

From: Norma Dale

Fax: 15108172665

To:

Fax: (510) 267-5739

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11/29/2018 2:30 PM

1 JOSEPH CLAPP, Esq., SBN 99194
2 AITMAN-SMITH & MARCY
3 7767 Oakport Street, Suite 1150
4 Oakland, California 94621
5 Telephone: 510/590-7115
6 Facsimile: 510/562-6830
7 Email: jc@asmlawyers.com

8 Attorneys for Plaintiff

FILED BY FAX

ALAMEDA COUNTY

November 29, 2018

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy

CASE NUMBER:

RG16811677**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF ALAMEDA**

11 WAYNE MAULDIN, an individual, on behalf of
12 himself and all others similarly situated,

13 Plaintiff,

14 vs.

15 ROLLING FRITO-LAY SALES, LP, a Delaware
16 Limited Partnership; FRITO-LAY, INC., a
17 Delaware Corporation; and DOES 1 through 25,

18 Defendants.

Case No.: RG16811677

CLASS ACTION**Declaration of Joseph Clapp in Support of
Motion for an Order**

- (1) Finally Approving Class Settlement;
- (2) Awarding Reasonable Attorney's Fees;
- (3) Awarding Reasonable Costs;
- (4) Awarding Incentive Award;
- (5) Awarding PAGA Penalties;
- (6) Awarding Claims Administration Fees;
- and
- (7) Scheduling Compliance Hearing.

Date: Dec. 21, 2018

Time: 9:00 a.m.

Courtroom: 21

Judge: Hon. Robert McGuiness

Complaint Filed: April 14, 2016

Reservation Number: R-1970331

1 I, Joseph Clapp, declare:

2 1. I am the attorney of record for Plaintiff Wayne Mauldin in this action and I testify to the
3 following facts based on my own personal knowledge.

4 2. In May of 2016 I served requests for production of documents, including a request for the
5 employee handbook applicable to Mauldin's employment. In July, Defendants Rolling Frito-Lay
6 Sales, LP and Frito-Lay, Inc. (Frito-Lay) responded, producing a copy of the applicable handbook.
7 The handbook contains a "Work Week and Pay Day" policy which reads as follows:

8 "The 'work week' is defined as Sunday at 12:00 a.m. through Saturday at 11:59 a.m. 'Pay
9 Day' is defined as every Friday. If a Pay Day falls on a holiday, the Company will make the
10 appropriate adjustment to the pay schedule."

11 3. In May of 2016, I served requests for admission, including this one: "The Pay Day for a
12 particular workweek is the Friday before the Saturday that ends the workweek." Frito-Lay admitted
13 this request in September 2016.

14 4. In August of 2016, I served amended requests for admission, third set, including this one:
15 "For work performed in the workweek January 1, 2017 through January 7, 2017, Route Service
16 Associates were paid straight time wages on Friday, January 6, 2017 and overtime wages on Friday,
17 January 20, 2017." Frito-Lay admitted this request in September 2016.

18 5. Settlement discussions in this case spanned a year, from June 2017 when the matter was
19 initially mediated before Michael Dickstein until the last hurdles to settlement were overcome in May
20 2018.

21 6. On May 25, 2018, I served on the California Labor & Workplace Development Agency the
22 moving papers on the motion for preliminary approval of the settlement, including the final
23 settlement agreement. The LWDA has not submitted any objection to this settlement.
24

25 7. I will cause the moving papers on this motion for final approval of settlement to be served
26 on the LWDA on the same day that they are filed with the Court.
27

28 8. This settlement was reached after a year's worth of intense and protracted negotiations

1 mediated by a Michael Dickstein, a nationally-renowned mediator. On June 1, 2017, the parties
2 engaged in a full-day mediation but that effort failed. The parties continued actively to negotiate
3 through the Mediator over the next five months. I had numerous telephone conferences with the
4 Mediator and I exchanged over forty emails with him during these negotiations, several devoted to
5 lengthy and detailed argument about the substantive and remedial law applicable to the case. Finally
6 the Mediator was able to broker a settlement in the amount of \$800,000 in the fall. A short-form
7 Confidential Memorandum of Understanding that memorialized this settlement was not signed by all
8 parties and attorneys until November 8, 2017.

10 9. I then began negotiating the long-form class settlement agreement with Frito-Lay's
11 counsel, Samantha D. Hardy, Esq., of Sheppard Mullin Richter & Hampton LLP. She sent me a
12 proposed settlement agreement on January 5, 2018. Thereafter we became embroiled in numerous
13 disagreements about the exact wording of the terms. We continued negotiations over the next few
14 months, but could not reach agreement until May 2018. The "Stipulation and Settlement of
15 Representative and Class Actions Claims" was not fully signed by all parties and attorneys until May
16 10, 2018.

18 10. During this litigation I propounded, and received responses to, four sets of admissions,
19 two sets of document requests, special interrogatories, and form interrogatories. When responses
20 were deficient, I diligently met and conferred until an agreement was reached to produce satisfactory
21 responses. In addition, Frito-Lay voluntarily produced all information that I sought about the number
22 of RSAs included within the class and the number of workweeks that these RSAs worked during the
23 class period.

25 11. If the drivers can pursue a Labor Code §204b class claim for damages, the amount sought
26 would be the interest due for the late payment. We can estimate that amount by making certain
27 liberal assumptions: First, if the drivers averaged \$100 in late overtime payments each pay period,
28

1 and the interest rate was 10% annually, then for each driver the amount of interest due during a year
2 would be \$10.¹ If there are 1,000 active drivers, then the total annual interest for that year would be
3 \$10,000. Since the class period runs from March 8, 2015 until the date of preliminary approval—
4 approximately 3.23 years—the class recovery would in the rather paltry range of \$30,000-\$35,000.
5

6 12. On the other hand, the second class claim for violation of Labor Code Section 226(e)(1)
7 provides a statutory penalty for employees who suffer injury due to the employer's knowing and
8 intentional failure to provide an accurate wage statement. This penalty is capped, however, at
9 \$4,000. Labor Code §226(e)(1). Thus, assuming 1,772 drivers, then this statutory penalty would be
10 much more substantial than the Labor Code Section 204b damages, but it could not exceed
11 \$4,000,000 (excluding costs and attorney's fees).
12

