and have expressly denied, and continue to deny, any
14 wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Defendants
15 have also denied, and continue to deny, *inter alia*, the allegations that Plaintiffs have suffered damages
16 or harm by the conduct alleged in the Action; that Defendants failed to provide timely and compliant
17 meal or rest breaks; that Defendants failed to pay appropriate minimum and overtime wages for all hours
18 worked; that Defendants failed to pay all earned vacation wages; that Defendants failed to provide
19 accurate itemized wage statements; that Defendants failed to timely pay all final wages to current
20 employees and terminated or resigning employees; that Defendants failed to reimburse for necessary
21 business expenses; that Defendants made unlawful pay deductions; and that Defendants engaged in any
22 other wrongful conduct as alleged in the Action. Neither this Agreement, any document referred to or
23 contemplated in this Agreement, nor any action taken to carry out this Agreement, is, may be construed
24 as, or may be used as an admission, concession, or indication by or against Defendants of any fault,
25 wrongdoing, or liability whatsoever.

26 VII. **Named Plaintiffs' Reasons for Settlement.** Named Plaintiffs recognize the expense and
27 length of continued proceedings necessary to continue the litigation against Defendants through trial and
28 through any possible appeals. Named Plaintiffs have also taken into account the uncertainty and risk of

1 the outcome of further litigation, and the difficulties and delays inherent in such litigation. including, but
2 not limited to, the possibility that Defendants would successfully compel arbitration of Plaintiffs' class
3 action claims to individual-only arbitration pursuant to the dispute resolution agreement Plaintiffs
4 accepted during their employment with Rolling Frito-Lay Sales, LP. Named Plaintiffs are also aware of
5 the burdens of proof necessary to establish liability for the claims asserted in the Action (the "Claims"
6 or "Class Action Claims"), Defendants' defenses thereto, and the difficulties in establishing damages for
7 Plaintiffs. Named Plaintiffs have also taken into account the extensive informal discovery and settlement
8 negotiations conducted, which resulted in the material settlement terms contained in this Agreement.
9 Based on the foregoing, Named Plaintiffs have determined that the settlement set forth in this Agreement
10 is a fair, adequate and reasonable settlement, and is in the best interests of Plaintiffs.

11 **VIII. Defendants' Reasons for Settlement.** Defendants have concluded that any further
12 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
13 Defendants' time, energy, and resources has been and, unless this Settlement is made, will continue to
14 be, devoted to the defense of the Claims. For these reasons, Defendants have agreed to settle in the
15 manner and upon the terms set forth in this Agreement to fully resolve the Claims and the Action.

16 **IX. This Settlement is Fair, Adequate and Reasonable.** The Parties believe this Settlement
17 is a fair, adequate, and reasonable settlement of the Action, and have arrived at this Settlement in arms-
18 length negotiations taking into account all relevant factors, present and potential. This Settlement was
19 reached after extensive negotiations with mediator David A. Rotman, including two mediations roughly
20 three months apart, and over a month of negotiations after the parties October 19, 2023 mediation.
21 Defendants produced, and Plaintiffs reviewed over 76,000 pages of documents as part of their
22 investigation into Plaintiffs' claims.

23 **X. Stipulation.** NOW, THEREFORE, IT IS HEREBY STIPULATED by and among
24 Named Plaintiffs, on one hand, and Defendants, on the other hand, and conditioned upon approval by
25 the Court, that the Action is hereby compromised and settled pursuant to the terms and conditions set
26 forth in this Agreement.

27 **A. Class Certification.** For purposes of this Stipulation only, the Parties agree to the
28 certification of the Settlement Class, to include all hourly-paid and/or non-exempt employees in the State

1 of California employed by Defendants Frito-Lay, Inc. and Rolling Frito-Lay Sales, LP during the Class
2 Period. Should for whatever reason the Stipulation not become final, the fact that the Parties were willing
3 to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be
4 admissible in connection with, the issue of whether a class should be certified in a non-settlement context
5 in the Action, and shall have no bearing on, and shall not be admissible in connection with, the issue of
6 whether a class should be certified in any other lawsuit.

7 B. **Release as to All Class Members.** The release set forth in this Section pertains
8 to Class Members. As set forth in Section I.J, above, Class Members are “all Plaintiffs who do not elect
9 to exclude themselves by following the steps set forth in Section I.B.5.b below.” As of the Effective
10 Date, the Class Members, including Named Plaintiffs, release Defendants and each of their past or
11 present officers, directors, shareholders, employees, agents, principals, heirs,
12 representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their
13 respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys and each
14 of their company-sponsored employee benefit plans and all of their respective officers, directors,
15 employees, administrators, fiduciaries, trustees, and agents (the “Released Parties”) from the “Released
16 Claims.” For the purposes of this Agreement, “Released Claims” means any and all claims, demands,
17 rights, liabilities, and causes of action during the Class Period, of every nature and description
18 whatsoever, known or unknown, asserted or that might have been asserted, whether in contract, or for
19 violation of any California or federal statute, rule, or regulation, based on California or federal wage-
20 and-hour laws, whether for economic damages, restitution, penalties, or liquidated damages, arising out
21 of, relating to, or in connection with the Claims pleaded or that could have been pleaded based upon the
22 facts set forth in the Operative Complaint or any other pleading filed in the Action, including but not
23 limited to any and all claims for unpaid minimum wage, straight time, or overtime wages
24 (including on an off-the-clock, rounding, calculation of regular rates or other theory); timing of payment
25 (both during and at the end of employment); meal and rest period claims (including claims regarding
26 whether any meal and rest periods were provided, whether any meal and rest period penalties were paid,
27 and how any meal or rest period penalties were calculated); unpaid expense reimbursements; record-
28 keeping violations; sick time violations, vacation pay or other paid time off violations; claims for

1 unlawful pay deductions; and any and all associated penalties and damages, including PAGA penalties;
2 and claims for alleged unlawful, unfair, and/or fraudulent business practices under California Business
3 and Professions Code section 17200 et seq. based on the alleged Labor Code violations; alleged violation
4 of the Labor Code Private Attorneys General Act of 2004 (“PAGA”) based on the alleged Labor Code
5 violations; and interest, attorneys' fees and/or costs, at any time during the Class Period, excluding any
6 weeks covered by the settlements in *Lopez v. Frito Lay, Inc.*, Los Angeles Superior Court Case No.
7 21STCV01652 and *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y).

8 The Parties agree that this release shall have full res judicata effect as to FLSA claims for
9 all Class Members as described in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (9th
10 Cir. 2018), regardless of whether that Class Member endorses and cashes his or her settlement check.
11 However, in addition, the Settlement Administrator shall include the following language on each
12 settlement check issued to Class Members: “By endorsing and cashing this check, I consent to join the
13 FLSA settlement class and release any claims under the Fair Labor Standards Act that were pleaded or
14 that could have been pleaded based upon the facts alleged in this action.” Copies of these signed
15 endorsements shall be provided to Defendants and shall be filed with the Court as additional proof of
16 consent, with confidential information redacted, if filing the consents is requested by the Court.

17 The Released Claims expressly do not include claims for unemployment compensation,
18 workers’ compensation, discrimination, or retaliation. Specifically ***and only with respect to the Released***
19 ***Claims***, the Class Members stipulate and agree that, upon the Effective Date, the Class Members shall
20 be deemed to have, and by operation of the Final Judgment shall have, expressly waived and
21 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542
22 of the California Civil Code, or any other similar provision under federal or state law, which Section
23 provides:

24 **A general release does not extend to claims that the creditor or**
25 **releasing party does not know or suspect to exist in his or her favor at**
26 **the time of executing the release and that, if known by him or her,**
 would have materially affected his or her settlement with the debtor
 or released party.

27 The Class Members may hereafter discover facts in addition to or different from those
28 they now know or believe to be true specifically with respect to the subject matter of the Released Claims,

1 but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have,
2 fully, finally, and forever settled and released any and all of the Released Claims, whether known or
3 unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have
4 existed, upon any theory of law or equity now existing or coming into existence in the future, including,
5 but not limited to, conduct that is intentional, with or without malice, or a breach of any duty, law or
6 rule, without regard to the subsequent discovery or existence of such different or additional facts.

7 The Class Members may not sue or otherwise make a claim against any of the Released
8 Parties for the Released Claims.

9 C. **General Release by Named Plaintiffs Only.** Named Plaintiffs, as of the
10 Effective Date, make the additional following general release of all claims, known or unknown. Named
11 Plaintiffs fully release and discharge the Released Parties from all claims, demands, rights, liabilities,
12 and causes of action of every nature and description whatsoever, known or unknown, asserted or that
13 might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or
14 regulation arising out of, relating to, or in connection with any act or omission by or on the part of any
15 of the Released Parties committed or omitted prior to the execution hereof relating to his employment
16 with or resignation from any of the Released Parties. This includes any unknown claims Named Plaintiffs
17 do not know or suspect to exist in their favor, which, if known by them, may have affected their
18 settlement with, and release of, the Released Parties or might have affected their decision not to object
19 to the settlement.

20 With respect to this general release, Named Plaintiffs stipulate and agree that, upon the
21 Effective Date, Named Plaintiffs shall be deemed to have, and by operation of the Final Judgment shall
22 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights
23 and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal
24 or state law, which provides:

25 **A general release does not extend to claims that the creditor or**
26 **releasing party does not know or suspect to exist in his or her favor at**
27 **the time of executing the release and that, if known by him or her,**
28 **would have materially affected his or her settlement with the debtor**
or released party.

1 Named Plaintiffs may hereafter discover facts in addition to or different from those
2 Named Plaintiffs now knows or believes to be true with respect to the subject matter of the General
3 Release, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment
4 shall have, fully, finally, and forever settled and released any and all of the claims released pursuant to
5 the General Release, whether known or unknown, suspected or unsuspected, contingent or non-
6 contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing
7 or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional,
8 with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery
9 or existence of such different or additional facts. Named Plaintiffs will no longer be aggrieved employees
10 for purposes of PAGA once the Settlement is approved and Defendants complete their duties under the
11 Settlement Agreement. Named Plaintiffs will refrain from filing any litigation against Defendants while
12 the Settlement is pending.

13 D. **Neutral Reference.** Defendants will only provide dates of employment and job
14 title in response to any inquiries it may receive from prospective employers on behalf of Named
15 Plaintiffs. Prospective employers must call the Work Verification number. The number is 1-800-EMP-
16 AUTH. Plaintiffs may also log on to www.theworknumber.com. The only information that will be
17 provided will be Named Plaintiffs' job title and dates of employment. Named Plaintiffs will be given
18 additional directions if Named Plaintiffs wishes to release information about income.

