

1 Joseph Clapp, Esq., SBN 99194
2 Aiman-Smith & Marcy
3 7677 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

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.: RG 16811677

Assigned for all Purposes to
Honorable Robert McGuiness
Department 21

**[Proposed] Order Granting Final Approval of
Class Action Settlement and Entering
Judgment Thereon (CRC 3.769(h))**

Complaint Filed: April 14, 2016

1 Plaintiff's motions for an order finally approving the Stipulation and Settlement of
2 Representative and Class Action Claims ("Stipulation") and for an award of attorneys' fees,
3 costs, service payment to the Class Representative, and claims administration expenses, duly
4 came on for hearing on December 21, 2018, before the Honorable Robert McGuiness, Judge
5 of the above entitled Court. Joseph Clapp of the law firm of Aiman-Smith & Marcy appeared
6 on behalf of the Plaintiff Wayne Mauldin ("Named Plaintiff"). Samantha Hardy of the law
7 firm of Sheppard, Mullin, Richter & Hampton LLP appeared on behalf of Defendant Frito-
8 Lay, Inc. ("Defendant").

9 **I.**

10 **FINDINGS**

11 Based on the oral and written argument and evidence presented in connection with the
12 motions, the Court makes the following findings:

- 13 1. All terms used herein shall have the same meaning as defined in the Stipulation.
- 14 2. This Court has jurisdiction over the subject matter of this litigation pending
15 before the Honorable Robert McGuiness in Department 21 of the California Superior Court
16 for the County of Alameda ("Superior Court"), Case No. RG16811677, *Wayne Mauldin v.*
17 *Rolling Frito-Lay Sales, LP, et al.*, and over all Parties to this litigation, including all Class
18 Members.
19

20 **Preliminary Approval of the Settlement**

- 21
- 22 3. On June 1, 2018, the Court granted preliminary approval of a class-wide
23 settlement. At this same time the Court approved certification of a provisional settlement
24 class ("Plaintiffs") for settlement purposes only and authorized Plaintiff to file his First
25 Amended Complaint.
26

27 **Notice to Plaintiffs**

- 28 4. In compliance with the Preliminary Approval Order, class notice was mailed by

1 first class mail to 1773 Plaintiffs at their last known addresses on or about July 16, 2018.
2 Mailing of the Class Notice to their last known addresses was the best notice practicable
3 under the circumstances and was reasonably calculated to communicate actual notice of the
4 litigation and the proposed settlement to Plaintiffs.
5

6 5. The deadline for opting out or objecting was August 15, 2018. There was an
7 adequate interval between notice and deadline to permit Plaintiffs to choose what to do and
8 act on their decision. One Plaintiff opted out, leaving 1772 Class Members. There were no
9 objections to the Settlement.
10

11 **Fairness of Settlement**

12 6. The Stipulation is entitled to a presumption of fairness. (*Dunk v. Ford Motor*
13 *Co.* (1996) 48 Cal.App.4th 1794, 1801.)
14

15 a. The settlement was reached through arm's-length bargaining between
16 the parties during a mediation before Michael Dickstein, a respected mediator of wage and
17 hour class actions. There has been no collusion between the parties in reaching the proposed
18 settlement.
19

20 b. Plaintiffs' investigation and discovery have been more than sufficient to
21 allow the Court and counsel to act intelligently.

22 c. Counsel for both parties are experienced in similar employment class
23 action litigation. All counsel recommended approval of the Stipulation.
24

25 d. The percentage of objectors and requests for exclusion is small.

26 7. The consideration to be given to the Class Members under the terms of the
27 Stipulation is fair, reasonable and adequate compensation for the settlement of this action and
28

1 release of Class Members' claims, considering the strengths and weaknesses of the claims
2 asserted in this action and the uncertainties and risks of the litigation and the delays which
3 would ensue from continued prosecution of the action.
4

5 8. The proposed Stipulation is approved as fair, adequate and reasonable and in
6 the best interests of the Class Members.

7 **Attorneys' Fees**

8
9 9. The Stipulation provides for an award of up to \$240,000.00 to Class Counsel as
10 attorneys' fees in this action, subject to the Court's approval. The Stipulation also provides
11 for an award of up to \$11,000.00 for litigation costs. Class Counsel requests an award of
12 \$11,000.00 as reimbursement for litigation costs, and \$240,000.00 for attorneys' fees.

13
14 10. An award of \$240,000.00 for attorneys' fees and \$11,000.00 for litigation costs
15 is reasonable, in light of the contingent nature of Class Counsels' fee, the hours worked by
16 Class Counsel, and the results achieved by Class Counsel. The awarded attorneys' fee award
17 represents thirty percent (30%) of the Common Fund, which is reasonable and within the
18 benchmark range for fee awards in common fund cases.
19

20 **Service Award**

21 11. The Stipulation provides for a service award of up to \$15,000.00 for Named
22 Plaintiff Wayne Mauldin, subject to the Court's discretion. An award of \$15,000.00 for this
23 service award is reasonable in light of the risks and burdens undertaken by a named plaintiff
24 in class action litigation.
25

26 **Claims Administration Expenses**

27 12. The Stipulation provides for claims administration expenses in an amount not to
28

1 exceed \$20,000.00. The Court awards \$20,000.00 to the Claims Administrator, which is
2 reasonable in light of the work it has performed and will perform through the conclusion of
3 the administration process.
4

5 **PAGA Penalties**

6 13. The Stipulation provides for Private Attorneys General Act (“PAGA”) penalties
7 in an amount not to exceed \$60,000.00, with 75% (\$45,000.00) going to the Labor and
8 Workforce Development Agency (“LWDA”) and 25% (\$15,000.00) going to the Named
9 Plaintiff, Wayne Mauldin. The amount allocated to PAGA is reasonable in light of Plaintiff’s
10 claims in this Action.
11

12 **II.**

13 **ORDERS**

14
15 Based on the foregoing findings, and good cause appearing, IT IS HEREBY
16 ORDERED, ADJUDGED AND DECREED:

17 1. The Class is certified for the purposes of settlement only. The Settlement Class
18 is hereby defined to include:
19

20 All persons who worked for Defendants as Route Sales Associates (“RSAs”) in
21 the state of California at any time between March 8, 2015 and June 1, 2018.