13 13. Frito-Lay contends that Labor Code Section 204(d) permits normal wages to be paid as
14 late as seven calendar days following the close of the payroll period, and that Labor Code Section
15 204(b)(1) permits overtime wages to be paid no later than the next payday. Thus, Frito-Lay contends
16 that payment of overtime wages on the second payday after the end of the payroll period is permitted
17 by the Labor Code.
18

19 14. If this case must be adjudicated, it is likely that the computation of damages and statutory
20 penalties will require extensive work by an expert economist. In my experience, the cost of such
21 work on a class this size is likely to be in the scores of thousands of dollars. Moreover, class
22 litigation is likely to last two or more years in the trial court, and if successful, it is likely that Frito-
23 Lay will appeal, with an appeal lasting another year or more in the appellate courts. My firm has
24 prosecuted several class cases in which the duration of the litigation has exceeded a decade.
25
26
27

28 ¹ Each weekly paycheck would extinguish interest liability for the previous week's late-payment and
create a new liability. The effect would be a constant interest accruing at 10% on the average \$100

1 **Work Performed in the Case.**

2 15. As the list of tasks shows in the attached Exhibit A, this case required a considerable
3 amount of effort to prosecute. The case required an extensive amount of time devoted to analyzing
4 the complicated language and legislative history of two related provisions of the Labor Code
5 governing the timing of wage payments. In addition, I spent time drafting pleadings, meeting with
6 my client, conducting informal discovery, analyzing statutory language, engaging in extensive legal
7 research, propounding written discovery, preparing an extensive factual and legal analysis for
8 mediation, negotiating the terms of a memorandum of understanding, negotiating the terms of the
9 long-form settlement agreement, preparing the motion for preliminary approval, and preparing the
10 motion for final approval. Litigating this matter required a significant investment of my time,
11 preventing me from pursuing other work.

12 **Time Spent on this Action.**

13 16. The legal work on this case was performed almost entirely by me because I have
14 substantial experience in prosecuting wage and hour class action actions. In addition, I was assisted
15 by my firm's paralegals, Norma Dale and Marilee Strong, who helped me in completing many of the
16 tasks. I have not, however, included in my request for fees any of the hours that either paralegal
17 worked on the case.

18 17. It is my custom to exercise billing judgment, meaning that I do not record all of the time
19 that I spend on a case. For example, I do not record the time when I confer with other counsel in the
20 firm about a case, and I do not record the time I spent on tasks that do not require an attorney's
21 expertise. In addition, as a matter of routine I do not record the time I devote to email
22 correspondence or to telephone calls, unless these communications prove to be unusually substantive
23 in nature. As a result of these billing practices, I estimate that at least 25-35 percent of the time that I
24 actually spent on this case was not recorded in my time records.

25 18. I enter my time in the timekeeping program OfficeTime. I also review my emails and the
26 case file to create an accurate record of the total time I have spent on a case.

27
28 principal.

1 19. I have attached as **Exhibit A** an OfficeTime report which details the number of hours I
2 spent prosecuting this case. This number totals 275.52 hours.

3 20. I have attached as **Exhibit B** another OfficeTime report that breaks down this time by
4 category. I recorded 3.6 hours on Client Communications; 5.27 hours on CMCs; 12.2 hours on
5 Communications; 13.27 hours on Discovery; 8.3 hours on Fact Research; 56.62 hours on Legal
6 Research; 38.6 hours on Mediation; 100 hours on Motions; 20.47 hours on Pleadings; and 17.2 hours
7 on Settlement.

8 21. I worked these hours because I considered each of these hours necessary for the
9 successful prosecution of this lawsuit.

10 **Education and Experience.**

11 22. I graduated from McGeorge School of Law, University of the Pacific in 1981, and I
12 received my license to practice law that same year. I have devoted my entire 37-year career to
13 enforcing the employment rights of those who work for a living. I have litigated hundreds of cases in
14 state and federal courts. I have tried or arbitrated 17 cases, and I have prosecuted or defended 16
15 appeals. I am one of the very few attorneys who have actually been the lead counsel in a class action
16 trial. A true and correct copy of my CV is attached as **Exhibit C**.

17 **Hourly Rates.**

18 23. U.S. District Courts have previously awarded me fees at the rate of \$750 per hour. *See*
19 *Williams v. Bank of America*, Case No. 8:15-cv-01597-AG (C.D.CA); *Browner v. Bank of America*,
20 Case No. 3:14-cv-02702-LB (N.D.CA); *O'Rourke v. Farmers Group*, Case No. 8:17-cv-00279-JVS
21 (C.D.CA).

22 24. My firm regularly does extensive research into hourly rates charged in the Bay Area and
23 in the Los Angeles area by attorneys with comparable experience to the attorneys in the firm. As part
24 of this research, my firm recently compiled a survey of over 200 lawyers' hourly rates, as reflected in
25 sworn attorney declarations filed in various Bay Area and Los Angeles Area Superior Courts, as well
26 as in all the District Courts of California. This survey included cases in areas of complex litigation
27 similar to those in which our firm practices, such as employment, discrimination, fraud, and breach of
28 contract. In each instance, we tracked the hourly rate actually awarded by the court, the years of

1 experience of each attorney at the time of the award, the court, and other information. Using this
2 data, our firm was able to calculate average and median hourly rates awarded by courts in California
3 for cohorts of attorneys with similar experience. For attorneys with more than 30 years of experience
4 (I have 37), the hourly rates awarded ranged from \$700 to \$1,250. The average rate was \$841. I
5 have attached a copy of the 30+ years of experience portion of the survey as **Exhibit D**.

6 **Lodestar.**

7 25. I am requesting an hourly rate of \$750 per hour, which I believe is quite reasonable since
8 it lies at the lower end of the spectrum for attorneys with my depth and breadth of experience.

9 26. Multiplying the number of hours that I have spent prosecuting this case (275.52 hrs) by
10 this hourly rate (\$750/hr) produces a lodestar of \$206,637.50.