19 E. **Settlement Fund.** Defendants will create a settlement fund in the amount of Three
20 Million, Five-Hundred Thousand Dollars and No Cents (\$3,500,000.00) (the "Settlement Fund"). If the
21 number of workweeks is more than 10% greater than 642,552 workweeks, the settlement payment shall
22 increase proportionally, meaning that if the number of workweeks
23 is 11% greater the amount should increase by 1% if 12% greater than by 2% and so on. The Settlement
24 Fund will be allocated among these elements:

25 (a) payments to Class Members of the Individual Settlement Awards less deductions as explained
26 in Section X.E.2;

27 (b) a total amount not to exceed Five Thousand Dollars and No Cents (\$5,000.00) to be paid to
28 each of the three Named Plaintiffs as a Service Award, subject to Court approval;

(c) reasonable claims administration expenses, in an amount not to exceed Fifty Thousand Dollars and No Cents (\$50,000.00), subject to Court approval, to be paid to the Settlement Administrator (as defined herein) to cover the reasonable costs of the settlement administration process ("Claims Administration Costs");

(d) Plaintiffs' attorneys' fees not to exceed Thirty-Three and one third Percent (33 1/3%) of the Settlement Fund, or a maximum of One Million One Hundred and Sixty-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$1,166,666.67) subject to Court approval ("Attorneys Fees");

(e) Plaintiffs' attorneys' litigation costs not to exceed the amount of Fifty Thousand Dollars and No Cents (\$50,000) subject to their billing statements and Court approval ("Litigation Costs"); and

(f) Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000.00) allocated for penalties recoverable under PAGA and payable to the Labor and Workforce Development Agency ("LWDA"), 75% of which, or \$187,500.00, will be paid to the LWDA, and 25% of which, or \$62,500.00, will be paid to the Class Members as an additional component of their Settlement Awards (as defined herein) and will be part of the Settlement Fund.

Any amounts allocated to Named Plaintiffs' Service Award, Claims Administration Costs, Attorneys' Fees, Litigation Costs, and PAGA penalties not awarded by the Court shall remain the property of Defendants.

The amount that remains after the Service Award, Claims Administration Costs, Attorneys' Fees, Litigation Costs, and the LWDA portion of PAGA penalties have been deducted from the Settlement Fund shall be called the "Payout Fund." The Payout Fund shall be designated as 20% wages and 80% interest and penalties.

1. Fees and Costs Award and Service Awards. The Parties agree to the designation of Shaun Setareh, Thomas Segal, and Farrah Grant of the Setareh Law Group as "Class Counsel." Class Counsel will request that the Court approve an award of attorneys' fees of up to One Million One Hundred and Sixty-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$1,166,666.67) ("Fees Award"). This constitutes 33 1/3% Percent of the value of the Settlement Fund.

1 Class Counsel will also request a Costs Award not to exceed Fifty Thousand Dollars and No Cents
2 (\$50,000). Defendants will not oppose these requests. Class Counsel shall not be permitted to petition
3 the Court for, or accept, any additional payments for fees, costs, or interest, and the Fees Award and
4 Costs Award shall be for all claims for attorneys' fees and costs past, present, and future incurred in the
5 Action.

6 Defendants' payment of the Fees Award and Costs Award to Class Counsel shall
7 constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law firm for
8 attorneys' fees, expenses or costs in the Action incurred by any attorney on behalf of Named Plaintiffs
9 and/or the Class. Further, said payment shall relieve Defendants, the Settlement Administrator, the
10 Settlement Fund, and Defendants' Counsel of any other claims or liability to any other attorney or law
11 firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on
12 behalf of Named Plaintiffs and/or Class Members.

13 Class Counsel will request that the Court approve a Service Award in a total amount not
14 to exceed Five Thousand Dollars and No Cents (\$5,000.00) to be paid to each of the three Named
15 Plaintiffs as Service Awards and to be paid out of and deducted from the Settlement Fund. Defendants
16 will not oppose such request. Named Plaintiffs' Service Awards will not be taxed as wages. Named
17 Plaintiffs will receive a 1099 form relating to the Service Awards. These awards shall be in addition to
18 the amount the Named Plaintiffs may receive as a Class Member. The Fees Award, Costs Award, and
19 Service Awards shall be paid by Defendants by and through the Settlement Administrator from the
20 Settlement Fund to Class Counsel within thirty (30) calendar days after the Effective Date. Any reduction
21 of the Fees Award and Costs Award to Class Counsel and Service Award shall remain the property of
22 Defendants.

23 2. Plan of Allocation for Payment to Class Members. Within thirty (30)
24 calendar days after the Effective Date, and solely for purposes of this Settlement, Defendants shall pay
25 by and through the Settlement Administrator from the Payout Fund the Settlement Awards (as hereinafter
26 defined) to the Class Members in accordance with the following eligibility and settlement formula
27 requirements.
28

1 a. Excluded from becoming a Class Member are those Plaintiffs who
2 submit valid and timely requests for exclusion pursuant to the terms and procedures of the Notice of
3 Class Action Settlement (attached as Exhibit 1 hereto).

4 b. Any Plaintiff who does not timely request exclusion shall become
5 a Class Member and will receive a Settlement Award. The Individual Settlement Awards to be allocated
6 to each Class Member shall be calculated as follows:

7 (1) After deducting the amount of the Fees Award, the Costs
8 Award, the Service Award, the LWDA's share of the PAGA penalties, and settlement administration
9 expenses that are all finally approved by the Court, the remaining Payout Fund will be allocated to the
10 Class Members;

11 (1) To arrive at these amounts, the Payout Fund will be
12 distributed on a pro-rata basis to Class Members based on a per-workweek basis. Class Members will
13 receive their pro-rata share based on how many workweeks they worked during the Class Period as
14 compared to all workweeks worked by all Class Members during the Class Period, both excluding any
15 weeks covered by the settlements in *Lopez v. Frito Lay, Inc.*, Los Angeles Superior Court Case No.
16 21STCV01652 and *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y) ("Workweek
17 Totals"). The number of workweeks for each Plaintiff will be determined by adding all the calendar days
18 within the inclusive dates of employment and dividing that number by seven. Any partial workweek will
19 be expressed as a percentage of a full workweek. This shall be considered each Plaintiff's "Workweek
20 Figure." Class Members' Gross Settlement Amounts will be calculated by dividing the Payout Fund by
21 the total of all Plaintiffs' Workweek Figures to arrive at a Per-Workweek Amount, and then multiplying
22 this amount by each Class Member's Workweek Figure. Defendants represent that the number of
23 workweeks covered by the Settlement is 642,552, comprised of 323,093 workweeks worked by
24 employees who were not DOT-regulated Route Sales Representatives or Route Sales Associates, and
25 319,459 workweeks worked by employees who were DOT-regulated Route Sales Representatives or
26 Route Sales Associates. In recognition of the fact that DOT-regulated employees are exempt from
27 California overtime requirements, and California meal and rest period requirements are preempted for
28

1 these employees, non-DOT regulated employees will receive twice the amount per workweek worked
2 during the Class Period that DOT-regulated employees will receive per workweek.

3 For example, a Class Member who worked 360 days (180 days as a Merchandiser, for
4 example, and 180 days as a Route Sales Representation) would have a Workweek Figure of 52 weeks.
5 If the Payout Fund was \$2,085,833.33, and the total workweeks for all Plaintiffs was 642,552, this would
6 result in a \$3.25 Per-Workweek Amount for the workweeks employed as a Merchandiser, and a \$1.63
7 Per-Workweek Amount for the workweeks employed as a Route Sales Representative. Then, the above
8 Class Member would be eligible for \$3.25 for 26 workweeks, and \$1.63 for the remaining 26 workweeks,
9 or \$126.88 total. This would be the Class Member's Gross Settlement Amount.

10 b. Twenty percent (20%) of all Individual Settlement Payments to
11 Class Members will be called the "Gross Wage Portion." The remaining eighty percent (80%) of
12 payments to Class Members represents the "Non-Wage Portion" of the Individual Settlement Payment
13 and includes interest and penalties sought in the Action. Class Members will be issued W2s for the Wage
14 Portions of their Individual Settlement Payment and IRS Form 1099s for the Non-Wage Portions. The
15 resulting amount will be each individual Class Member's "Gross Wage Component." From each Class
16 Member's Gross Wage Component, payroll deductions will be made for state and federal withholding
17 taxes and any other applicable payroll deductions owed by the Class Member as a result of the payment,
18 resulting in a "Net Wage Component." The total of the Net Wage Component and the Non-Wage Portion
19 shall be the Class Member's "Net Settlement Amount." The Net Settlement Amount will be the net
20 amount paid to each Class Member and is the Class Member's "Individual Settlement Award."

21 c. The Settlement Administrator shall be responsible for issuing the
22 payments and calculating and withholding all required state and federal taxes owed by the Class
23 Members. The Settlement Administrator shall calculate the Settlement Awards no later than fourteen
24 (14) calendar days after receiving the Workweek Totals for each Plaintiff from Defendants.

25 d. Some of the Individual Settlement Awards may remain unclaimed
26 because a Plaintiff (1) was an Unlocated Plaintiff, (2) submitted a valid and timely request for exclusion,
27 and/or (3) failed to cash his or her Individual Settlement Award Check within one hundred and twenty
28 (120) days of its issuance, as allowed by Court order. Funds associated with the Individual Settlement

1 Awards of Unlocated Plaintiffs and Plaintiffs who have submitted valid and timely requests for exclusion
2 shall be included in the Payout Fund and will be distributed amongst Class Members in accordance with
3 the formulas above. Funds associated with uncashed checks will be transferred by Defendants to the
4 California State Controller with the identity of the Class Member to whom the funds belong, to be held
5 for the Class Member per the California Unclaimed Property Law, in the interest of justice. The money
6 paid to the California State Controller will remain the Class Member's property. This allows Class
7 Members who did not cash their checks to collect their Individual Settlement Payment at any time in the
8 future. Therefore, there will be no unpaid residue or unclaimed or abandoned Class Member fund and
9 the California Code of Civil Procedure Section 384 shall not apply.

10 2. Operation of the Settlement Fund and Payout Fund.

11 a. At no time shall Defendants have the obligation to segregate the
12 funds comprising the Settlement Fund from Defendants' other assets, and Defendants shall retain
13 exclusive authority over, and responsibility for, those funds until they are paid over to the Settlement
14 Administrator.

