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

WAYNE MAULDIN, an individual,

Plaintiff,

vs.

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

Defendants.

Case No. RG16811677

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND PERMITTING
PLAINTIFF TO FILE FIRST AMENDED
COMPLAINT**

Assigned For All Purposes To:
Judge: Hon. Winifred Y. Smith
Dept.: 21

[Complaint Filed: April 14, 2016]

1 WHEREAS, this case is pending before this Court as a class action (the "Action");
2 and
3

4 WHEREAS, Class Counsel has applied to this Court for an order preliminarily
5 approving the settlement of the Claims in this Action in accordance with a Stipulation and
6 Settlement Agreement of Representative and Class Action Claims (the "Stipulation" or
7 "Settlement"), which, together with the exhibits annexed thereto, sets forth the terms and
8 conditions for a proposed settlement of the Claims in this Action upon the terms and conditions set
9 forth therein; and the Court having read and considered the Stipulation and the exhibits annexed
10 thereto, and good cause appearing thereof;
11

12 NOW, THEREFORE, IT IS HEREBY ORDERED:
13

14 1. This Order incorporates by reference the definitions in the Stipulation, and all terms
15 defined therein shall have the same meaning in this Order as set forth in the Stipulation.
16

17 2. The Court grants preliminary approval to the Stipulation. The Court preliminarily
18 finds that the Stipulation is fair, adequate and reasonable, and preliminarily approves the terms of
19 the settlement.
20

21 3. Plaintiff and Frito-Lay stipulate and agree to, and the Court conditionally grants
22 certification of, a class of all California employees of Defendant employed as Route Sales
23 Associates ("RSAs") at any time between March 8, 2015 and [Date of preliminary approval] (the
24 "Class Period"). This stipulation will not be deemed admissible in this or any other proceeding
25 should this Settlement not become final.
26
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1 4. Named Plaintiff Wayne Mauldin is hereby appointed and designated, for all
2 purposes, as the representative of the Class, and Joseph Clapp, Esq., of Aiman-Smith & Marcy, is
3 hereby appointed and designated as counsel for the Class ("Class Counsel"). Class Counsel is
4 authorized to act on behalf of Class Members with respect to all acts or consents required by, or
5 which may be given pursuant to, the Settlement, and such other acts reasonably necessary to
6 consummate the Settlement.

7
8 5. The Court hereby approves on a preliminary basis the definition and disposition of
9 the Settlement Fund and related matters provided for in the Stipulation. It appears to the Court on
10 a preliminary basis that the settlement amount and terms are fair, adequate and reasonable as to all
11 potential Class Members when balanced against the probable outcome of further litigation relating
12 to liability and damages issues. It further appears that investigation and research have been
13 conducted such that counsel for the Parties at this time are able to reasonably evaluate their
14 respective positions. It further appears to the Court that settlement at this time will avoid
15 substantial additional costs by all Parties, as well as avoid the delay and risks that would be
16 presented by the further prosecution of the Action. It further appears that the Settlement has been
17 reached as the result of intensive, serious and non-collusive, arms-length negotiations.

18
19 6. A hearing (the "Settlement Hearing") shall be held before this Court on _____,
20 2018, at _____ a./p.m. in the Superior Court for the State of California for the County
21 of Alameda, Dept. 21, 2233 Shoreline Drive, Alameda, CA 94501, to determine all necessary
22 matters concerning the Settlement, including: whether the proposed settlement of the Action on
23 the terms and conditions provided for in the Stipulation is fair, adequate and reasonable and
24 should be finally approved by the Court; whether a Judgment, as provided in the Stipulation,
25 should be entered herein; whether the plan of allocation contained in the Stipulation should be
26 approved as fair, adequate and reasonable to the Class Members; and to finally approve Class

1 Counsel's Fees Award and costs, Named Plaintiff's Service Payment, claims administration
2 expenses and PAGA payments to the LWDA.
3