11 **Contingency Fee.**

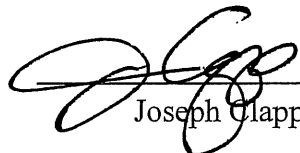
12 27. The attorney's fee agreement that my firm entered into with Mr. Mauldin provided that he
13 would owe no fee unless there was a recovery in the action, in which case he would owe 40 percent
14 of the recovery.

15 **Costs.**

16 28. I have attached as **Exhibit E** a statement detailing the costs incurred in prosecuting this
17 case, which total \$11,027.52.

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19 I declare under penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct.

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23 Date: November 29, 2018



Joseph Clapp

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Exhibit A

Mauldin: 8/31/2015 to 11/29/2018

Date	Hours	Amount	Category	Notes
11/29/2018	7.2	\$5400.	Motions	Prep of M/Final Approval
11/28/2018	6.1	\$4575.	Motions	Prep of M/Final Approval
11/27/2018	5.4	\$4050.	Motions	Prep of M/Final Approval
11/26/2018	8.1	\$6075.	Motions	Prep of M/Final Approval
11/25/2018	4.2	\$3150.	Motions	Prep of M/Final Approval
11/24/2018	7.5	\$5625.	Motions	Prep of M/Final Approval
11/23/2018	5.9	\$4425.	Motions	Prep of M/Final Approval
11/21/2018	4.8	\$3600.	Motions	Prep of M/Final Approval
8/28/2018	0.3	\$225.	Motions	Review of claims admin dec
8/23/2018	0.4	\$300.	Motions	Review of claims admin dec
8/14/2018	0.2	\$150.	Settlement	Review of claims admin report
8/7/2018	0.2	\$150.	Settlement	Review of claims admin report
7/31/2018	0.3	\$225.	Settlement	Review of claims admin report
7/6/2018	1.8	\$1350.	Settlement	Review of class notice form
6/21/2018	0.6	\$450.	Motions	Email to clerk re FA hearing
6/14/2018	1.7	\$1275.	Mediation	Research re PAGA distribution
5/31/2018	0.5	\$375.	Motions	Review of TR
5/25/2018	0.9	\$675.	Client Communications	Discussion re client dec w/client
5/25/2018	0.2	\$150.	Pleadings	Ltr to LWDA
5/25/2018	2.4	\$1800.	Motions	Prep of M/Prelim Approval
5/24/2018	2.7	\$2025.	Motions	Prep of M/Prelim Approval
5/24/2018	0.4	\$300.	Pleadings	Prep of stip to shorten time
5/20/2018	1.4	\$1050.	Pleadings	Prep of M/Prelim Approval
5/17/2018	6.1	\$4575.	Motions	Prep of M/Prelim Approval
5/16/2018	7.6	\$5700.	Motions	Prep of M/Prelim Approval
5/14/2018	8.7	\$6525.	Motions	Prep of M/Prelim Approval
5/13/2018	6	\$4500.	Motions	Prep of M/Prelim Approval
5/12/2018	6.2	\$4650.	Motions	Prep of M/Prelim Approval
5/11/2018	9.3	\$6975.	Motions	Prep of M/Prelim Approval
5/8/2018	0.5	\$375.	Communications	Prep of ltr to LWDA
5/4/2018	0.4	\$300.	CMC	Prep of CM St
5/4/2018	0.5	\$375.	Settlement	Prep of settlement agreement
5/3/2018	0.7	\$525.	Settlement	Prep of settlement agreement
5/2/2018	1.6	\$1200.	Settlement	Prep of settlement agreement
4/20/2018	2.3	\$1725.	Communications	Prep of email re PAGA
4/17/2018	3.23	\$2425.	Legal Research	Research re PAGA distribution
4/15/2018	0.4	\$300.	Settlement	Review of agreement, research re class list

4/8/2018	3.02	\$2262.5	Legal Research	Research re cy pres, class lists
4/6/2018	4.9	\$3675.	Legal Research	Research re PAGA distribution
4/5/2018	2.1	\$1575.	Pleadings	Prep of FAC and Stip
4/4/2018	3.2	\$2400.	Settlement	Review and research re modifications to settlement
3/29/2018	2.7	\$2025.	Settlement	Research re settlement
3/16/2018	0.3	\$225.	CMC	Prep of CM St
2/15/2018	2.1	\$1575.	Pleadings	Prep of FAC
2/14/2018	3	\$2250.	Settlement	Review of settlement agreement; prep of FAC
1/5/2018	2.4	\$1800.	Settlement	Review of settlement agreement
12/8/2017	0.3	\$225.	CMC	Prep of CM St
11/8/2017	0.2	\$150.	Settlement	Email to SH re settlement
10/30/2017	0.6	\$450.	Mediation	Discussion w/client re MOU
10/20/2017	1.8	\$1350.	Mediation	Review of MOU; discussion re MOU w/client
0/10/2017	0.4	\$300.	Discovery	Review R/dis
10/4/2017	2.2	\$1650.	Mediation	Discussion w/client re settlement; prep of settlement email to med.
10/4/2017	1.4	\$1050.	Mediation	Prep of proposal to med
9/29/2017	2.8	\$2100.	Mediation	Review of MOU; research; prep. of email to med.
9/11/2017	0.2	\$150.	Discovery	Review R/A
9/6/2017	1.8	\$1350.	CMC	Prep of Complex CM St
8/31/2017	0.4	\$300.	Mediation	Email to med re OT
8/31/2017	1.2	\$900.	Discovery	Prep of second set of docs and fourth set of admissions
8/25/2017	0.3	\$225.	Mediation	Email to med re settlement
8/22/2017	1.9	\$1425.	Mediation	Discussion w/client re settlement; prep of demand email to med
8/2/2017	0.6	\$450.	Pleadings	Prep of third set of admissions
7/11/2017	0.4	\$300.	CMC	Opp to Continuance of CMC
6/21/2017	0.5	\$375.	Mediation	Prep of email re settlement to med
6/21/2017	0.4	\$300.	Mediation	Settlement discussions w/client
6/19/2017	0.8	\$600.	Mediation	Prep of email to med re PAGA distribution
6/15/2017	3.3	\$2475.	Legal Research	Research re PAGA distribution
6/3/2017	2.1	\$1575.	Mediation	Prep of email to med re applicability of LC 204b
6/3/2017	3.4	\$2550.	Mediation	Prep of email to med re PAGA
6/1/2017	6.1	\$4575.	Mediation	Mediation; meeting w/client
5/26/2017	2.6	\$1950.	Mediation	Review of Def med brf
5/25/2017	4.7	\$3525.	Mediation	Prep of Med Brf