15 b. The Settlement Administrator will calculate the net amounts to be
16 paid to the Class Members from the Payout Fund in accordance with the terms and provisions of this
17 Agreement.

18 c. The Settlement Administrator shall have the authority and
19 obligation to make payments, credits, and disbursements, including payments and credits in the manner
20 set forth herein, to Class Members from the Payout Fund in accordance with the methodology set out in
21 this Agreement and orders of the Court.

22 d. To the extent any tax returns must be filed for the Settlement Fund
23 pursuant to this Agreement, the Settlement Administrator shall cause to be timely and properly filed all
24 informational and other tax returns, if any, necessary with respect to the Settlement Fund. Such returns
25 shall be consistent with this Section. The Parties do not believe that the Settlement Fund will generate
26 any taxable income. However, if any taxable income is generated by the Settlement Fund, the tax returns
27 filed shall reflect that all taxes payable on the taxable income of the Settlement Fund, if any, shall be
28 paid from the Settlement Fund. Any expenses consisting of the expenses and costs incurred in connection

1 with the operation and implementation of this Section (including, without limitation, reasonable
2 expenses of tax attorneys, accountants or other designees retained by the Settlement Administrator as
3 required for the preparation and filing of tax returns described in this Section) shall be treated as, and
4 considered to be, a cost of administration of the Settlement.

5 e. No person shall have any claim against Defendants, Defendants'
6 Counsel, Named Plaintiffs, Plaintiffs, or Plaintiffs' Counsel based on distributions and payments made
7 in accordance with this Agreement.

8 B. **Administration of the Settlement.**

9 1. A hearing shall be held before the Court on a mutually-convenient date,
10 or on another date and time if that hearing is rescheduled, at which the Named Plaintiffs shall request
11 preliminary approval of the Settlement (the "Preliminary Approval Hearing"). In conjunction with this
12 hearing, Named Plaintiffs will submit this Agreement, which sets forth the terms of this settlement, and
13 will include proposed forms of all notices and other documents as attached hereto necessary to
14 implement the Settlement. Defendants shall not oppose Named Plaintiffs' request for preliminary
15 approval consistent with this Agreement.

16 2. Simultaneous with the filing of this Agreement, and solely for purposes of
17 this Settlement, Named Plaintiffs will request the Court to enter the Preliminary Approval Order
18 ("Preliminary Approval Order") (substantially in the form attached as Exhibit 2 hereto) preliminarily
19 approving the proposed Settlement, approving the appointment of Class Counsel, and setting a date for
20 final approval of the Settlement. The Proposed Order shall provide for notice of the Settlement and
21 related matters to be sent to Plaintiffs as specified herein. The Parties will request the Court, in its
22 preliminary approval of this Settlement, to enjoin any Plaintiffs from initiating or prosecuting any
23 proceeding on any claim to be released pursuant to this Stipulation unless, and until, either the Plaintiffs
24 opts out of the class, or the Effective Date does not occur (as set forth in Section I.M, above).

25 3. **Interim Stay of Proceedings.** The Parties agree to hold all Court
26 proceedings in the Act in abeyance pending the Preliminary Approval Hearing and Final Approval
27 Hearing to be conducted by the Court. No additional discovery shall be conducted in this case unless
28 this Settlement Agreement is nullified in accordance with Section I.C below.

1 4. Notice of the Settlement shall be provided to Plaintiffs using the following
2 procedures:

3 a. Class List. Within forty-five (45) calendar days after entry of the
4 Preliminary Approval Order or the closure of the Class Period, whichever is later, Defendants shall
5 provide the Settlement Administrator a "Class List and Data Report" showing the full names, full social
6 security numbers, and last known telephone numbers and mailing addresses for all Plaintiffs and their
7 weeks worked within a covered position, as well as applicable Workweek Totals. The Settlement
8 Administrator shall keep this information confidential and shall not share this information with Class
9 Counsel.

10 b. Settlement Administrator. The Parties agree to designate Phoenix
11 Class Action Administration Solutions as the "Settlement Administrator." In the event Phoenix Class
12 Action Administration Solutions is subsequently unable to serve as Settlement Administrator, another
13 Settlement Administrator shall be agreed to by the Parties, or, if they cannot reach agreement, will be
14 selected by the Court. The Parties agree that they have selected a Settlement Administrator with whom
15 they have no financial interest or other relationship that could create a conflict of interest. The Settlement
16 Administrator shall be responsible for: preparing, printing, translating the Notice, and mailing the Notice
17 as directed by the Court to the Plaintiffs; communicating with Plaintiffs and others regarding the
18 Settlement Award administration process, corrections, and/or additional information needed for
19 administration; calculating the Total Workweeks; calculating the amount of the Individual Settlement
20 Awards and all payroll tax deductions to be withheld; keeping track of opt outs; drafting and mailing
21 Settlement Award checks to Class Members; disbursing the Fees Award and Costs Award to Class
22 Counsel; disbursing the Service Awards to Named Plaintiffs through Class Counsel; and submitting the
23 LWDA's portion of the PAGA payment to the LWDA; preparing, mailing, and filing all applicable tax
24 forms necessary as a result of the payments made under this Settlement; and for such other tasks as the
25 Parties mutually agree or the Court orders the Settlement Administrator to perform.

26 c. Notice Mailing. By no later than forty-five (45) calendar days after
27 Preliminary Approval, or receipt of the Class List/Data Report, whichever is later, the Settlement
28 Administrator shall send the Notice to all Plaintiffs via First Class regular U.S. mail. Prior to mailing,

one National Change of Address ("NCOA") search will be performed on Defendants' records to ascertain updated contact information for all Plaintiffs. Any Notices returned to the Settlement Administrator as non-delivered before the Notice Deadline Date specified below shall be sent to the forwarding address affixed thereto within three (3) business days of receiving notice that a Notice was undeliverable. If no forwarding address is provided, then the Settlement Administrator shall attempt to determine a correct address by using a single computer or other search using the social security number of the individual involved and shall forward the Notice to the correct address.

d. In the event the procedures in this Section are followed and the intended recipient of a Notice still does not receive the Notice, the intended recipient shall remain a Class Member and shall be bound by all terms of the Settlement and by any Final Judgment entered by the Court, provided the Settlement is approved by the Court. As defined above, these persons shall be included as "Unlocated Plaintiffs." The Parties agree that this procedure is the best notice practicable under the circumstances. The settlement amount attributed to Unlocated Plaintiffs and Plaintiffs who timely opt-out of the settlement shall be distributed as reflected herein.

5. Procedure for Objecting to or Requesting Exclusion From Class Action Settlement.

a. Procedure for Objecting. The Notice shall provide that Class Members who wish to object to the Settlement must file with the Court and serve on counsel for the Parties a written statement objecting to the Settlement. Such written objection must contain the name, address, telephone number, and last four digits of the social security number of the person objecting; the location and dates of his or her employment by Defendants; whether the objector has retained an attorney; and, if the objector has retained an attorney, the name of the firm, name of the attorney, address, and telephone number. Such written statement must be filed with the Court and either electronically or personally served on counsel for the Parties no later than thirty (30) calendar days after the date the Notice is first mailed (the "Objection/Exclusion Deadline Date"). No Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel at his/her own expense) or to object to the Settlement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Settlement Hearing, unless written notice of

1 the Class Member's intention to appear at the Settlement Hearing, and copies of any written objections
2 or briefs, have been filed with the Court, and electronically or personally served on all counsel for the
3 Parties, on or before the Objection/Exclusion Deadline Date. The date of the postmark on the return
4 mailing envelope shall be the exclusive means used to determine whether an objection has been timely
5 submitted. Class Members who fail to file and electronically or personally serve timely written
6 objections in the manner specified above shall be deemed to have waived any objections and shall be
7 foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Further, if the
8 objector retains an attorney, the attorney must file a valid notice of appearance within seven (7) days
9 after the deadline for submitting objections. If the objector's attorney fails to file a notice of appearance
10 within that time, the objector waives his or her right to be represented by counsel, but otherwise retains
11 his or her right to object *pro se* in accordance with this Agreement. Any Class Member who submits a
12 timely and valid objection will still be entitled to his or her Individual Settlement Award, became a Class
13 Member, and will be bound by the Settlement if the Court approves the Settlement. If a Plaintiff submits
14 both a timely objection and request for exclusion from the settlement, the objection will not be
15 considered but the request for exclusion will be accepted.

16 b. Procedure for Requesting Exclusion. The Notice shall provide that
17 Plaintiffs who wish to exclude themselves from the Class must submit a written statement requesting
18 exclusion from the Class on or before the Objection/Exclusion Deadline Date. Such written request for
19 exclusion must contain the name, address, telephone number, and last four digits of the social security
20 number of the person requesting exclusion, and the location and dates of his or her employment by
21 Defendants. Such request must be returned by mail to the Settlement Administrator and must be
22 postmarked on or before the Objection/Exclusion Deadline Date. The date of the postmark on the return
23 mailing envelope shall be the exclusive means used to determine whether a request for exclusion has
24 been timely submitted. Any Plaintiff who submits a timely and valid request for exclusion from the Class
25 will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have
26 any right to object, appeal, or comment thereon. Plaintiffs who fail to submit a valid and timely request
27 for exclusion on or before the Objection/Exclusion Deadline Date shall become Class Members and shall
28

1 be bound by all terms of the Settlement and any Final Judgment entered in the Class Action if the
2 Settlement is approved by the Court.

3 6. No Solicitation of Settlement Objections or Exclusions. The Parties agree
4 to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or
5 their counsel seek to solicit or otherwise encourage Plaintiffs to submit written objections to the
6 Settlement or requests for exclusion from the Settlement Class or to appeal from the Court's Final
7 Judgment.

8 7. The Settlement Administrator will, on a weekly basis during and for a
9 reasonable period following the Notice Period, provide updates to Class Counsel and Defense Counsel
10 as to the number of Plaintiffs who submitted (i) valid opt-out requests for exclusions; (ii) and objections.
11 To the extent practicable, the weekly updates shall also provide updated data on the extent of Class
12 Notices that are returned undeliverable and any re-mailing efforts.

13 8. No less than ten (10) court days before the Final Approval Hearing, the
14 Settlement Administrator will prepare a declaration to be provided to Class Counsel and Defendants
15 counsel for filing in support of Plaintiffs' motion for final approval attesting to the following: (i) its
16 mailing efforts regarding the Class Notice; (ii) its receipt of the valid requests for exclusion, and its
17 inability to deliver the Class Notice to Plaintiffs, if any; (iii) the highest and lowest estimated Individual
18 Settlement Awards, along with the estimated average Individual Settlement Awards.

