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

12 RICHARD BOOTH, on behalf of himself and
13 all others similarly situated, and the general
14 public,

15 *Plaintiff,*

16 v.

17 FRITO-LAY, INC., a Delaware corporation;
18 ROLLING FRITO-LAY SALES, LP, a
19 Delaware limited partnership; FRITO-LAY
20 NORTH AMERICA, INC., a Delaware
21 corporation; FRITO-LAY SALES, INC., a
22 Delaware corporation; and DOES 1 through
23 50, inclusive,

24 *Defendants.*

Case No. **21STCV46151**

REPRESENTATIVE ACTION

COMPLAINT

1. Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff RICHARD BOOTH ("Plaintiff"), on behalf of himself and all others similarly
2 situated, the general public, and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against defendant FRITO-LAY, INC., a
5 Delaware corporation; ROLLING FRITO-LAY SALES, LP, a Delaware limited partnership;
6 FRITO-LAY NORTH AMERICA, INC., a Delaware corporation; FRITO-LAY SALES, INC., a
7 Delaware corporation; and DOES 1 through 50, inclusive, (collectively referred to as
8 "Defendants") for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
9 Defendants have

- 10 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
11 periods;
- 12 (2) failed to provide them with rest periods;
- 13 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 14 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
15 rate of pay;
- 16 (5) failed to pay them at least minimum wage for all hours worked;
- 17 (6) failed to pay them overtime wages at the correct rate;
- 18 (7) failed to pay them double time wages at the correct rate;
- 19 (8) failed to pay them overtime and/or double time wages by failing to include all
20 applicable remuneration in calculating the regular rate of pay;
- 21 (9) failed to pay them for all vested vacation pay;
- 22 (10) failed to reimburse them for all necessary business expenses;
- 23 (11) failed to provide them with accurate written wage statements; and
- 24 (12) failed to pay them all of their final wages following separation of employment.

25 Based on these alleged violations, Plaintiff now brings this representative action to recover
26 civil penalties and related relief on behalf of himself and all others similarly situated, all other
27 aggrieved employees, and the State of California.

28 ///

[illegible]

3. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure §§ 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business, and/or has an agent therein.

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1 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
2 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
3 capacities of the DOE defendants when ascertained.

4 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
5 mentioned herein, some or all of the defendants were the representatives, agents, employees,
6 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
7 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
8 and scope of such relationship and with the full knowledge, consent, and ratification by such other
9 defendants.

10 **GENERAL ALLEGATIONS**

11 11. Plaintiff worked for Defendants as an hourly, non-exempt employee from
12 approximately August 16, 2020 through November 4, 2020.

13 **Late, and/or Shortened Meal Periods**

14 12. Plaintiff and the aggrieved employees were not provided with meal periods of at
15 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
16 scheduling each meal period as part of each work shift; (2) chronically understaffing each work
17 shift with not enough workers; (3) imposing so much work on each employee such that it made it
18 unlikely that an employee would be able to take their breaks if they wanted to finish their work on
19 time; and (4) no formal written meal and rest period policy that encouraged employees to take their
20 meal and rest periods.

21 13. Specifically, Defendants have a policy and/or practice of requiring Plaintiff and the
22 aggrieved employees to take their meal periods after the fifth hour of work. Specifically, Plaintiff
23 and aggrieved employees worked shifts of approximately ten (10) to twelve (12) hours. Plaintiff
24 and the aggrieved employees did not take their meal period until halfway through their shift or
25 later, and routinely took their meal period well after the fifth hour of their shift. Additionally the
26 aggrieved employees were required to clock out for meal periods even though they continued to
27 perform work with the full knowledge of their supervisors. Accordingly, Plaintiff and the
28 aggrieved employees were not provided with legally mandated uninterrupted meal periods of at

1 least thirty minutes pursuant to California law.

2 14. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
3 regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five
4 (5) hours worked due to complying with Defendants' productivity requirements that required
5 Plaintiff and the aggrieved employees to work through their meal periods.

6 **Missed Rest Breaks**

7 15. Plaintiff and the aggrieved employees were not provided with rest periods of at least
8 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
9 Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically
10 understaffing each work shift with not enough workers; and (3) imposing so much work on each
11 employee such that it made it unlikely that an employee would be able to take their breaks if they
12 wanted to finish their work on time.

13 16. Defendants' written policies failed to advise Plaintiff and the aggrieved employees
14 of their legal right to take rest breaks in accordance with California law. Specifically, Defendants
15 have a policy and/or practice of requiring Plaintiff and the aggrieved employees to write down and
16 record time for rest breaks although they were required to continue working continuously through
17 them. Ed [surname unknown] specifically directed Boothe and the aggrieved employees to falsify
18 time sheets to reflect that they took a rest break although they were told to continue their work.
19 Additionally, Defendants did not adequately staff their workplace so that on many occasions the
20 aggrieved employees could not take their rest breaks in order to continuously work and finish their
21 tasks in satisfaction of Defendants' demands. As a result of Defendants' policy, Plaintiff and the
22 aggrieved employees were regularly not provided with uninterrupted rest periods of at least ten
23 (10) minutes for each four (4) hours worked due to complying with Defendants' productivity
24 requirements that required Plaintiff and the aggrieved employees to work through their rest
25 periods.

26 **Vacation Pay**

27 17. Plaintiff and the aggrieved employees accrued vacation wages during their
28 employment with Defendants.

18. Vacation wages are considered a form of wages under Labor Code § 200. Vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law.