5/24/2017	3.3	\$2475.	Mediation	Prep of med brf
5/22/2017	2.5	\$1875.	Legal Research	Research re LC 204b
5/19/2017	1.6	\$1200.	Legal Research	Research re preemption
5/4/2017	0.23	\$175.	CMC	Prep of CM St.
4/5/2017	1.6	\$1200.	Mediation	Prep for TC w/ Mediator; TC
w/Mediator				
2/14/2017	0.5	\$375.	CMC	CMC
12/29/2016	0.5	\$375.	Communications	Review of Def M&C ltr
12/28/2016	0.3	\$225.	Discovery	Review R/FIE
10/7/2016	0.9	\$675.	Discovery	Review R/A; research
10/5/2016	0.33	\$250.	CMC	Prep of CM St
9/22/2016	0.4	\$300.	Discovery	Review R/A
9/21/2016	2	\$1500.	Discovery	Prepare M&C letter
9/21/2016	2.1	\$1575.	Communications	Prep of M&C ltr re dis
9/21/2016	0.57	\$425.	Discovery	Review amended response to dis
9/8/2016	0.3	\$225.	Communications	M&C TC
9/8/2016	0.2	\$150.	Communications	TC re 204b
8/29/2016	0.5	\$375.	CMC	CMC
8/16/2016	0.7	\$525.	Discovery	Prep of second set of admissions
8/12/2016	0.5	\$375.	CMC	Prep CMC St
8/4/2016	1.9	\$1425.	Communications	Prep of M&C ltr re response
to dis				
7/6/2016	3	\$2250.	Discovery	Review R/dis; research
5/31/2016	3.6	\$2700.	Discovery	Prep of initial discovery (A, D, SI, FIE)
5/26/2016	0.9	\$675.	Pleadings	Review of Answer
5/5/2016	3.6	\$2700.	Legal Research	Research leg hx of LC 204b
4/14/2016	3.2	\$2400.	Pleadings	Prep of Complaint
4/13/2016	2.9	\$2175.	Pleadings	Prep of Complaint
4/11/2016	3.3	\$2475.	Legal Research	Research re LC 204b
4/8/2016	2.1	\$1575.	Legal Research	Research re LC 204b
4/7/2016	3.5	\$2625.	Legal Research	Research re PAGA
4/6/2016	2.8	\$2100.	Legal Research	Research re causes of action
3/8/2016	0.7	\$525.	Communications	Prep of LC 210 Notice
3/8/2016	3.7	\$2775.	Communications	Prep of PAGA ltr
3/7/2016	3.2	\$2400.	Legal Research	Research re causes of action
3/7/2016	0.7	\$525.	Fact Research	Research re pot class members
1/27/2016	2.7	\$2025.	Legal Research	Research re OT, exemption
1/13/2016	1.9	\$1425.	Legal Research	Research re preemption
1/12/2016	2.1	\$1575.	Legal Research	Research re exemption
1/11/2016	3.9	\$2925.	Legal Research	Research re OT, preemption
10/19/2015	0.82	\$612.5	Pleadings	Prepare PAGA ltr
10/19/2015	0.65	\$487.5	Pleadings	Prepare PAGA ltr
10/19/2015	2.8	\$2100.	Fact Research	Research re pot class members
10/19/2015	0.4	\$300.	Pleadings	Ltr to Frito-Lay
10/19/2015	2	\$1500.	Legal Research	Research re PAGA

10/16/2015	3.47	\$2600.	Legal Research	Research re arbitration
10/16/2015	1.1	\$825.	Legal Research	Research re PAGA
10/13/2015	4.8	\$3600.	Pleadings	Research re OT
9/17/2015	2.4	\$1800.	Legal Research	Research re arb
9/15/2015	0.3	\$225.	Client Communications	Ltr to client
9/8/2015	1.4	\$1050.	Fact Research	Research re FL organization
9/7/2015	2.4	\$1800.	Fact Research	Research re FL trucking
9/1/2015	2.4	\$1800.	Client Communications	Plf meeting
8/31/2015	1	\$750.	Fact Research	Review, discussion of case
Total	275.52	\$206,637.50		

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Exhibit B

Mauldin: 8/31/2015 to 11/29/2018

Date	Hours	Amount	Category	Notes
5/25/2018 w/client	0.9	\$675.	Client Communications	Discussion re dec
9/15/2015	0.3	\$225.	Client Communications	Ltr to client
9/1/2015	2.4	\$1800.	Client Communications	Plf meeting
Client Communications Total				
	3.6	\$2,700.00		
5/4/2018	0.4	\$300.	CMC	Prep of CM St
3/16/2018	0.3	\$225.	CMC	Prep of CM St
12/8/2017	0.3	\$225.	CMC	Prep of CM St
9/6/2017	1.8	\$1350.	CMC	Prep of Complex CM St
7/11/2017	0.4	\$300.	CMC	Opp to Continuance of CMC
5/4/2017	0.23	\$175.	CMC	Prep of CM St.
2/14/2017	0.5	\$375.	CMC	CMC
10/5/2016	0.33	\$250.	CMC	Prep of CM St
8/29/2016	0.5	\$375.	CMC	CMC
8/12/2016	0.5	\$375.	CMC	Prep CMC St
CMC Total				
	5.27	\$3,950.00		
5/8/2018	0.5	\$375.	Communications	Prep of ltr to LWDA
4/20/2018 distribution	2.3	\$1725.	Communications	Prep of email to SH re PAGA
12/29/2016	0.5	\$375.	Communications	Review of Def M&C ltr
9/21/2016	2.1	\$1575.	Communications	Prep of M&C ltr re dis
9/8/2016	0.3	\$225.	Communications	M&C TC
9/8/2016	0.2	\$150.	Communications	TC re 204b
8/4/2016 to dis	1.9	\$1425.	Communications	Prep of M&C ltr re response
3/8/2016	0.7	\$525.	Communications	Prep of LC 210 Notice
3/8/2016	3.7	\$2775.	Communications	Prep of PAGA ltr
Communications Total				
	12.2	\$9,150.00		
10/10/2017	0.4	\$300.	Discovery	Review R/dis
9/11/2017	0.2	\$150.	Discovery	Review R/A
8/31/2017 set of admissions	1.2	\$900.	Discovery	Prep of second set of docs and fourth
12/28/2016	0.3	\$225.	Discovery	Review R/FIE
10/7/2016	0.9	\$675.	Discovery	Review R/A; research