19 9. Option to Terminate Settlement. If, after the Objection/Exclusion
20 Deadline Date, and before the Settlement Hearing referenced in Section I.B.10 below, the number of
21 Plaintiffs who have timely submitted requests for exclusion total more than ten percent (10%) of all
22 Plaintiffs, Defendants shall have, in their sole discretion, the option to terminate this Settlement. To be
23 valid, a request for exclusion must be submitted on a timely basis as required by this Agreement.
24 Defendants agree to meet and confer in good faith with Class Counsel before withdrawing from this
25 Agreement. In the event that Defendants elect to withdraw, Defendants shall provide written notice of
26 such withdrawal to Class Counsel. If Defendants choose to exercise the right to withdraw from this
27 Agreement, Defendants must do so within twenty (20) days after the Settlement Administrator notifies
28 Class Counsel and Defendants' Counsel of the number of valid opt outs or objections received, which

1 the Settlement Administrator will do within twenty (20) days after the Objection/Exclusion Deadline
2 Date. Class Counsel may attempt to cause retraction of any election of exclusion by Plaintiffs. If
3 Defendants have exercised its option to withdraw from the Settlement Agreement, and Class Counsel
4 succeeds in causing the retraction of sufficient requests for exclusion such that the remaining number of
5 Plaintiffs seeking exclusion does not exceed 10% of the Plaintiff Class, then Defendants' notice of
6 withdrawal from the Settlement Agreement shall automatically be deemed a nullity. To retract a prior
7 request for exclusion, a Plaintiff must provide to the Settlement Administrator, at least three (3) calendar
8 days prior to the Final Settlement Hearing, or any adjournment thereof, a written notice stating his or her
9 desire to retract his or her request for exclusion from the Plaintiff Class. Any withdrawal from this
10 Agreement by Defendants shall have the same effect as a termination of the Settlement Agreement for
11 failure to satisfy a condition of settlement, and the Agreement shall become null and void and have no
12 further force or effect, and the Settlement Class certified pursuant to the Agreement will be decertified
13 for all purposes. If Defendants choose to terminate the Stipulation based upon this Section, the Parties
14 shall split the Settlement Administrator's fees and costs incurred to that point on a 50-50 basis.

15 10. Final Settlement Approval Hearing and Entry of Final Judgment. Upon
16 expiration of the Objection/Exclusion Deadline Date, with the Court's permission, a Final Settlement
17 Approval Hearing ("Settlement Hearing") shall be conducted to determine final approval of the
18 Settlement along with the amount properly payable for (i) attorneys' fees and costs to Class Counsel, (ii)
19 Named Plaintiffs' Service Awards, (iii) Settlement Administration fees; and (iv) PAGA penalties. Upon
20 final approval of the Settlement by the Court at or after the Settlement Hearing, the Parties shall present
21 an Order Granting Final Approval and Final Judgment ("Final Judgment") (attached as Exhibit 3 hereto)
22 to the Court for its approval. After entry of the Final Judgment, the Court shall have continuing
23 jurisdiction pursuant to California Code of Civil Procedure section 664.6 solely for purposes of
24 addressing: (i) settlement administration matters and (ii) such post-Final Judgment matters as may be
25 appropriate under court rules or as set forth in this Agreement.

26 11. The Settlement Administrator shall establish a Settlement Account (either
27 a separate checking account or separate ledger entry), and timely fund any checks written upon the
28 Settlement Account to pay all amounts owed under this Settlement;

1 a. Within fourteen (14) calendar days after the Effective Date,
2 Defendants will wire to or otherwise fund the Settlement created by the Settlement Administrator to pay
3 the Settlement Awards, Fees Award, Costs Award, Service Award and PAGA payment, as specified
4 above;

5 b. Within fourteen (14) calendar dates after the Effective Date,
6 Defendants will pay the Settlement Administrator for costs and expenses of administering this Settlement
7 in the amount awarded by the Court out of the Settlement Fund.

8 12. Procedure for Payment of Settlement Awards. Within thirty (30) calendar
9 days after the Effective Date, the Settlement Administrator will pay Attorneys' Fees and Costs, the
10 Named Plaintiffs' Service Award, and \$187,500.00 to the LWDA. Within thirty (30) calendar days after
11 the Effective Date, the Settlement Administrator shall mail Individual Settlement Awards to the Class
12 Members. Any checks paid to Settlement Class Members shall remain valid and negotiable for one
13 hundred twenty (120) days from the date of their issuance ("Check Stale Date"). Any checks not cashed
14 after one hundred twenty (120) calendar days will be distributed as set forth within this Agreement. For
15 any checks that are returned with a forwarding address, the Settlement Administrator shall send the check
16 to that forwarding address within ten (10) calendar days. For any checks that are returned with no
17 forwarding address, the Settlement Administrator shall attempt to determine a correct address by using
18 a single computer or other search and shall call the Class Member at the telephone number provided by
19 Defendants. If the Settlement Administrator obtains a new address, then the check shall be mailed to that
20 new address within ten (10) calendar days. In the event these procedures are utilized and the person does
21 not receive the check, no additional steps are required and the Settlement Administrator will have
22 fulfilled all of its obligations under this section.

23 13. Administration of the Settlement shall be completed on or before the date
24 approximately one hundred eighty (180) days or sooner after the Check Stale Date. Upon completion of
25 administration of the Settlement, the Settlement Administrator shall provide Class Counsel and counsel
26 for Defendants with a declaration of completion to be filed with the Court by Class Counsel.

27 14. Administration Cost. All of Defendants' own legal fees, costs and
28 expenses incurred in the Action shall be borne by Defendants. In accordance with Section X.E,

1 settlement administration expenses will be part of the Settlement Fund. The Parties agree to cooperate
2 in the Settlement administration process and to make all reasonable efforts to control and minimize the
3 costs and expenses incurred in administration of the Settlement.

4 C. **Nullification of Settlement Agreement.** In the event that prior to the Effective
5 Date: (i) the Court does not enter a Preliminary Approval Order; (ii) the Court does not finally approve
6 the Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided herein
7 which becomes final as a result of the occurrence of the Effective Date; (iv) more than ten percent (10%)
8 of Plaintiffs submit valid opt-out election forms and Defendants exercise their option to void the
9 settlement; or (v) the Settlement does not become final for any other reason, this Settlement Agreement
10 shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement
11 shall be treated as void *ab initio*. In that case, the Parties will seek to reach a revised agreement acceptable
12 to them to be presented to the Court. In the event the Parties cannot reach a mutually acceptable revised
13 agreement, they shall ask the mediator to assist them in resolving the remaining disputes before litigating
14 further. In the event the Parties are unable to reach a revised agreement, or any such revised agreement
15 is not approved by the Court, the Parties shall proceed in all respects as if this Settlement Agreement had
16 not been executed and Defendants will not make any payments under this Settlement Agreement, except
17 that any fees already incurred by the Settlement Administrator shall be paid for equally by the Parties.
18 In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought
19 prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of
20 the appeal or other appellate review.

21 D. **No Effect on Employee Benefits.** The Service Awards and Individual Settlement
22 Awards paid to the Named Plaintiffs and Class Members shall be deemed not to be pensionable earnings
23 and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g.,
24 vacations, holiday pay, retirement plans, etc.) of Named Plaintiffs or Class Members. The Parties agree
25 that any Service Awards and Settlement Awards paid to Named Plaintiffs and Class Members under the
26 terms of this Agreement do not represent any modification of Named Plaintiff's or Class Members'
27 previously credited hours of service, or other eligibility criteria, under any employee pension benefit
28 plan or employee welfare benefit plan sponsored by Defendants. Further, any Service Awards or

1 Settlement Awards hereunder shall not be considered "compensation" in any year for purposes of
2 determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee
3 welfare benefit plan sponsored by Defendants, or unemployment benefits. Defendants will not take
4 401(k) or other benefits deductions from any Service Awards or Individual Settlement Awards.

5 E. **Privacy of Documents and Information.** Named Plaintiffs and Named
6 Plaintiffs' counsel agree that none of the documents and information provided to them by Defendants
7 shall be used for any purpose other than prosecution of the Class Action.

8 F. **Confidentiality Prior to Preliminary Approval.** The undersigned agree that
9 prior to the date of the filing of the papers in support of Preliminary Approval, they will keep confidential
10 the terms of this Settlement. Named Plaintiffs shall be informed that the Settlement is confidential up
11 until the date of the filing of the papers in support of Preliminary Approval, and shall be advised to keep
12 this Settlement confidential. Notwithstanding the foregoing, Named Plaintiffs and Class Counsel may
13 inform their immediate family and legal, tax, and financial advisors of this Settlement. However, before
14 disclosing any such information to any such person, Named Plaintiffs or Class Counsel (as the case may
15 be) shall advise such person(s) that the information is confidential. The disclosure of this information to
16 any other person shall constitute a breach of this Agreement. Prior to the date of the filing of the papers
17 in support of Preliminary Approval, Class Counsel and Counsel for Defendants may not communicate
18 the terms of this Settlement to Plaintiffs, other than Named Plaintiffs, including on websites.
19 Notwithstanding the foregoing, the Parties may discuss the terms of the Settlement in any papers filed
20 with the Court relating to preliminary approval of the Settlement. Defendants may reference this
21 Settlement prior to Preliminary Approval, in its financial disclosures. The Parties agree that damages
22 from violation of this provision are significant, and impossible to calculate. They therefore agree that
23 any violation of this provision shall subject the Named Plaintiffs and/or their Counsel to liquidated
24 damages in the amount of Ten Thousand Dollars and No Cents (\$10,000.00) for each such breach.

25 G. **Limited Publicity Following Preliminary Approval.** From and after
26 Preliminary Approval of the Settlement, Class Counsel and Named Plaintiffs may only comment
27 regarding the specific terms of this Agreement: (1) as required by law; or (2) as required under the terms
28 of this Agreement. In all other cases, Class Counsel and Named Plaintiffs agree to not publicize this

1 Settlement in any way. Neither Named Plaintiffs nor Class Counsel shall hold any press conference,
2 make any press release, make statements to the press, publish the settlement on their website, the internet
3 or social media, or in any way affirmatively publicize any information related in any way to the
4 Settlement. The Parties agree that damages from violation of this provision are significant, and
5 impossible to calculate. They therefore agree that any violation of this provision shall subject the Named
6 Plaintiffs and/or their Counsel to liquidated damages in the amount of Ten Thousand Dollars and No
7 Cents (\$10,000.00) for each such breach. Nothing in this paragraph or any other provision of this
8 Agreement is intended to prevent the Parties from disclosing factual information regarding any claim for
9 sexual harassment, sex discrimination, or retaliation for reporting sexual harassment or sex
10 discrimination pursuant to Code of Civil Procedure § 1001(a)(3). Further, nothing in this Agreement
11 shall prevent Plaintiffs from engaging in any form of concerted activity that is protected by Section 7 of
12 the National Labor Relations Act, which is codified at 29 U.S.C. § 157. Information about such rights is
13 available to Plaintiffs on the National Labor Relations Board's website, www.nlr.gov.