19. At all relevant times, Defendants maintained policies that provide for the unlawful forfeiture of vested vacation pay in violation of Labor Code § 227.3 and *Suastez v. Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774.

20. The aggrieved employees are entitled to vacation accrued during their employment with Defendants. Upon termination, the aggrieved employees were not paid all accrued vacation pay.

Regular Rate of Pay

21. The regular rate of pay under California law includes all remuneration for employment paid to, on behalf of, the employee. This requirement includes, but is not limited to, commissions and non-discretionary bonuses.

22. At all relevant times, Defendants violated the above-referenced Labor Code sections by failing to pay Sanchez and the aggrieved employees for all hours worked, including, but not limited to, overtime hours and/or meal and/or rest premiums. While employed by Defendants, Sanchez and the aggrieved employees received hourly wages and other remuneration, including, but not limited to, premium rates for work performed on holidays and/or non-discretionary bonuses and/or other applicable remuneration that must be included when calculated their regular rates of pay for purposes of overtime, meal premiums, and/or rest premiums.

23. However, Defendants consistently failed to include all applicable forms of remuneration when calculating their regular rates of pay. As a result, any overtime wages, meal premiums, and/or rest premiums paid to Sanchez and the aggrieved employees were not paid at the regular rate of pay.

24. During the applicable limitations period, Defendants violated the rights of Plaintiff and the aggrieved employees under the above-referenced Labor Code sections by failing to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and

1 1198 as a result of not correctly calculating their regular rate of pay to include all applicable
2 remuneration, including, but not limited to, non-discretionary bonuses and/or holiday premium
3 pay.

4 **Expense Reimbursement**

5 25. At all relevant times during the applicable limitations period, Defendants required
6 Plaintiff and the aggrieved employees to incur expenses which Defendants failed and/or refused to
7 reimburse them for including, but not limited to, no-slip shoes, black and/or brown pants, use of
8 personal cell phones to communicate with management regarding scheduling and work tasks, and
9 use of personal vehicles to drive merchandise and/or products from store to store without
10 reimbursement.

11 26. In addition, Plaintiff and the aggrieved employees members were not paid at least
12 two times the minimum wage for all hours worked.

13 27. Defendants failed to reimburse Plaintiff and the aggrieved employees for such
14 necessary business expenses incurred by them.

15 **Wage Statements**

16 28. Plaintiff and the aggrieved employees were not provided with accurate wage
17 statements as mandated by law pursuant to Labor Code § 226.

18 29. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
19 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
20 clock” work, were not included.

21 30. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
22 worked by the employee” were not accurately reflected in that all hours worked, including overtime
23 and “off-the-clock” work, were not included.

24 31. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
25 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
26 clock” work, were not included.

27 32. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at each

hourly rate by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

FIRST CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

33. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

34. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

35. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

36. Plaintiff, a former employee against whom Defendants committed one or more of the alleged Labor Code violations during the applicable limitations period, is an aggrieved employee within the meaning of Labor Code § 2699(c).

37. Plaintiff has complied with the procedures for bringing suit specified in Labor Code § 2699.3.

38. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198 and 2802:

- i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198 and 2802, one hundred dollars (\$100) for each employee per pay period for each initial violation and two hundred dollars (\$200) for each employee per pay period for each subsequent violation (penalties set by Labor Code § 2699(f)(2));
- ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each

1 employee for each initial violation that was neither willful nor intentional,
2 two hundred dollars (\$200) for each employee, plus 25% of the amount
3 unlawfully withheld from each employee, for each initial violation that was
4 either willful or intentional, and two hundred dollars (\$200) for each
5 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
6 from each employee, for each subsequent violation, regardless of whether the
7 subsequent violation was either willful or intentional (penalties set by Labor
8 Code § 210);

9 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
10 employee for each initial violation that was neither willful nor intentional,
11 two hundred dollars (\$200) for each employee, plus twenty-five percent
12 (25%) of the amount unlawfully withheld from each employee, for each
13 initial violation that was either willful or intentional, and two hundred dollars
14 (\$200) for each employee, plus twenty-five percent (25%) of the amount
15 unlawfully withheld from each employee, for each subsequent violation,
16 regardless of whether the subsequent violation was either willful or
17 intentional (penalties set by Labor Code § 225.5);

18 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
19 citation, two hundred and fifty dollars (\$250) for each employee for each
20 violation. Alternatively, if an initial citation or its equivalent occurred before
21 the filing of this action, one thousand dollars (\$1,000) for each employee for
22 each violation (penalties set by Labor Code § 226.3);

23 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
24 employee for each initial pay period for which the employee was underpaid,
25 and one hundred dollars (\$100) for each employee for each subsequent pay
26 period for which the employee was underpaid (penalties set by Labor Code §
27 558);

28 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each

1 aggrieved employee for each initial violation of Labor Code § 1197 that was
2 intentional and two hundred and fifty dollars (\$250) for each aggrieved
3 employee per pay period for each subsequent violation of Labor Code §
4 1197, regardless of whether the initial violation was intentional (penalties set
5 by Labor Code § 1197.1);

6 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
7 attorneys' fees and costs in connection with Plaintiff's claims for civil
8 penalties.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, the State of
11 California, and the general public, prays for relief and judgment against Defendants as follows:

- 12 (1) Pre-judgment interest;
13 (2) Civil penalties;
14 (3) Costs of suit;
15 (4) Reasonable attorneys' fees; and
16 (5) Such other relief as the Court deems just and proper.

17
18 Dated: December 17, 2021

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