9/22/2016	0.4	\$300.	Discovery	Review R/A
9/21/2016	2	\$1500.	Discovery	Prepare M&C letter
9/21/2016	0.57	\$425.	Discovery	Review amended response to dis
8/16/2016	0.7	\$525.	Discovery	Prep of second set of admissions
7/6/2016	3	\$2250.	Discovery	Review R/dis; research
5/31/2016	3.6	\$2700.	Discovery	Prep of initial discovery (A, D, SI, FIE)

Discovery Total

13.27

\$9,950.00

3/7/2016	0.7	\$525.	Fact Research	Research re pot class members
10/19/2015	2.8	\$2100.	Fact Research	Research re pot class members
9/8/2015	1.4	\$1050.	Fact Research	Research re FL organization
9/7/2015	2.4	\$1800.	Fact Research	Research re FL trucking
8/31/2015	1	\$750.	Fact Research	Review, discussion of case

Fact Research Total

8.3

\$6,225.00

4/17/2018 distribution	3.23	\$2425.	Legal Research	Research re PAGA
4/8/2018 lists	3.02	\$2262.5	Legal Research	Research re cy pres, class
4/6/2018 PAGA	4.9	\$3675.	Legal Research	Research re distribution of
6/15/2017 distribution	3.3	\$2475.	Legal Research	Research re PAGA
5/22/2017	2.5	\$1875.	Legal Research	Research re LC 204b
5/19/2017	1.6	\$1200.	Legal Research	Research re preemption
5/5/2016	3.6	\$2700.	Legal Research	Research leg hx of LC 204b
4/11/2016	3.3	\$2475.	Legal Research	Research re LC 204b
4/8/2016	2.1	\$1575.	Legal Research	Research re LC 204b
4/7/2016	3.5	\$2625.	Legal Research	Research re PAGA
4/6/2016	2.8	\$2100.	Legal Research	Research re causes of action
3/7/2016	3.2	\$2400.	Legal Research	Research re causes of action
1/27/2016	2.7	\$2025.	Legal Research	Research re OT, exemption
1/13/2016	1.9	\$1425.	Legal Research	Research re preemption
1/12/2016	2.1	\$1575.	Legal Research	Research re exemption
1/11/2016	3.9	\$2925.	Legal Research	Research re OT, preemption
10/19/2015	2	\$1500.	Legal Research	Research re PAGA
10/16/2015	3.47	\$2600.	Legal Research	Research re arbitration
10/16/2015	1.1	\$825.	Legal Research	Research re PAGA
9/17/2015	2.4	\$1800.	Legal Research	Research re arb

Legal Research Total

56.62

\$42,462.50

6/14/2018	1.7	\$1275.	Mediation	Review of med email and research re
PAGA distribution				
10/30/2017	0.6	\$450.	Mediation	Discussion w/client re MOU
10/20/2017	1.8	\$1350.	Mediation	Review of MOU; discussion re
MOU w/client				
10/4/2017	2.2	\$1650.	Mediation	Discussion w/client re settlement;
prep of settlement email to med.				
10/4/2017	1.4	\$1050.	Mediation	Prep of proposal to med
9/29/2017	2.8	\$2100.	Mediation	Review of MOU; research; prep. of
email to med.				
8/31/2017	0.4	\$300.	Mediation	Email to med re OT
8/25/2017	0.3	\$225.	Mediation	Email to med re settlement
8/22/2017	1.9	\$1425.	Mediation	Discussion w/client re settlement;
prep of demand email to med				
6/21/2017	0.5	\$375.	Mediation	Prep of email re settlement to med
6/21/2017	0.4	\$300.	Mediation	Settlement discussions w/client
6/19/2017	0.8	\$600.	Mediation	Prep of email to med re PAGA
distribution				
6/3/2017	2.1	\$1575.	Mediation	Prep of email to med re applicability
of LC 204b				
6/3/2017	3.4	\$2550.	Mediation	Prep of email to med re PAGA
6/1/2017	6.1	\$4575.	Mediation	Mediation; meeting w/client
5/26/2017	2.6	\$1950.	Mediation	Review of Def med brf
5/25/2017	4.7	\$3525.	Mediation	Prep of Med Brf
5/24/2017	3.3	\$2475.	Mediation	Prep of med brf
4/5/2017	1.6	\$1200.	Mediation	Prep for TC w/ Mediator; TC
w/Mediator				
Mediation Total				
	38.6	\$28,950.00		
11/29/2018	7.2	\$5400.	Motions	Prep of M/Final Approval
11/28/2018	6.1	\$4575.	Motions	Prep of M/Final Approval
11/27/2018	5.4	\$4050.	Motions	Prep of M/Final Approval
11/26/2018	8.1	\$6075.	Motions	Prep of M/Final Approval
11/25/2018	4.2	\$3150.	Motions	Prep of M/Final Approval
11/24/2018	7.5	\$5625.	Motions	Prep of M/Final Approval
11/23/2018	5.9	\$4425.	Motions	Prep of M/Final Approval
11/21/2018	4.8	\$3600.	Motions	Prep of M/Final Approval/AF
8/28/2018	0.3	\$225.	Motions	Review of claims admin dec
8/23/2018	0.4	\$300.	Motions	Review of claims admin dec
6/21/2018	0.6	\$450.	Motions	Email to clerk re FA hearing
5/31/2018	0.5	\$375.	Motions	Review of TR
5/25/2018	2.4	\$1800.	Motions	Prep of M/Prelim Approval
5/24/2018	2.7	\$2025.	Motions	Prep of M/Prelim Approval
5/17/2018	6.1	\$4575.	Motions	Prep of M/Prelim Approval
5/16/2018	7.6	\$5700.	Motions	Prep of M/Prelim Approval