22 2. All persons who meet the foregoing definition are members of the Class, except
23 for those individuals who filed a timely request for exclusion from the class.
24

25 3. The Stipulation is hereby approved as fair, reasonable, adequate, and in the best
26 interest of the stipulated Class.

27 4. Class Counsel are awarded attorneys’ fees in the amount of \$240,000.00 and
28

1 litigation costs in the amount of \$11,000.00. Class Counsel shall not seek or obtain any other
2 compensation or reimbursement from Defendant, Plaintiff or members of the Class.

3 5. The payment of a service award in the amount of \$15,000.00 for Named
4 Plaintiff is approved.
5

6 6. The payment of \$20,000.00 to the Claims Administrator for claims
7 administration services is approved.

8 7. The payment of \$60,000.00 in PAGA penalties, with 75% (\$45,000.00) going
9 to LWDA and 25% (\$15,000.00) going to Named Plaintiff, is approved.
10

11 8. Pursuant to California Rules of Court, rule 3.769(h), the Court hereby enters
12 Judgment in this Action. This Final Approval Order and Judgment binds each Class Member
13 and operates as a full release and discharge of the Released Claims. This Final Judgment
14 shall have a res judicata effect and bar all Class Members and Named Plaintiff from bringing
15 any action asserting "Released Claims" as that term is defined in the Stipulation.
16

17 9. The Stipulation and Settlement are not an admission by Frito-Lay or any of the
18 other Released Parties, nor is this Final Approval Order and Judgment a finding of the
19 validity of any claims in the Actions or of any wrongdoing by Frito-Lay or any of the other
20 Released Parties. Neither this Final Approval Order, the Final Judgment, the Stipulation, nor
21 any document referred to herein, nor any action taken to carry out the Stipulation is, may be
22 construed as, or may be used as an admission by or against Frito-Lay or any of the other
23 Released Parties of any fault, wrongdoing or liability whatsoever. The entering into or
24 carrying out of the Stipulation, and any negotiations or proceedings related thereto, shall not
25 in any event be construed as, or deemed to be evidence of, an admission or concession with
26
27
28

1 regard to denials or defenses by Frito-Lay or any of the other Released Parties and shall not
2 be offered in evidence in any action or proceeding against Frito-Lay or any of the Released
3 Parties in any court, administrative agency or other tribunal for any purpose whatsoever other
4 than to enforce the provisions of the Final Approval Order, the Final Judgment, the
5 Stipulation, or any related agreement or release. Notwithstanding these restrictions, any of
6 the Released Parties may file in the Action or in any other proceeding this Final Approval
7 Order and Judgment, the Stipulation, or any other papers and records on file in the Action as
8 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or
9 other theory of claim or issue preclusion or similar defense as to the Released Claims.
10

11
12 10. Notice of entry of this Final Approval Order and Judgment shall be given to
13 Class Counsel on behalf of Named Plaintiff and all Class Members. It shall not be necessary
14 to send notice of entry of this Final Approval Order and Final Judgment to individual Class
15 Members. The time for any appeal shall run from service of Notice of entry of the Final
16 Approval Order and Final Judgment, by Class Counsel on Defendant.
17

18 11. After entry of the Final Approval Order and Judgment, the Court shall retain
19 jurisdiction to construe, interpret, implement, and enforce the Stipulation, to hear and resolve
20 any contested challenge to a claim for settlement benefits, and to supervise and adjudicate
21 any dispute arising from or in connection with the distribution of settlement benefits. In
22 addition, a final compliance hearing shall be held before this Court on _____,
23 2019, at _____ a.m., in Department 21, 1221 Oak Street, Oakland, California 94612.
24 The Claims Administrator shall keep ten percent (10%) of the attorneys' fee awarded in the
25 Administrator's trust until the Court approves a final accounting.
26
27
28

12. If the Stipulation does not become final and effective in accordance with the terms of the Stipulation, resulting in the return and/or retention of the Settlement Fund to Frito-Lay consistent with the terms of the Stipulation, then this Final Approval Order and Judgment, and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

Dated: _____

BY ORDER OF THE COURT
HON. ROBERT MCGUINNESS
SUPERIOR COURT OF CALIFORNIA

1 **PROOF OF SERVICE**

2 I, the undersigned, hereby declare: I am employed in the County of Alameda,
3 California; I am over eighteen years of age and not a party to the within action. I am either
4 admitted to practice before this Court or employed in the Office of an attorney admitted to
5 practice in this Court. My business address is 7677 Oakport, Suite 1150, Oakland, California
6 94621.

7 On this date, I served the following:

8 **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION
9 SETTLEMENT AND ENTERING JUDGMENT THEREON (CRC 3.76(h))**

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

11 Samantha D. Hardy, Esq. 12 Tara M. Duester, Esq. 13 Sheppard Mullin Richter & Hampton LLP 14 501 West Broadway, 19 th Floor San Diego, California 92101-3598	Attorneys for Defendants ROLLING FRITO-LAY SALES, LP and FRITO-LAY, INC.
California Labor and Workforce Development Agency Attn.: PAGA Administrator 1515 Clay Street, Suite 801 Oakland, California 94612	

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

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

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

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

23 Dated: November 29, 2018

24 
25 Norma Dale