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11/29/2018 2:30 PM

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8 Attorneys for Plaintiff

FILED BY FAX

ALAMEDA COUNTY

November 29, 2018

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy

CASE NUMBER:

RG16811677

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 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 Wayne Mauldin 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, Wayne Mauldin, declare:

2 1. I am the plaintiff in this action and testify to the following facts based on my own personal
3 knowledge.

4 2. I was formerly employed by Rolling Frito-Lay Sales, LP as a local delivery driver ("Route
5 Sales Associate") to deliver Frito-Lay snacks to retail stores.

6 3. During my employment, I signed a form arbitration agreement waiving the right to bring
7 class claims.

8 4. On August 10, 2015 I first contacted the Aiman-Smith & Marcy law firm about wage &
9 hour problems I encountered with my employer, Rolling Frito-Lay Sales, LP, and I first spoke with
10 Hallie Von Rock, Esq., on that same day. On several occasions that fall I met with both Hallie Van
11 Rock, Esq. and with Joseph Clapp, Esq., to discuss Frito-Lay's pay policies, which involve a
12 complicated fluctuating workweek method of calculating overtime. I supplied them with all my
13 records relating to my employment, including employee handbooks and itemized wage statements.
14 We spent hours analyzing these documents trying to understand how Frito-Lay calculated the
15 amounts due for overtime hours and on what payday Frito-Lay paid for those overtime hours. I also
16 supplied them with the arbitration agreement I signed, and we spent more hours discussing whether I
17 would have to arbitrate my claims.

18 5. In November 2015, Frito-Lay was engaged in a successful campaign to force me to quit.
19 Thereafter, I spent several more hours in discussions with Mr. Clapp about a constructive wrongful
20 termination lawsuit. Ultimately, I decided that prosecuting a wrongful termination lawsuit would
21 detract from, and undercut, any claim for remedies due for systematic wage violations to all the
22 Route Sales Associates employed by Frito-Lay. Thus, when I authorized Mr. Clapp to pursue claims
23 under the Labor Code Private Attorney's General Act for untimely overtime payments and for
24 inaccurate wage statements, I understood that I was sacrificing my right to pursue a potentially
25
26
27
28

1 valuable wrongful discrimination lawsuit.

2 6. Between November 2015 and April 2016 I had numerous telephone conversations with
3 Mr. Clapp about all aspects of my employment with Frito-Lay, including the regional operating
4 structure for local delivery drivers, the practices for dispatching drivers on routes, the size and makes
5 of the trucks driven by delivery drivers, the tasks performed by drivers before and after they drove
6 the trucks, the tasks performed by drivers while at retail stores, the method of keeping track of time,
7 the method of keeping track of product, and the procedures for the resolution of employee
8 complaints.
9

10 7. Thereafter, for the next year I had intermittent telephone conversations with Mr. Clapp
11 each month or so in which we discussed the progress of the case, and I answered any questions he
12 had about Frito-Lay's practices. Then in May 2017 we began having numerous telephone
13 conversations as we prepared for the mediation of this case. I assisted him in preparing the valuation
14 of the remedies that we would seek in mediation, and we discussed the strategy that we would pursue
15 in the mediation.
16

17 8. On June 1, 2017, I met with Mr. Clapp for a mediation before Michael Dickstein, Esq.
18 Unfortunately, we were not able to conclude a settlement at that time.

19 9. Thereafter, over the next five months, Mr. Clapp and I spoke on the telephone every week
20 or two as follow-on negotiations proceeded with the mediator. Our discussions involved not only the
21 various back-and-forth offers made by the parties, but also the underlying disputes about statutory
22 interpretation of Labor Code provisions that lay at the heart of the lawsuit.
23

24 10. In late October 2017, I discussed with Mr. Clapp in detail the options available for
25 settlement. I weighed the pros and cons of settlement, and finally decided, after much deliberation,
26 that the proposed settlement should be accepted. Thereafter, we discussed in detail the complicated,
27 written memorandum of understanding that had been prepared by Frito-Lay's counsel. I then had
28

1 several more conversations with Mr. Clapp as we negotiated the language of this MOU.

2 11. Approximately a month thereafter, Frito-Lay sent its proposed long-form settlement
3 agreement. Over the next six months or so, I had innumerable telephone conversations with Mr.
4 Clapp about various disputes concerning the language of the agreement, and after understanding the
5 disputes I would direct Mr. Clapp to pursue one line of argument or another.
6

7 12. After the settlement agreement was finally signed in May 2018, I had a series of
8 telephone conversations with Mr. Clapp as he prepared a motion for preliminary approval. Then,
9 during the past few months, we had telephone discussions in which we discussed the progress of the
10 settlement and the class notice process.

11 13. Finally, in November 2018 I have had telephone conversations in which we discussed the
12 final approval process and this declaration.
13

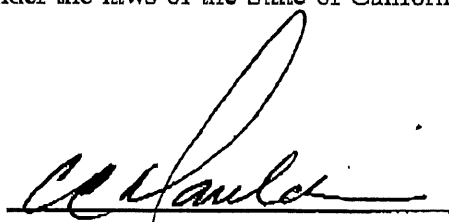
14 14. I understood when I agreed to pursue this litigation that if I lost, the court might award
15 substantial court costs against me.

16 15. I understood when I agreed to pursue this litigation that my name would be in the public
17 records as one who had sued his employer for wage & hour violations, and that many potential
18 employers would be disinclined to hire such a "troublemaker."
19

20 16. I am proud that this litigation will serve to compensate over 1700 RSAs for Frito-Lay's
21 practice of paying overtime wages a week after the legal deadline. I have received my class notice,
22 and it indicates that I am likely to receive the amount of \$339.94 for my late payments and inaccurate
23 wage statements.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct.
26

27 Date: November 29, 2018

28 
Wayne Mauldin

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 Wayne Mauldin 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.**

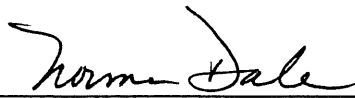
16 by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

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	Attorneys for Defendants ROLLING FRITO- LAY SALES, LP and FRITO-LAY, INC.
22 California Labor and Workforce Development 23 Agency 24 Attn. PAGA Administrator 25 1515 Clay St., Ste. 801 26 Oakland, CA 94612	

- 27 X [By Mail] I caused such envelope, with postage fully prepaid, to be placed in the United
28 States mail at Oakland, California.
- [By Personal Service] I caused such envelope to be delivered by hand to the above address.
- [By E-Mail] I caused such document to be delivered by electronic transmission/e-mail to the
above addressee.

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

Dated: November 29, 2018


Norma Dale