5/14/2018	8.7	\$6525.	Motions	Prep of M/Prelim Approval
5/13/2018	6	\$4500.	Motions	Prep of M/Prelim Approval
5/12/2018	6.2	\$4650.	Motions	Prep of M/Prelim Approval
5/11/2018	9.3	\$6975.	Motions	Prep of M/Prelim Approval

Motions Total

100 \$75,000.00

5/25/2018	0.2	\$150.	Pleadings	Ltr to LWFDA
5/24/2018	0.4	\$300.	Pleadings	Prep of stip to shorten time
5/20/2018	1.4	\$1050.	Pleadings	Prep of M/Prelim Approval
4/5/2018	2.1	\$1575.	Pleadings	Prep of FAC and Stip
2/15/2018	2.1	\$1575.	Pleadings	Prep of FAC
8/2/2017	0.6	\$450.	Pleadings	Prep of third set of admissions
5/26/2016	0.9	\$675.	Pleadings	Review of Answer
4/14/2016	3.2	\$2400.	Pleadings	Prep of Complaint
4/13/2016	2.9	\$2175.	Pleadings	Prep of Complaint
10/19/2015	0.82	\$612.5	Pleadings	Prepare PAGA ltr
10/19/2015	0.65	\$487.5	Pleadings	Prepare PAGA ltr
10/19/2015	0.4	\$300.	Pleadings	Ltr to Frito-Lay
10/13/2015	4.8	\$3600.	Pleadings	Research re OT

Pleadings Total

20.47 \$15,350.00

8/14/2018	0.2	\$150.	Settlement	Review of claims admin report
8/7/2018	0.2	\$150.	Settlement	Review of claims admin report
7/31/2018	0.3	\$225.	Settlement	Review of claims admin report
7/6/2018	1.8	\$1350.	Settlement	Review of class notice form
5/4/2018	0.5	\$375.	Settlement	Prep of revisions to settlement agreement
5/3/2018	0.7	\$525.	Settlement	Prep of revisions to settlement agreement
5/2/2018	1.6	\$1200.	Settlement	Prep of settlement agreement
4/15/2018	0.4	\$300.	Settlement	Review of agreement, research re class list
4/4/2018	3.2	\$2400.	Settlement	Review and research re modifications to settlement
3/29/2018	2.7	\$2025.	Settlement	Research re settlement
2/14/2018	3	\$2250.	Settlement	Review of settlement agreement; prep of FAC
1/5/2018	2.4	\$1800.	Settlement	Review of settlement agreement
11/8/2017	0.2	\$150.	ettlement	Email to SH re settlement

Settlement Total

17.2 \$12,900.00

Total

275.52 \$206,637.50

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Exhibit C

Joseph Clapp, Esq., State Bar No. 99194
2790 Marineview Drive
San Leandro, CA 94577
(510) 590-7115
jc@asmlawyers.com

Practice Areas

Employment Litigation; ERISA Litigation; Class Action Litigation; Trial and Appellate Practice.

Experience

Aiman-Smith & Marcy
7677 Oakport St., Suite 1150
Oakland, CA 94621
2012 to Present

Law Office of Joseph Clapp, San Leandro, CA
2010 to 2017

Kumin Sommers LLP, San Francisco, CA
2009 to 2010

Herron & Herron, San Francisco, CA
1982 to 2008

General – Prosecuted hundreds of employment-related lawsuits as the lead counsel responsible for all phases of the litigation. Obtained numerous six- and seven-figure settlements and judgments.

Class Actions – Prosecuted numerous class actions in state and federal courts as the court-appointed lead class counsel.

Trials – Tried seventeen cases to jury verdict, court judgment, or arbitration award. Tried a class action case to judgment.

Appeals – Briefed and argued sixteen appeals in state or federal appellate courts. Appeals included Due Process issues, labor law preemption issues, and ERISA issues.

Notable Class Actions

Smith v. Genstar Capital, S.F. Superior Court No. 313964. Freight carrier declared bankruptcy without paying 700+ employees for three weeks of work. Result: \$3.5 million settlement from the venture capital fund that owned the carrier and additional \$1.5 million from the freight carrier's bankruptcy estate.

Nostrum v. Albertsons, Monterey Superior Court No. M 66712. Retail grocery chain denied meal periods to 900+ pharmacists. Result: \$6 million settlement.

Munoz v. UPS Freight, N.D.Ca. No. C07-00970 MHP. Freight carrier required 500+ line-haul drivers to wait, off-the-clock, while trailers were loaded. Result: \$3 million settlement.

Brawner v. Bank of America, N.D.Ca. No. 3:14-cv-02702-LB. Bank misclassified 100+ back office workers as exempt "administrative" employees. Result: \$2.25 million settlement.

Published Appellate Victories

George v. California Unemployment Insurance Appeals Board (2009) 179 Cal.App.4th 1475 (public employee's retaliation lawsuit survives claim and issue preclusion defenses).

Walker v. Berkeley Housing Authority, 951 F.2d 182 (9th Cir. 1991) (biased decision-maker violates public employee's Due Process rights).

Education

J.D., McGeorge School of Law, U.O.P.
Comment Editor, Pacific Law Journal

A.B., Economics, U.C. Berkeley

Publications

"Practical Tip: Drafting a Complaint for Wrongful Termination," 5 San Francisco Barrister Law Journal 13, September, 1986.

"Recognizing the Employee's Interests in Continued Employment - The California Cause of Action for Unjust Dismissal," 12 Pacific Law Journal 69, 1980.