14 H. **No Admission by the Released Parties.** Defendants and the Released Parties
15 deny any and all claims alleged in the Action and deny all wrongdoing whatsoever. This Agreement is
16 not a concession or admission, and shall not be used against Defendants or any of the Released Parties
17 as an admission or indication with respect to any claim of any fault, concession or omission by
18 Defendants or any of the Released Parties. Whether or not the Settlement is finally approved, neither the
19 Settlement, nor any document, statement, proceeding or conduct related to this Agreement, nor any
20 reports or accounts thereof, shall in any event be:

21 1. Construed as, offered or admitted in evidence as, or deemed to be evidence
22 for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption,
23 concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing,
24 omission, concession or damage; or

25 2. Disclosed, referred to or offered or received as evidence against any of the
26 Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative
27 action or proceeding, except for purposes of settling the Action pursuant to this Agreement or enforcing
28 the terms of this Stipulation.

1 I. **CIRCULAR 230 DISCLAIMER.** EACH PARTY TO THIS AGREEMENT
2 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
3 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
4 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
5 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
6 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL
7 ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
8 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY
9 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING
10 PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT
11 LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION
12 WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
13 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
14 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION
15 OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID
16 ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND
17 (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
18 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
19 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
20 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
21 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
22 BY THIS AGREEMENT.

23 J. **Exhibits and Headings.** The terms of this Agreement include the terms set forth
24 in any of the attached Exhibits 1 through 3, which are incorporated by this reference as though fully set
25 forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive
26 headings of any Paragraphs or Sections of this Agreement are inserted for convenience of reference only
27 and do not constitute a part of this Agreement.
28

1 K. **Amendment or Modification.** This Agreement may be amended or modified
2 only by a written instrument signed by counsel for all Parties or their successors-in-interest.

3 L. **Entire Agreement.** This Agreement and the attached Exhibits constitute the
4 entire agreement among these Parties, and no oral or written representations, or warranties or
5 inducements, have been made to any Party concerning this Agreement or its Exhibits, other than the
6 representations, warranties, and covenants contained and memorialized in such documents.

7 M. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties
8 warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate
9 this Agreement, and to take all appropriate action required or permitted to be taken by such Parties
10 (including the execution of any other documents) pursuant to this Agreement to effectuate the terms of
11 said Agreement. The Parties and their counsel will cooperate with each other and use their best efforts
12 to effect the implementation of the Settlement.

13 N. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and
14 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

15 O. **California Law Governs.** All terms of this Agreement and the Exhibits attached
16 hereto shall be governed by and interpreted according to the laws of the State of California.

17 P. **Counterparts.** This Agreement may be executed in one or more counterparts and
18 transmitted via email or facsimile. All executed counterparts, their copies and each of them, shall be
19 deemed to be one and the same instrument.

20 Q. **Cooperation and Drafting.** Each of the Parties has cooperated in the drafting and
21 preparation of this Agreement. Hence, in any construction made of this Agreement, the same shall not
22 be construed against any of the Parties.

23 R. **Invalidity of Any Provision.** Before declaring any provision of this Agreement
24 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
25 consistent with applicable precedents so as to define all provisions of this Agreement valid and
26 enforceable.

27 S. **Named Plaintiffs' General Release Remains Effective.** Named Plaintiffs agree
28 to sign this Agreement, and by signing this Agreement is bound by the terms herein stated, including

1 without limitation the release set forth in Section X.C. Named Plaintiffs shall retain their rights as a Class
2 Member under this Agreement, but understands that should they opt out of the Settlement, they shall
3 waive their right to any recovery of any Service Awards.
4

5 Dated: 3/7/2024

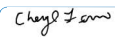
PLAINTIFF, RICHARD BOOTH

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7 ID kicsDaVDJbp4WU3UkiEBg3Ba

Richard Booth

8 Dated: 3/7/2024

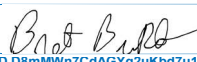
PLAINTIFF, CHERYL FERRO

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Cheryl Ferro

12 Dated: 3/8/2024

PLAINTIFF, BRETT BURKETT

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Brett Burkett

16 Dated: 3/8/2024

SETAREH LAW GROUP

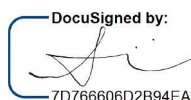
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Shaun Setareh
Thomas Segal
Farrah Grant

21 Attorneys for Plaintiffs,
22 RICHARD BOOTH AND CHERYL FERRO

24 Dated: 3/12/2024

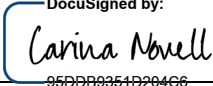
For Defendants, FRITO-LAY, INC; ROLLING FRITO-LAY
25 SALES, LP; and FRITO LAY NORTH AMERICA, INC.

26 By: 
27 DocuSigned by:
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Aida Babalola

1 Dated: 3/12/2024
2 _____

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3 By: 
4 Samantha D. Hardy
5 Carina L. Novell

6 Attorneys for Defendants,
7 FRITO-LAY, INC; ROLLING FRITO-LAY SALES, LP; and
8 FRITO LAY NORTH AMERICA, INC.

eSignature Details

Signer ID: kicsDaVDJbp4WU3UKiEBg3Ba
Signed by: Richard Booth
Sent to email: richboo562@gmail.com
IP Address: 174.193.194.17
Signed at: Mar 7 2024, 12:01 pm PST

Signer ID: SwUYk9FgSQmXQUME5Q4opJ5p
Signed by: Cheryl Ferro
Sent to email: cflifeisruff@gmail.com
IP Address: 66.27.184.221
Signed at: Mar 7 2024, 9:49 pm PST

eSignature Details

Signer ID: MQFN6oekSMdp5bJ7aZ1P4v37
Signed by: Shaun Setareh
Sent to email: shaun@setarehlaw.com
IP Address: 104.180.15.40
Signed at: Mar 8 2024, 3:00 pm PST

Signer ID: D8mMWn7CdAGYq2uKbd7u1u2W
Signed by: Brett Burkett
Sent to email: bwburkett62@gmail.com
IP Address: 97.190.145.136
Signed at: Mar 8 2024, 6:59 pm PST

EXHIBIT 1

NOTICE OF SETTLEMENT

Richard Booth et al. v. Frito-Lay, Inc., et. al.

Superior Court of the State of California for the County of Los Angeles

Case No. 21STCV46151

TO: Any and all persons who are or were employed as a non-exempt and/or hourly employee employed by Rolling Frito Lay Sales, LP or Frito Lay, Inc. in the State of California from September 7, 2020, through October 17, 2023 ("Class Period").

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHT TO A MONETARY SETTLEMENT ARISING OUT OF YOUR EMPLOYMENT AS A NON-EXEMPT AND/OR HOURLY EMPLOYEE BY ROLLING FRITO LAY SALES, LP OR FRITO LAY, INC. IN CALIFORNIA DURING THE CLASS PERIOD.

THIS NOTICE WILL EXPLAIN THE ABOVE OPTIONS IN MORE DETAIL AND INFORM YOU OF IMPORTANT, TIME-SENSITIVE DEADLINES FOR EACH OPTION.

I. INTRODUCTION

If you were employed by Defendants Rolling Frito Lay Sales, LP or Frito Lay, Inc. in California as a non-exempt and/or hourly employee at any time from September 7, 2020, through October 17, 2023 (excluding any weeks covered by the settlements in *Lopez v. Frito Lay, Inc.*, Los Angeles Superior Court Case No. 21STCV01652 and *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y)) (the "Class Period"), you are a member of the proposed settlement class in this class action lawsuit ("Plaintiff") and your rights will be affected as set forth in the proposed settlement described in this Notice (the "Settlement"). On [REDACTED], 2024, the Court preliminarily approved the Settlement. You have received this Notice because Defendants' records show you are a Plaintiff in this action.

II. NATURE OF THE ACTION

This Action was filed by Named Plaintiffs Richard Booth, Cheryl Ferro and Brett Burkett ("Named Plaintiffs") in the Superior Court for the State of California, County of Los Angeles, on December 17, 2021, against Rolling Frito Lay Sales, LP; Frito-Lay, Inc.; Frito-Lay North America, Inc.; and Frito-Lay Sales, Inc. Named Plaintiffs and the Plaintiffs are represented by the Setareh Law Group ("Class Counsel").

Named Plaintiffs' Operative Complaint alleges the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse for necessary business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay all wages due upon separation of employment; (8) failure to pay all wages due during employment; (9) unlawful deductions; (10) failure to pay vested vacation pay; (11) unfair competition; (12) claims under the Private Attorney's General Act.

Named Plaintiffs generally allege that Defendants failed to properly provide compliant meal and rest periods to its employees, and/or to pay meal and rest period penalties; failed to fully and timely pay them all wages owed, including vacation wages and deducted wages; failed to reimburse for business expenses; etc. On this basis, Named Plaintiffs also allege derivative claims for failure to pay accurate wages during employment and upon termination, penalties for incorrect wage statements, and penalties under

PAGA. For these allegedly improper actions, Named Plaintiffs are demanding various amounts for wages, penalties, interest, attorneys' fees, and other damages (collectively, the "Claims").

III. POSITIONS OF THE PARTIES

Class Counsel have extensively investigated and researched the facts and circumstances underlying the issues raised in the Action, and the applicable law. Class Counsel recognizes the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Class Counsel has also taken into account the uncertainty and the risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Class Counsel is also aware of the burdens of proof necessary to establish liability for the Claims, of Defendants' defenses, and of the difficulties in establishing damages for the Plaintiffs. Class Counsel also has taken into account the extensive settlement negotiations conducted by Plaintiffs and Defendants (the "Parties"). Based on the foregoing, Class Counsel believes the proposed Settlement is fair, adequate and reasonable and in the best interests of the Plaintiffs.

