

Apr. 14, 2016 4:31PM Aimar Smith & Marcy 510-562-6830

No. 4407 P. 4

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FILED BY FAX
ALAMEDA COUNTY
April 14, 2016
CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy
CASE NUMBER:
RG16811677

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED JURISDICTION

12 WAYNE MAULDIN, an individual,

13 Plaintiff,

14 vs.

15 ROLLING FRITO-LAY SALES, LP, a business
16 entity, form unknown; FRITO-LAY, INC., a
17 business entity, form unknown; and Does 1
18 through 25, inclusive,

19 Defendants.

Case No.:

Complaint Seeking Civil Penalties under the
Labor Code Private Attorneys General Act of
2994

Demand for Jury Trial

1 Plaintiff is informed and believes, and thereon alleges, the following:

2 **Parties**

3 1. Plaintiff Wayne Mauldin is a competent adult who is a citizen of California.

4 2. Defendants Rolling Frito-Lay Sales, LP and Frito-Lay, Inc., are business entities, form
5 unknown, which are in the business of producing snack and other processed foods.

6 3. Plaintiff is presently unaware of the true names and capacities of those persons named as
7 Does 1 through 25 and therefore sues them by these fictitious names. Plaintiff will amend this
8 Complaint to assert their true names and capacities when these are ascertained. Except as otherwise
9 alleged herein, each of the entities sued as Does 1 through 25 was the agent of the other and each is
10 responsible for the damages to Plaintiff as alleged herein.

11 **Venue**

12 4. The liabilities described below arose in the County of Alameda.

13 **Factual Background**

14 5. Plaintiff was employed by Defendants with as a local delivery driver from approximately
15 July 2013 until approximately November 2015. Plaintiff was employed primarily, but not
16 exclusively, at Defendant's Alameda, California facility.

17 6. Defendants employ drivers in California to deliver processed food products to retail stores.
18 These drivers are known as "Route Sales Representatives," "Route Sales Associates," or similar
19 names.

20 7. Defendants define the workweek for these drivers as "Sunday at 12:00 a.m. through
21 Saturday at 11:59 p.m." Defendants define the "Pay Day" as every Friday (except when there is an
22 adjustment because of holidays."

23 8. The Pay Day for a particular workweek is the Friday *before* the Saturday that ends the
24 workweek.

25 9. Defendants pay these drivers overtime premiums when they work overtime hours.
26 Defendants do not pay drivers the premiums earned, however, on the Pay Day for the workweek
27 during which the overtime premiums were earned. Defendants do not pay these drivers the premiums
28 on the Pay Day for the following workweek. Instead, Defendants pay the premiums on the Pay Day

1 for the second workweek after the premiums were earned.

2 **FIRST CAUSE OF ACTION**
3 **Labor Code Private Attorneys General Act of 2004**
4 **Labor Code Sec. 2698 *et seq.***
5 **Labor Code Sec. 204b**

6 10. Plaintiff incorporates herein the foregoing paragraphs.

7 11. Defendants have paid, and continue to pay, the drivers the overtime premiums they earn
8 from Sunday through Friday in a workweek later than the regular payday that fell during the
9 following calendar week.

10 13. On April 13, 2016, Plaintiff made a demand for the payment of all civil penalties due for
11 Defendants' failure to pay overtime premiums earned from Sunday through Friday in a workweek
12 later than the regular payday that fell during the following calendar week.

13 14. On March 8, 2016, Plaintiff gave written notice by certified mail to the Labor and
14 Workforce Development Agency (LWDA) and to Defendants of the specific provisions of the Labor
15 Code that he alleged Defendants had violated, and he included the facts and theories supporting the
16 alleged violations. Although more than 33 days have passed since the postmark date of the notice
17 given to the LWDA, the LWDA has not notified the Plaintiff whether it intends to investigate.

18 **SECOND CAUSE OF ACTION**
19 **Labor Code Private Attorneys General Act of 2004**
20 **Labor Code Sec. 2698 *et seq.***
21 **Labor Code Sec. 226**

22 15. Plaintiff incorporates herein the foregoing paragraphs.

23 16. Defendants often failed to furnish the drivers on their regular paydays with an accurate
24 itemized statement in writing showing gross wages earned, total hours worked, net wages earned, and
25 all applicable hourly rates of pay in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate.

27 17. On March 8, 2016, Plaintiff gave written notice by certified mail to the Labor and
28 Workforce Development Agency (LWDA) and to Defendants of the specific provisions of the Labor
Code that he alleged Defendants had violated, and he included the facts and theories supporting the
alleged violations. Although more than 33 days have passed since the postmark date of the notice

1 given to the LWDA, the LWDA has not notified the Plaintiff whether it intends to investigate.

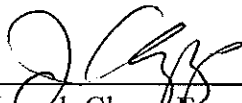
2 **Prayer**

3 WHEREFORE, Plaintiff prays for the following relief:

- 4 1. Civil penalties on the first cause of action pursuant to Labor Code Sections 558 and 2699;
5 2. Civil penalties on the second cause of action pursuant to Labor Code Sections 226.3 and
6 2699);
7 3. Pre-judgment interest;
8 4. Costs of suit;
9 5. Reasonable attorney's fees;
10 6. Declaratory relief; and
11 7. All other appropriate remedies.

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13 Dated: April 14, 2016

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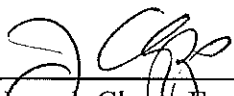
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15 
16 Joseph Clapp, Esq.
Attorneys for Plaintiff

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18 **Demand for Jury Trial**

19 Plaintiff hereby demands trial by jury.

20 Dated: April 14, 2016

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23 Joseph Clapp, Esq.
Attorneys for Plaintiff