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Exhibit D

Lawyer Name	Lawyer Firm	Year Admitted to the Bar	Years Practicing [Year Case Decided]	Hourly Rate Approved [At Time of Case]	Year Case Decided	Case	Court
Scarpulla, Francis O.	Zelle Hofmann Voelbel & Mason	1967	50	\$ 1,250.00	2017	<i>Four in One Company, Inc. v. SK Foods, L.P. et al</i> (2: 08cv3017)	U.S. District Court - California Eastern - Sacramento
Hausfeld, Michael	Hausfeld	1970	47	\$ 975.00	2017	<i>Four in One Company, Inc. v. SK Foods, L.P. et al</i> (2: 08cv3017)	U.S. District Court - California Eastern - Sacramento
Greenwald, Gary	Keller Rohrback	1971	46	\$ 800.00	2017	<i>Schwartz v. Cook et al</i> (5: 15cv3347)	U.S. District Court - Northern California - San Jose
Steel, Lewis	Outten and Golden	1973	43	\$ 850.00	2016	<i>Cancilla et al v. Ecolab, Inc.</i> (3:12cv3001)	U.S. District - Northern California - San Francisco
Fay, Raymond C.	Fay Law Group	1974	41	\$ 700.00	2015	<i>Bennett v. Simplexgrinnell</i> (11-01854-JST)	U.S. District - Northern California - San Francisco
Lewis, Jeffrey	Keller Rohrback	1975	41	\$ 900.00	2016	<i>Cancilla et al v. Ecolab, Inc.</i> (3:12cv3001)	U.S. District - Northern California - San Francisco
Lehmann, Michael P.	Hausfeld	1977	40	\$ 930.00	2017	<i>Four in One Company, Inc. v. SK Foods, L.P. et al</i> (2: 08cv3017)	U.S. District Court - California Eastern - Sacramento
Lewis, Jeffrey	Lewis Feinberg	1975	40	\$ 825.00	2015	<i>Bennett v. Simplexgrinnell</i> (11-01854-JST)	U.S. District - Northern California - San Francisco
Corbitt, Craig C.	Zelle Hofmann Voelbel & Mason	1978	39	\$ 900.00	2017	<i>Four in One Company, Inc. v. SK Foods, L.P. et al</i> (2: 08cv3017)	U.S. District Court - California Eastern - Sacramento
Kilgard, Ron	Keller Rohrback	1979	38	\$ 895.00	2017	<i>Schwartz v. Cook et al</i> (5: 15cv3347)	U.S. District Court - Northern California - San Jose
Seligman, Brad	Lewis Feinberg	1978	37	\$ 825.00	2015	<i>Bennett v. Simplexgrinnell</i> (11-01854-JST)	U.S. District - Northern California - San Francisco
Sarko, Lynn Lincoln	Keller Rohrback	1981	36	\$ 940.00	2017	<i>Schwartz v. Cook et al</i> (5: 15cv3347)	U.S. District Court - Northern California - San Jose

Pomerance, Drew	Roxborough, Pomerance, NYE & Adreani	1981	36		\$	695.00	2017	<i>Augustus v. ABM</i> (BC336416)	CA Superior Court - Los Angeles
Berman, Steve	Hagens Berman	1982	35		\$	900.00	2017	<i>In re: Hyundai Sonata Engine Litigation</i> (5:15-cv-1685-BLF)	U.S. District Court - Northern California - San Jose
Gotto, Gary	Keller Rohrbach	1982	35		\$	895.00	2017	<i>Schwartz v. Cook et al</i> (5:15cv3347)	U.S. District Court - Northern California - San Jose
Bien, Michael W.	Rosen Bien Galvan & Grunfeld	1981	35		\$	900.00	2016	<i>National Federation of the Blind v. Uber Technologies</i> (3:14-cv-04086-NC)	U.S. District Court - Northern District of CA
Pearson, Clifford	Pearson, Simon & Warshaw	1983	34		\$	750.00	2017	<i>Four in One Company, Inc. v. SK Foods, L.P. et al</i> (2:08cv3017)	U.S. District Court - California Eastern - Sacramento
Simon, Bruce	Pearson, Simon & Warshaw	1983	34		\$	795.00	2017	<i>Four in One Company, Inc. v. SK Foods, L.P. et al</i> (2:08cv3017)	U.S. District Court - California Eastern - Sacramento
Sobol, Thomas	Hagens Berman	1984	33		\$	800.00	2017	<i>In re: Hyundai Sonata Engine Litigation</i> (5:15-cv-1685-BLF)	U.S. District Court - Northern California - San Jose
Skalet, Steven	Mehri & Skalet	1982	33		\$	750.00	2015	<i>Bennett v. Simplexgrinnell</i> (11-01854-JST)	U.S. District - Northern California - San Francisco
Feldman, Robert P.	Quinn, Emanuel, Urquhart, & Sullivan	1984	33		\$	950.00	2017	<i>Four in One Company, Inc. v. SK Foods, L.P. et al</i> (2:08cv3017)	U.S. District Court - California Eastern - Sacramento
Finberg, Jim	Altshuler Berzon	1984	32		\$	895.00	2016	<i>Cancilla et al v. Ecolab, Inc.</i> (3:12cv3001)	U.S. District - Northern California - San Francisco
Arias, Mike	Arias, Ozzello & Gignac	1984	31		\$	750.00	2015	<i>Massillo v. Rick's Tavern</i> (BC482338)	CA Superior Court - Lost Angeles
Ozzello, Mark A.	Arias, Ozzello & Gignac	1984	31		\$	750.00	2015	<i>Massillo v. Rick's Tavern</i> (BC482338)	CA Superior Court - Lost Angeles
Paradis, Lawrence	Disability Rights Advocates	1985	31		\$	895.00	2016	<i>National Federation of the Blind v. Uber Technologies</i> (3:14-cv-04086-NC)	U.S. District Court - Northern District of CA
Byrd, Janell	Mehri & Skalet	1984	31		\$	750.00	2015	<i>Bennett v. Simplexgrinnell</i> (11-01854-JST)	U.S. District - Northern California - San Francisco

Carey, Robert B.	Hagens Berman	1987	30		\$	700.00	2017	<i>In re: Hyundai Sonata Engine Litigation</i> (5:15-cv-1685-BLF)	U.S. District Court - Northern California - San Jose
Saveri, Joseph	Lieff Cabraser Heimann & Bernstein	1987	30		\$	725.00	2017	<i>Four in One Company, Inc. v. SK Foods, L.P. et al</i> (2:08cv3017)	U.S. District Court - California Eastern - Sacramento
McCune, Richard D.	McCune Wright	1987	30		\$	825.00	2017	<i>In re: Hyundai Sonata Engine Litigation</i> (5:15-cv-1685-BLF)	U.S. District Court - Northern California - San Jose
Cirillo, Henry A.	Zelle Hofmann Voelbel & Mason	1987	30		\$	725.00	2017	<i>Four in One Company, Inc. v. SK Foods, L.P. et al</i> (2:08cv3017)	U.S. District Court - California Eastern - Sacramento