Defendants have denied and continue to deny each of the claims and contentions alleged by Named Plaintiffs in the Action. Defendants have repeatedly asserted and continue to assert defenses thereto, and have expressly denied and continue to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Defendants also have denied and continue to deny, *inter alia*, the allegations that Plaintiffs have suffered damages; that Defendants failed to properly provide meal and rest periods or to pay appropriate meal and rest period penalties to their employees; failed to fully and timely pay them all wages owed, including vacation wages and deducted wages; failed to reimburse for business expenses; etc.; Defendants also have denied and continue to deny that Defendants engaged in any other wrongful conduct as alleged in the Action, or that Plaintiffs were harmed by the conduct alleged in the Action. Defendants have also concluded that the further defense of this litigation would be protracted and expensive for all Parties. Defendants have, therefore, agreed to settle this Action in the manner and upon the terms set forth in the proposed Settlement to put to rest all claims that are or could have been asserted against it in the Action.

IV. YOUR OPTIONS

Upon receipt of this Notice, you have three options, described in further detail in following sections:

DO NOTHING	You will receive your share of the Settlement's Payout Fund. In exchange for receiving payment from the Payout Fund, you are releasing certain state law claims covered by the Settlement, as well as certain related federal law claims, against Defendants and/or related entities.
EXCLUDE YOURSELF	Receive no payment from the Settlement and retain all rights you may have against Defendants and/or related entities as to state and federal claims.
OBJECT	Write to the Court about why you don't agree with the Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from the Settlement, and you will release the claims covered by the Settlement, if it is approved by the Court.

V. THE SETTLEMENT

The following is only a summary of the provisions of the proposed Settlement between the Named Plaintiffs, the Plaintiffs and Defendants. The specific and complete terms of the proposed Settlement are described in the Stipulation and Settlement of Class Claims ("Settlement Agreement"), a copy of which is available from the Court's docket for your review as set forth at the end of this Notice.

The Settlement has a maximum value of \$3,500,000.00 (Three Million, Five Hundred Thousand Dollars and No Cents) (the "Settlement Fund"). The Settlement Fund is made up of six parts: (1) the total payments to Class Members of the Settlement Awards (the "Payout Fund"); (2) a Fees Award to Class Counsel; (3) a Costs Award to Class Counsel; (4) a Service Award/General Release Payment to the Named Plaintiffs; (5) a payment to the Labor Workforce Development Agency; and (6) claims administration expenses. The Payout Fund is explained in this Section. The Fees Award, Costs Award, Service Award, payment to the LWDA, and claims administration expenses are explained in Section VI below.

All Plaintiffs are receiving this Notice. All Plaintiffs who do not request to be excluded from the Settlement as set forth in Section VIII below will be "Class Members." All Class Members will automatically receive their pro rata share of the Payout Fund.

Approximately \$2,085,833.33 (Two Million Eighty-Five Thousand Eight Hundred and Thirty-Three Dollars and Thirty-Three cents) (the "Payout Fund") is available for disbursement to all Plaintiffs. **All Class Members who do not timely and validly opt-out of the class action will receive an Individual Settlement Award.** Individual Settlement Awards will be distributed on a pro-rata basis based on the number of weeks worked by the Class Member as compared to the number of weeks worked by all Class Members. Any partial week worked will be expressed as a percentage of a full workweek. In recognition of the fact that DOT-regulated employees are exempt from California overtime requirements, and California meal and rest period requirements are preempted for these employees, non-DOT regulated employees will receive twice the amount per workweek worked during the Class Period that DOT-regulated employees will receive per workweek.

The records of Defendants reflect that you worked approximately [REDACTED] compensable work weeks as a non-exempt and/or hourly employee of Defendants in California from September 7, 2020, through October 17, 2023 (excluding any weeks covered by the settlements in *Lopez v. Frito Lay, Inc.*, Los Angeles Superior Court Case No. 21STCV01652 and *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y)). Although the precise amount of payment is subject to change depending on the number of Settlement Class Members and the length of their employment, at this time it is estimated that you will recover approximately \$[REDACTED].

Each Class Member's Gross Settlement Amount will be divided into a "Gross Wage Portion" and a "Non-Wage Portion." The Gross Wage Portion shall comprise twenty percent (20%) of each Class Member's Gross Settlement Amount and the "Non-Wage Portion" shall comprise eighty percent (80%) of each Class Member's Gross Settlement Amount. From each Class Member's Gross Wage Portion, payroll deductions will be made for state and federal withholding taxes and any other applicable payroll deductions owed by the Class Member's employer as a result of the payment. The resulting amount will be each individual Class Member's "Gross Wage Component." From each Class Member's Gross Wage Component, payroll deductions will be made for state and federal withholding taxes and any payroll taxes owed by the Class Member as a result of the payment, resulting in a "Net Wage Component." The total of the Net Wage Component and the Non-Wage Portion shall be the Class Member's "Net Settlement Amount." The Net Settlement Amount will be the net amount paid to each Class Member and is the Class

Member's "Individual Settlement Award." Subject to Court approval, the Parties anticipate Individual Settlement Awards will be distributed in approximately [REDACTED], 2024.

Each Class Member will receive their Individual Settlement Award by check. The checks shall remain valid and negotiable for one hundred twenty (120) days from issuance and may thereafter automatically be canceled if not cashed.

VI. CLASS COUNSEL'S FEES AWARD, SERVICE AWARD, PAYMENT TO THE LWDA, AND SETTLEMENT ADMINISTRATION EXPENSES

A. The amount of attorneys' fees awarded to Class Counsel will be subject to the Court's discretion, but in any event, will not exceed One Million One Hundred and Sixty-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$1,166,666.67) (the "Fees Award"). Class Counsel may seek a Costs Award not to exceed \$50,000.00 (Fifty Thousand Dollars and No Cents). Class Counsel will not be permitted to petition the Court for any additional payments for fees, costs or interest and the Fees Award and Costs Award shall be for all claims for attorneys' fees and costs past, present and future incurred in the Action. The Fees Award and Costs Award will be paid out of and deducted from the Settlement Fund. As part of the Settlement, you will not be required to pay Class Counsel for their representation of you in the Action.

B. The amount of Service Award/General Release Payment to each Named Plaintiff will be subject to the Court's discretion, but in any event, will not exceed \$5,000.00 (Five Thousand Dollars and No Cents) each. This Service Award/General Release Payment shall be paid out of and deducted from the Settlement Fund.

C. As part of the preliminary approval of the Settlement, the Court has approved payment of Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000.00), 75% of which, or \$187,500.00 (One Hundred Eighty-Seven Thousand Five Hundred Dollars and No Cents) will be paid to the California Labor Workforce Development Agency ("LWDA") and represent the LWDA's share of the Settlement attributable to civil penalties under the California Labor Code's Private Attorneys General Act, Labor Code §§ 2699 *et seq.* ("PAGA"). The remaining \$62,500.00 (Sixty-Two Thousand Five Hundred Dollars and No Cents) will be added to the Payout Fund and distributed to Class Members as part of their Individual Settlement Amounts.

D. Also as part of the preliminary approval of the Settlement, the Court has approved payment of settlement administration expenses in the amount of up to \$50,000.00 (Thirty Thousand Dollars and No Cents) to the Settlement Administrator from the Settlement Fund.

VII. BINDING EFFECT/RELEASE OF CLAIMS

As of the Effective Date, the Class Members, including Named Plaintiffs, release Defendants and each of their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys and each of their company-sponsored employee benefit plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents (the "Released Parties"), from the "Released Claims." For the purposes of this Agreement, "Released Claims" means any and all claims, demands, rights, liabilities, and causes of action during the Class Period, of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in contract, or for violation of any California or federal statute, rule, or regulation, based on California or federal wage-and-hour laws, whether for economic damages, restitution, penalties, or liquidated damages, arising out of, relating to, or in connection

with the Claims pleaded or that could have been pleaded based upon the facts set forth in the Operative Complaint or any other pleading filed in the Action, including but not limited to any and all claims for unpaid minimum wage, straight time, or overtime wages (including on an off-the-clock, rounding, calculation of regular rates or other theory); timing of payment (both during and at the end of employment); meal and rest period claims (including claims regarding whether any meal and rest periods were provided, whether any meal and rest period penalties were paid, and how any meal or rest period penalties were calculated); unpaid expense reimbursements; record-keeping violations; sick time violations, vacation pay or other paid time off violations; claims for unlawful pay deductions; and any and all associated penalties and damages, including PAGA penalties; and claims for alleged unlawful, unfair, and/or fraudulent business practices under California Business and Professions Code section 17200 et seq. based on the alleged Labor Code violations; alleged violation of the Labor Code Private Attorneys General Act of 2004 (“PAGA”) based on the alleged Labor Code violations; and interest, attorneys' fees and/or costs, at any time during the Class Period, excluding any weeks covered by the settlements in *Lopez v. Frito Lay, Inc.*, Los Angeles Superior Court Case No. 21STCV01652 and *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y).

PROCEDURE FOR EXCLUSION

You may exclude yourself from the Settlement by mailing to Phoenix Class Action Administration Solutions located at [ADDRESS], on or before [DATE], a written statement expressing your desire to be excluded from the Settlement in the *Richard Booth et. al. v. Frito-Lay, Inc., et. al.* litigation. If you wish to request exclusion from the Settlement in this Action, your written statement must include your name (and former names, if any), current address, telephone number, employee ID number or last four digits of your social security number, and the location and dates of your employment by Defendants. In addition, it must be postmarked on or before [DATE]. Requests for exclusion that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void and ineffective. Persons who are eligible to and do submit valid and timely requests for exclusion from the Settlement will not receive Settlement Awards for their individual labor code claims, nor will they be bound by the terms of the proposed Settlement, if it is approved, or the Final Judgment in this Action, as it relates to their individual labor code claims. However, you cannot be excluded from the PAGA portion of the Settlement, and will receive a Settlement Award for your portion of the PAGA Settlement Amount regardless of whether you exclude yourself.

VIII. SETTLEMENT HEARING/OBJECTIONS TO THE PROPOSED SETTLEMENT

A hearing (the “Settlement Hearing”) will be held before the Honorable Judge Curtis Kin on [REDACTED], 2024, at [REDACTED] m. at the Superior Court of the State of California for the County of Los Angeles, 111 North Hill Street, Los Angeles, CA 90012 (the “Court”), to determine whether the proposed Settlement of the Action is fair, adequate and reasonable and should be approved by the Court and whether the Action should be dismissed on the merits with prejudice. The hearing may be continued by the Court from time to time as the Court may without further direct notice.