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

10 8. The Court hereby appoints RUST CONSULTING, INC., 201 Lyndale Ave S Ste S,
11 Faribault, MN 55021 as Claims Administrator and hereby directs the Claims Administrator to mail
12 or cause to be mailed to Plaintiffs the Notice within forty-five (45) days after the entry of this
13 Preliminary Order (the "Notice Date") using the procedures set forth in the Stipulation.
14

15 9. Any Plaintiff may choose to opt out of and be excluded from the Class by
16 following the instructions for requesting exclusion from the Class that are set forth in the Notice.
17 All requests for exclusion must be submitted as provided in the Notice. Any such person who
18 chooses to opt out of and be excluded from the Class will not be entitled to any recovery under the
19 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
20 thereon. Any written request to opt out must be signed by each such person opting out.
21

22 10. Any Class Member may appear at the Final Settlement Hearing and may object or
23 express the Member's views regarding the Settlement, and may present evidence and file briefs or
24 other papers, that may be proper and relevant to the issues to be heard and determined by the
25 Court as provided in the Notice. However, no Class Member shall be entitled to be heard at the
26 final Settlement Hearing (whether individually or through separate counsel) or to object to the
27 Settlement, and no written objections or briefs submitted by any Class Member shall be received
28

1 or considered by the Superior Court at the Settlement Hearing, unless written notice of the Class
2 Member's intention to appear at the Settlement Hearing (if applicable), and copies of any written
3 objections or briefs, have been filed with the Superior Court, and served on all counsel for the
4 Parties, on or before the Objection/Exclusion Deadline Date. Class Members who fail to file and
5 serve timely written objections in the manner specified above shall be deemed to have waived any
6 objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to
7 the Settlement.

8
9 11. All papers in support of the Settlement shall be filed with the Court and served on
10 the Parties' Counsel no later than 10 days before the Final Settlement Hearing.

11
12 12. The Settlement is not a concession or admission, and shall not be used against
13 Frito-Lay or any of the Released Parties as an admission or indication with respect to any claim of
14 any fault or omission by Frito-Lay or any of the Released Parties.

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

20
21 14. Plaintiff is hereby granted leave to file his First Amended Complaint, attached to
22 the Settlement as Exhibit 4, and shall file such within 7 calendar days following entry of this
23 Order. Defendant shall not be required to file a responsive pleading.

24
25 15. Plaintiffs are enjoined from initiating or prosecuting any proceeding on any claim
26 to be released pursuant to this Stipulation unless, and until, either the Plaintiff opts out of the class,
27 or the Effective Date does not occur.

16. The Court reserves the right to adjourn or continue the date of the Settlement Hearing and all dates provided for in the Stipulation without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

Dated: _____

BY ORDER OF THE COURT
HON. WINIFRED Y. SMITH
SUPERIOR COURT OF CALIFORNIA

SDH

PROOF OF SERVICE

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

On this date, I served the following:

[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PERMITTING PLAINTIFF TO FILE FIRST AMENDED COMPLAINT

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

Samantha D. Hardy, Esq.
Tara M. Duester, Esq.
Sheppard Mullin Richter & Hampton LLP
501 West Broadway, 19th Floor
San Diego, California 92101-3598

Attorneys for Defendants ROLLING
FRITO-LAY SALES, LP and FRITO-LAY,
INC.

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

— [By Overnight Delivery, UPS Next Day Air, C.C.P. § 1013(c)] UPS is a provider of overnight delivery services. I placed the above described document(s) in an envelope or package designated for use by UPS and delivered said designated envelope to an authorized Office or drop box of UPS at Oakland, California, with delivery fees for overnight delivery fully prepaid, and addressed to the addressee(s) above.

— [By Facsimile Transmission, C.C.P. § 1013(e),(f)] I caused such document to be transmitted by facsimile transmission to a facsimile machine maintained by the person(s) listed in the attached service list and at the fax numbers on that list which are the facsimile numbers last given by the addressee(s) on documents filed in this cause. I received electronic confirmation that said transmission had occurred.

— [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: May 25, 2018


Norma Dale