Average \$ 841.33

Median \$ 825.00

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Exhibit E

Mauldin v. Frito-Lay
Cost Detail

Date	Description	Cost
09/30/15	PACER – search for and download court documents 07/01/15-09/30/15	\$7.80
10/15/15	Mail PAGA Notice	5.75
10/31/15	LexisNexis – legal research	25.92
03/31/16	PACER – search for and download court documents 01/01/16-03/31/16	3.80
03/31/16	LexisNexis – March 2016 legal research	23.46
04/14/16	Alameda County Superior Court – file Complaint	445.50
04/29/16	One Legal – serve Complaint on Rolling Frito-Lay Sales, LP	106.90
05/03/16	One Legal – file Proof of Service of Complaint on Rolling Frito-Lay Sales, LP	14.95
05/04/16	One Legal – serve Complaint on Frito-Lay, Inc.	37.95
05/05/16	One Legal – file Proof of Service of Complaint on Frito-Lay, Inc.	14.95
06/16/16	Alameda County Superior Court – file Notice of Change of Address	4.50
06/16/16	Alameda County Superior Court – print court document	2.00
07/19/16	Alameda County Superior Court – post deposit for jury fees	150.00
08/31/16	LexisNexis – August 2016 legal research	0.32
08/04/16	CourtCall – telephonic court appearance for 08/29/16 Case Management Conference	86.00
08/29/16	Alameda County Superior Court – post further jury fees	156.00
09/20/16	Alameda County Superior Court – print court document	2.00
09/28/16	Alameda County Superior Court – file CMC Statement	4.00
10/24/16	Alameda County Superior Court – pay complex litigation fee	1,000.00
01/31/17	LexisNexis – January 2017 legal research	0.77
02/13/17	CourtCall – telephonic court appearance fee for 2/15/17 CMC	116.00

04/24/17	Michael Dickstein – mediation fees for 06/01/17 mediation	7,000.00
05/04/17	Alameda County Superior Court – file Updated CMC Statement	6.00
05/30/17	LexisNexis – May 2017 legal research	56.00
06/01/17	Meal during 06/01/17 mediation	18.41
06/30/17	LexisNexis – June 2017 legal research	2.71
07/11/17	Alameda County Superior Court – file Opposition to Continue Complex CMC	6.00
07/25/17	Alameda County Superior Court – print court document	4.00
07/31/17	LexisNexis – July 2017 legal research	2.61
08/03/17	LRI History – legislative history research	500.00
08/31/17	LexisNexis – August 2017 legal research	0.79
09/13/17	Parking during CMC	4.00
10/04/17	CourtCall – telephonic appearing for 12/13/17 CMC	86.00
12/08/17	Alameda County Superior Court – file Updated CMC Statement	6.00
02/28/18	LexisNexis – February 2018 legal research	4.38
02/16/18	Alameda County Superior Court – purchase court documents (Motion for Preliminary Approval in <i>Lacy v. Azuma Foods</i>)	50.00
03/16/18	File Joint CMC Statement	2.00
03/31/18	LexisNexis – March 2018 legal research	2.24
04/06/18	Alameda County Superior Court – file Stipulation for Leave to File First Amended Complaint	38.00
04/30/18	LexisNexis – April 2018 legal research	16.70
05/03/18	Alameda County Superior Court – file First Amended Complaint (not yet received)	12.00
05/04/18	File Joint Updated Complex CMC Statement (not yet received)	6.50
05/25/18	Alameda County Superior Court – file Stipulation and Order Shortening Time for Hearing on Motion for Preliminary Approval	25.00
05/25/18	Alameda County Superior Court – file Motion for Preliminary Approval	105.00
05/27/18	UPS – serve chambers copy of Motion for Preliminary Approval	30.67
05/30/18	LexisNexis – May 2018 legal research	8.49
06/19/18	Alameda County Superior Court – file Notice of	15.00

	Entry of Order Granting Motion for Preliminary Approval	
11/29/18	Alameda County Superior Court – file Motion for Final Approval and for Attorneys Fees	130.00
	Estimated Closing Costs (file Notice of Entry of Order Granting Motion for Preliminary Approval, file Request for Dismissal, shipping to class rep)	150.00
	Postage	74.95
	Copier Charges: 1,832 @ \$0.25	455.50
	TOTAL:	\$11,027.52

1 **PROOF OF SERVICE**

2 I, the undersigned, hereby declare: I am employed in the County of Alameda, California; I am
3 over eighteen years of age and not a party to the within action. I am either admitted to practice before
4 this Court or employed in the Office of an attorney admitted to practice in this Court. My business
5 address is 7677 Oakport St., Suite 1150, Oakland, California 94621.

6 On this date, I served the following:

7 **Declaration of Joseph Clapp in Support of Motion for an Order**

- 8 (1) Finally Approving Class Settlement;
9 (2) Awarding Reasonable Attorney's Fees;
10 (3) Awarding Reasonable Costs;
11 (4) Awarding Incentive Award;
12 (5) Awarding PAGA Penalties;
13 (6) Awarding Claims Administration Fees;
14 and
15 (7) Scheduling Compliance Hearing.

16 by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

17 Samantha D. Hardy, Esq. 18 Tara M. Duester, Esq. 19 Sheppard Mullin Richter & Hampton LLP 20 501 West Broadway, 19 th Floor 21 San Diego, California 92101-3598	22 Attorneys for Defendants ROLLING FRITO- 23 LAY SALES, LP and FRITO-LAY, INC.
24 California Labor and Workforce Development 25 Agency 26 Attn. PAGA Administrator 27 1515 Clay Street, Ste. 801 28 Oakland, CA 94612	

19 X [By Mail] I caused such envelope, with postage fully prepaid, to be placed in the United
20 States mail at Oakland, California.

21 [By Personal Service] I caused such envelope to be delivered by hand to the above address.

22 [By E-Mail] I caused such document to be delivered by electronic transmission/e-mail to the
23 above addressee.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
25 true and correct.

26 Dated: November 29, 2018

27 
28 Norma Dale