Any Class Member who wishes to object to the Settlement must file with the Court and serve on counsel for the Parties a written statement objecting to the Settlement. Such written objection must contain the name, address, telephone number, employee ID number or last four digits of the social security number of the person objecting; the location and dates of his/her employment by Defendants; whether the objector has retained an attorney; and if the objector has retained an attorney, the name of the firm, name of the attorney, address, and telephone number. Any such objection must be filed with the Court and have been served electronically or personally on or before [REDACTED], 2024, or if by mail then postmarked no later than [REDACTED], 2024, upon all of the following:

Class Counsel Shaun Setareh shaun@setarehlaw.com Thomas Segal thomas@setarehlaw.com Farrah Grant farrah@setarehlaw.com SETAREH LAW GROUP 9665 Wilshire Blvd., Suite 430 Beverly Hills, CA 90212	Counsel for Defendants Samantha D. Hardy shardy@sheppardmullin.com Carina L. Novell cnovell@sheppardmullin.com SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP 501 West Broadway, 18 th Floor San Diego, CA 92101
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No Class Member shall be entitled to be heard at the Final Settlement Hearing (whether individually or through separate counsel at his/her own expense) or to object to the Settlement, and no objections or briefs submitted by any Class Member shall be received or considered by the Court at the Settlement Hearing, unless written notice of the Class Member's intention to appear at the Settlement Hearing, and copies of any written objections or briefs, have been filed with the Court and served on counsel for the Parties, before the deadline above. Further, if the objector retains an attorney, the attorney must file a valid notice of appearance within seven (7) days of the deadline for submitting objections. If the objector's attorney fails to file a notice of appearance within that time, the objector waives his or her right to be represented by counsel, but otherwise retains his or her right to object *pro se*. Any Class Member who does not make and serve his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

Any Class Member who is satisfied with the proposed Settlement need not appear at the Settlement Hearing.

IX. EXAMINATION OF PAPERS AND INQUIRIES

The foregoing is only a summary of the Action and the proposed Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Action and the proposed Settlement, you may refer to the pleadings, the Stipulation and Settlement of Class Claims, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the Court, Los Angeles, 111 North Hill Street, Los Angeles, CA, 90012, during regular business hours of each Court day.

All inquiries by Plaintiffs regarding this Notice and/or the Settlement should be directed to the settlement administrator for this Settlement, or you can also contact Class Counsel listed in section IX above.

Phoenix Class Action Administration Solutions [ADDRESS] [PHONE] [WEBSITE]
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PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES

EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

RICHARD BOOTH and CHERYL FERRO,
on behalf of themselves and all others
similarly situated, and the general public,

Plaintiffs,

v.

FRITO-LAY, INC., a Delaware corporation;
ROLLING FRITO-LAY SALES, LP, a
Delaware limited partnership; FRITO-LAY
NORTH AMERICA, INC., a Delaware
corporation; FRITO-LAY SALES, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 21STCV46151

**STIPULATION AND SETTLEMENT OF
CLASS CLAIMS**

Assigned for All Purposes to:
Honorable Curtis Kin
Dept. 072

Filed: 02/09/2023

PRELIMINARY APPROVAL ORDER

1 WHEREAS, this action is pending before this Court as a class action (the “Action”); and

2

3 WHEREAS, the Parties have jointly applied to this Court for an order preliminarily
4 approving the settlement of the Action in accordance with a Stipulation and Settlement of Class
5 Claims (the “Stipulation” or “Settlement”), which, together with the exhibits annexed thereto, sets
6 forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice
7 upon the terms and conditions set forth therein; and the Court having read and considered the
8 Stipulation and the exhibits annexed thereto;

9

10 NOW, THEREFORE, IT IS HEREBY ORDERED:

11

12 1. This Order incorporates by reference the definitions in the Stipulation, and all terms
13 defined therein shall have the same meaning in this Order as set forth in the Stipulation.

14

15 2. The Court recognizes that the Plaintiffs and Defendants stipulate and agree to
16 certification of a class for settlement purposes only. For settlement purposes only, the Court
17 conditionally certifies the following settlement class (the “Class”): “all current and former hourly-
18 paid and/or non-exempt employees employed by Frito-Lay, Inc. and/or Rolling Frito Lay Sales,
19 LP in the State of California from September 7, 2020 to October 17, 2023.”

20

21 3. The Court finds, for settlement purposes only, the requirements of California Code
22 of Civil Procedure section 382 are satisfied. The term “Class Member” means a Plaintiff who has
23 not requested exclusion from the Settlement.

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25 4. Named Plaintiffs Richard Booth, Cheryl Ferro and Brett Burkett (“Named
26 Plaintiffs”) are hereby appointed and designated, for all purposes, as the representatives of the

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STHT8YMV\Exhibits to Booth + Ferro Settlement
Agreement (Class and PAGA), 4866-1495-1827
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28 class, and the following attorneys are hereby appointed and designated as counsel for Named
Plaintiffs and the Class (“Class Counsel”):

Shaun Setareh
Thomas Segal
Farrah Grant
SETAREH LAW GROUP
9665 Wilshire Blvd, Suite 430
Beverly Hills, CA 90212

Class Counsel is authorized to act on behalf of Class Members with respect to all acts or consents required by, or which may be given pursuant to, the Settlement, and such other acts reasonably necessary to consummate the Settlement.

5. The Court hereby approves on a preliminary basis the Stipulation and settlement contained therein, including the definition and disposition of the Settlement Fund and related matters provided for in the Stipulation. It appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate and reasonable as to all potential Class Members when balanced against the probable outcome of further litigation relating to liability and damages issues. It further appears that extensive and costly investigation and research have been conducted such that counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by further prosecution of the Action. It further appears that the Settlement has been reached as the result of intensive, serious and non-collusive, arms-length negotiations.

6. A hearing (the "Settlement Hearing") shall be held before this Court on _____, at _____.m. at the Superior Court of the State of California for the County of Los Angeles, 111 North Hill Street, Los Angeles, CA 90012, to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Stipulation is fair, adequate and reasonable and should be finally approved by the Court; whether a Judgment, as provided in the Stipulation, should be entered herein; whether the plan of allocation contained in the Stipulation should be approved as fair, adequate and reasonable to the Class Members; and to finally approve Class Counsel's Fees

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entered herein, whether the plan of
Agreement (Class and PAGA), 4866-1495-1827
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1 and Costs Award, the Named Plaintiffs' Service Awards/General Release Payments, the PAGA
2 payment to the LWDA, and the settlement administration expenses. The Final Approval hearing
3 may be continued without further notice to Plaintiffs. The Parties shall file a Motion for Final
4 Approval and/or a Motion for Attorneys' Fees and Costs on or before _____, 2024.

5
6 7. The Court hereby approves, as to form and content, the Notice annexed as
7 Exhibit 1 to the Stipulation. The Court finds that the distribution of the Notice substantially in the
8 manner and form set forth in the Stipulation and this Order meets the requirements of due process,
9 is the best notice practicable under the circumstances, and shall constitute due and sufficient notice
10 to all persons entitled thereto.

11
12 8. The Court hereby appoints Phoenix Class Action Administration Solutions as
13 Settlement Administrator and hereby directs the Settlement Administrator to mail or cause to be
14 mailed to Plaintiffs the Notice by first class mail within fourteen (14) calendar days after the
15 receipt of the Class List and Data from Defendants (the "Notice Date") using the procedures set
16 forth in the Stipulation. Plaintiffs who do not opt out of the settlement will become Class
17 Members and will automatically receive their Individual Settlement Awards.

18
19 9. Any Plaintiff may choose to opt out of and be excluded from the Class as provided
20 in the Notice by following the instructions for requesting exclusion from the Class that are set
21 forth in the Notice. All requests for exclusion must be submitted as provided in the Notice. Any
22 such person who chooses to opt out of and be excluded from the Class will not be entitled to any
23 recovery under the Settlement and will not be bound by the Settlement or have any right to object,
24 appeal or comment thereon. Any written request to opt out must be signed by each such person
25 opting out. Class Members who have not timely and validly requested exclusion shall be bound
26 by all determinations of the Court, the Stipulation and Judgment.

1 10. Any Class Member may appear at the Settlement Hearing and may object or
2 express his or her views regarding the Settlement, and may present evidence and file briefs or
3 other papers, that may be proper and relevant to the issues to be heard and determined by the
4 Court as provided in the Notice. However, no Class Member, or any other person shall be heard
5 or entitled to object, and no papers or briefs submitted by any such person shall be received or
6 considered by the Court, unless on or before thirty (30) days after the Notice Date, that person has
7 served written objections and copies of any papers and briefs in support of their position and
8 verification of their membership in the Class upon: (1) Setareh Law Group, attn. Shaun Setareh,
9 Thomas Segal, and Farrah Grant, 9665 Wilshire Blvd, Suite 430 Beverly Hills, CA 90212 and (2);
10 and Sheppard, Mullin, Richter & Hampton LLP, attn.: Samantha Hardy and Carina Novell,
11 501 West Broadway, 19th Floor, San Diego, CA 92101, and filed the objections, papers and briefs
12 with the Clerk of this Court. Any Class Member who does not make his or her objection in the
13 manner provided for in this Order shall be deemed to have waived such objection and shall forever
14 be foreclosed from making any objection to the Settlement.

15
16 11. To the extent permitted by law, pending final determination as to whether the
17 settlement contained in the Stipulation should be approved, the Plaintiffs, whether directly,
18 representatively, or in any other capacity, whether or not such persons have appeared in the
19 Action, shall not institute or prosecute any Released Claims against the Released Parties. The
20 Settlement is not a concession or admission, and shall not be used against Defendants or any of the
21 Released Parties as an admission or indication with respect to any claim of any fault or omission
22 by Defendants or any of the Released Parties. Whether or not the Settlement is finally approved,
23 neither the Settlement, nor any document, statement, proceeding or conduct related to the
24 Settlement, nor any reports or accounts thereof, shall in any event be:

25
26 a. Construed as, offered or admitted in evidence as, received as or deemed to be
27 evidence for any purpose adverse to the Released Parties, including, but not limited
28 to, evidence of a presumption, concession, indication or admission by Defendants

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STHT8YM\Exhibits to Booth + Ferro Settlement
Agreement (Class and PAGA), 4866-1495-1827
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1 or any of the Released Parties of any liability, fault, wrongdoing, omission,
2 concession or damage; or

3
4 b. Disclosed, referred to, or offered or received in evidence against any of the
5 Released Parties in any further proceeding in the Action, or in any other civil,
6 criminal or administrative action or proceeding, except for purposes of settling the
7 Action pursuant to the Stipulation.

8
9 12. As of the date this Order is signed, all dates and deadlines associated with the
10 Action shall continue to be stayed, other than those related to the administration of the Settlement
11 of the Action.

12
13 13. In the event the Settlement does not become effective in accordance with the terms
14 of the Stipulation, or the Settlement is not finally approved, or is terminated, canceled or fails to
15 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
16 and the Parties shall revert to their respective positions as of before entering into the Stipulation.

17
18 14. The Court reserves the right to adjourn or continue the date of the Settlement
19 Hearing and all dates provided for in the Stipulation without further notice to Plaintiffs, and
20 retains jurisdiction to consider all further applications arising out of or connected with the
21 proposed Settlement.

22
23 Dated: _____

24 _____
25 THE HONORABLE CURTIS KIN

EXHIBIT 3

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF LOS ANGELES

3 RICHARD BOOTH and CHERYL FERRO,
4 on behalf of themselves and all others
similarly situated, and the general public,

5 Plaintiffs,

6 v.

7 FRITO-LAY, INC., a Delaware corporation;
8 ROLLING FRITO-LAY SALES, LP, a
Delaware limited partnership; FRITO-LAY
9 NORTH AMERICA, INC., a Delaware
corporation; FRITO-LAY SALES, INC., a
10 Delaware corporation; and DOES 1 through
50, inclusive,

11 Defendants.

Case No. 21STCV46151

**STIPULATION AND SETTLEMENT OF
CLASS CLAIMS**

Assigned for All Purposes to:
Honorable Curtis Kin
Dept. 072

Filed: 02/09/2023

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14 **FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE**
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28 Agreement (Class and PAGA), 4866-1495-1827
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EXHIBIT "3"

1 This matter having come before the Court for hearing pursuant to the Order of this Court
2 dated _____, for final approval of the settlement set forth in the Stipulation and Settlement
3 of Class Claims ("Stipulation" or "Settlement"), and due and adequate notice having been given to
4 the Plaintiffs as required in said Order, and the Court having considered all papers filed and
5 proceedings had herein and otherwise being fully informed of the premises and good cause
6 appearing therefor, it is

7
8 ORDERED, ADJUDGED AND DECREED THAT:

- 9
- 10 1. All terms used herein shall have the same meaning as defined in the Stipulation.
- 11
- 12 2. This Court has jurisdiction over the subject matter of this litigation and over all
13 Parties to this litigation, including all Plaintiffs.
- 14
- 15 3. Distribution of the Notice directed to the Plaintiffs as set forth in the Stipulation
16 and the other matters set forth therein has been completed in conformity with the Preliminary
17 Approval Order, including individual notice to all Plaintiffs who could be identified through
18 reasonable effort, and was the best notice practicable under the circumstances. This Notice
19 provided due and adequate notice of the proceedings and of the matters set forth therein, including
20 the proposed settlement set forth in the Stipulation, to all persons entitled to such Notice, and the
21 Notice fully satisfied the requirements of due process. ____ Plaintiffs objected to the Settlement.
22 ____ Plaintiffs opted out of the Settlement.
- 23
- 24 4. This Court hereby approves the settlement set forth in the Stipulation and finds that
25 the Settlement is, in all respects, fair, adequate and reasonable and directs the Parties to effectuate
26 the Settlement according to its terms. The Court finds that the Settlement has been reached as a
27 result of intensive, serious and non-collusive arms-length negotiations; that the Parties have
28 conducted extensive and costly investigation and research and counsel for the Parties are able to

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1 reasonably evaluate their respective positions; and that settlement at this time will avoid additional
2 substantial costs, as well as avoid the delay and risks that would be presented by the further
3 prosecution of these Actions. The Court has reviewed the monetary recovery that is being granted
4 as part of the Settlement and recognizes the significant value to the Class of that monetary
5 recovery. The Court finds that the Class is properly certified as a class for settlement purposes
6 only.

7
8 5. For purposes of this Judgment, the term “Class” means ““all current and former
9 hourly-paid and/or non-exempt employees employed by Frito-Lay, Inc. and/or Rolling Frito Lay
10 Sales, LP in the State of California from September 7, 2020 to October 17, 2023.”

11
12 6. The term “Class Member” means a Plaintiff who has not requested exclusion from
13 the Settlement.

14
15 7. As of the Effective Date, each and every Released Claim of each and every Class
16 Member is and shall be deemed to be conclusively released as against the Released Parties. All
17 Class Members as of the Effective Date are hereby forever barred and enjoined from prosecuting
18 the Released Claims against the Released Parties.

19
20 8. The Final Judgment shall bind each Class Member (including Named Plaintiffs)
21 and shall operate as a full release and discharge of claims. The Final Judgment shall have a res
22 judicata effect and bar all Class Members from bringing any action asserting Released Claims as
23 specified in the Settlement against Defendants and the Released Parties, and it shall further bar
24 Named Plaintiffs only from bringing any action asserting any claims against Defendants and the
25 Released Parties that were released as part of the “General Release” agreed to by Named Plaintiffs
26 in the Settlement. The Court further finds that the Released Claims shall include Fair Labor

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Standards Act (“FLSA”) claims for all Class Members under the doctrine of *res judicata* as
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1 described in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (9th Cir. 2018),
2 regardless of whether that Class Member endorses and cashes his or her settlement check.

3
4 9. The Stipulation and Settlement are not an admission by Defendants or any of the
5 other Released Parties, nor is this Judgment a finding, of the validity of any claims in the Action
6 or of any wrongdoing by Defendants or any of the other Released Parties. Neither this Judgment,
7 the Stipulation, nor any document referred to herein, nor any action taken to carry out the
8 Stipulation is, may be construed as, or may be used as an admission by or against Defendants or
9 any of the other Released Parties of any fault, wrongdoing or liability whatsoever. The entering
10 into or carrying out of the Stipulation, and any negotiations or proceedings related thereto, shall
11 not in any event be construed as, or deemed to be evidence of, an admission or concession with
12 regard to the denials or defenses by Defendants or any of the other Released Parties and shall not
13 be offered in evidence in any action or proceeding against Defendants or any of the Released
14 Parties in any court, administrative agency or other tribunal for any purpose whatsoever other than
15 to enforce the provisions of this Judgment, the Stipulation, or any related agreement or release.
16 Notwithstanding these restrictions, any of the Released Parties may file in the Action or in any
17 other proceeding the Judgment, Stipulation, or any other papers and records on file in the Action
18 as evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or
19 other theory of claim or issue preclusion or similar defense as to the Released Claims.

20
21 10. The Court hereby dismisses the Action on the merits and with prejudice against the
22 Named Plaintiffs and all Class Members in favor of Plaintiffs and without costs or attorneys' fees
23 to any of the Parties as against any other settling party, except as provided for in the Stipulation.
24 Without affecting the finality of this Judgment in any way, this Court hereby retains continuing
25 jurisdiction over the interpretation, implementation and enforcement of the Settlement and all
26 orders and judgments entered in connection therewith.

1 11. The Court hereby approves a Service Award/General Release Payment to the
2 Named Plaintiffs in the amount of \$_____ each. The Court approves payment to the LWDA in
3 the amount of \$ _____. The Court also approves the payment of claims administration
4 expenses in the amount of \$_____.

5
6 12. With respect to attorneys' fees, the Court approves the amount of \$_____

7 based on a percentage of the recovery method. *See Laffitte v. Robert Half International Inc.* (2016)

8 1 Cal.5th 480, 503 ("when class action litigation establishes a monetary fund for the benefit of

9 class members, and the trial court in its equitable powers awards class counsel a fee out of that

10 fund, the court may determine the amount of a reasonable fee by choosing an appropriate

11 percentage of the fund created."). The Gross Settlement Amount of \$3,500,000 represents a true

12 common fund, as Defendants are obligated to pay this entire amount, and no portion of the

13 Settlement Fund will revert to Defendants. In addition, the Court finds that \$_____, which

14 represents _____ of the Gross Settlement Amount, is reasonable and appropriate. *See In re*

15 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 ("Empirical studies show that,

16 regardless whether the percentage method or the lodestar method is used, fee awards in class

17 actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.* (2008) 162

18 Cal.App.4th 43, 66 n.11 (recognizing that fee awards in class actions average around one-third of

19 the recovery"). Cross-checking the reasonableness of this amount against Class Counsel's lodestar

20 further supports the reasonableness of the \$_____ attorneys' fees award. *See Laffitte*, 1

21 Cal.5th at 506 (trial courts have "discretion to conduct a lodestar cross-check on a percentage

22 fee."). Based on Class Counsel's lodestar, which the Court finds is reasonable, an award of

23 \$_____ is reasonable and appropriate.

24
25 13. The Court also finds that the \$_____ in litigation costs incurred by Class Counsel

26 were necessary and appropriate.

1 14. Accordingly, Court hereby approves payment of \$_____ in attorneys' fees
2 and \$____ in litigation costs to Class Counsel.

3
4 15. After administration of the Settlement has been completed in accordance with the
5 Stipulation and all amounts calculated, and in no event later than one hundred and eighty (180)
6 days after the Check Stale Date, Defendants shall file a report with this Court setting forth the total
7 of the Gross Settlement Amounts for the Class Members and certifying compliance with the terms
8 of the Settlement.

9
10 16. Plaintiff's Motion for Final Approval of Class Action Settlement and Motion for
11 Attorneys' Fees and Costs and Class Representative Service Awards is hereby granted and the
12 Court directs that a judgment shall be entered in accordance with the terms of this Order.

13
14 17. Judgment in this matter is entered in accordance with the terms of the Settlement
15 Agreement, the Court's Preliminary Approval Order, and this Final Approval Order against
16 Defendants in favor of Plaintiffs and the Settlement Class. This document shall constitute a
17 Judgment for purposes of California Rule of Court 3.769(h). This Judgment is intended to be a
18 final disposition of the above captioned action in its entirety, and is intended to be immediately
19 appealable

20
21 18. The Court finds that the Stipulation is in good faith and constitutes a fair,
22 reasonable and adequate compromise of the Released Claims.

23
24 19. This Court shall retain jurisdiction with respect to all matters related to the
25 administration and consummation of the Settlement, to enforce the terms of the judgment, and any
26 and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including
27 but not limited to all matters related to the Settlement and the determination of all controversies

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20. If the Settlement does not become final and effective in accordance with the terms of the Stipulation, resulting in the return and/or retention of the Settlement Fund to Defendants consistent with the terms of the Settlement, then this Judgment and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

Dated: _____

THE HONORABLE CURTIS KIN