



1 This matter having come before the Court for hearing, pursuant to the Order  
2 of this Court dated April 10, 2012, for final approval of the settlement set forth in  
3 the Stipulation and Settlement Agreement of Class Action Claims ("Stipulation" or  
4 "Settlement") attached hereto as Exhibit A, and due and adequate notice having  
5 been given to the Plaintiffs as required in said Order, and the Court having  
6 considered all papers filed and proceedings had herein and otherwise being fully  
7 informed of the premises and good cause appearing, therefore, it is

8 ORDERED, ADJUDGED AND DECREED THAT:

9 1. All terms used herein shall have the same meaning as defined in the  
10 Stipulation.

11 2. This Court has jurisdiction over the subject matter of this litigation and  
12 over all Parties to this litigation, including all Plaintiffs.

13 3. Distribution of the Notice directed to the Plaintiffs as set forth in the  
14 Stipulation and the other matters set forth therein have been completed in  
15 conformity with the Preliminary Approval Order, including individual notice to all  
16 Plaintiffs who could be identified through reasonable effort, and was the best notice  
17 practicable under the circumstances. This Notice provided due and adequate notice  
18 of the proceedings and of the matters set forth therein, including the proposed  
19 settlement set forth in the Stipulation, to all persons entitled to such Notice, and the  
20 Notice fully satisfied the requirements of due process. Zero (0) Plaintiffs objected  
21 to the Settlement. Six (6) Plaintiffs opted out of the Settlement.

22 4. This Court hereby approves the settlement set forth in the Stipulation  
23 and finds that the Settlement is, in all respects, fair, adequate and reasonable and  
24 directs the Parties to effectuate the Settlement according to its terms. The Court  
25 finds that the Settlement has been reached as a result of intensive, serious and non-  
26 collusive arms-length negotiations. The Court further finds that the Parties have  
27 conducted extensive and costly investigation and research and counsel for the  
28 Parties are able to reasonably evaluate their respective positions. The Court also

1 finds that settlement at this time will avoid additional substantial costs, as well as  
2 avoid the delay and risks that would be presented by the further prosecution of the  
3 Action. The Court has reviewed the monetary recovery that is being granted as part  
4 of the Settlement and recognizes the significant value to the Settlement Class of that  
5 monetary recovery.

6 5. The Court further recognizes the significant value to the Class and  
7 Subclass of the Prospective Relief granted as part of the Settlement. Class Counsel  
8 reviewed the following payroll methodologies proposed by Defendants and  
9 concluded that they believe the payroll methodologies listed below would comply  
10 with state and federal wage and hour law on a going forward basis:

11 a. Frito-Lay will continue to pay commissions on store door value  
12 as currently structured, whereby sales are adjusted for product that is  
13 exchanged as unsaleable (i.e., stale or defective) and sales are  
14 transferred when product is rolled. Frito-Lay may also pay a bonus,  
15 which may be based in part on an RSR's performance against his or  
16 her unsaleables plan. Frito-Lay will create a more comprehensive  
17 explanation and written authorization explaining how commissions  
18 are calculated.

19 b. Frito-Lay will implement an advance commission system  
20 whereby commissions are advanced, but not earned, in the week they  
21 are calculated. The amount of the advance will be equal to the  
22 commissions on the sales for that week. When product is exchanged  
23 as unsaleable, the previously advanced commission will be deducted  
24 from the advance and the RSR will receive a commission advance on  
25 the new sale. When product is rolled, the previously advanced  
26 commission will be deducted from the advance and the RSR will  
27 receive a commission advance if the product is placed in a new store.  
28 Frito-Lay will create a comprehensive explanation and written

1 authorization explaining the advance commission system.

2 c. Frito-Lay will pay RSRs a salary in addition to a bonus.  
3 Factors dictating whether an RSR will be eligible for a bonus may  
4 include: (1) the RSR's sales performance, as compared to the sales  
5 plan for that RSR's route; (2) the amount of unsaleables on an RSR's  
6 route, as compared to the unsaleables plan for that RSR's route; and/or  
7 (3) the RSR's compliance with the service plan for his/her route. The  
8 bonus shall be comprised of certain pre-determined, fixed amounts  
9 based on percentage performance against some or all of these factors,  
10 and/or additional factors. The bonus may be paid monthly or on a  
11 different schedule. Frito-Lay will create a comprehensive explanation  
12 and written authorization explaining how the bonus system is  
13 structured.

14 6. For purposes of this Judgment, the term "Class" means all persons who  
15 are or were employed as a Route Sales Representative ("RSR") and/or similar  
16 position by Frito-Lay, Inc. or Rolling Frito-Lay Sales, LP (collectively "Frito-Lay")  
17 in the state of California who received a commission as part of their compensation  
18 from October 27, 2007 to April 10, 2012. The term "Subclass" means all Class  
19 Members whose employment with Frito-Lay, Inc. or Rolling Frito-Lay Sales, LP  
20 was terminated at any time from October 27, 2007 to April 10, 2012.

21 7. As of the Effective Date, each and every Released Claim of each and  
22 every Class Member is and shall be deemed to be conclusively released as against  
23 the Released Parties. All Class Members as of the Effective Date are hereby  
24 forever barred and enjoined from prosecuting the Released Claims against the  
25 Released Parties. In addition, as of the Effective Date, each and every Released  
26 Federal Claim of each and every Settlement Class Member is and shall be deemed  
27 to be conclusively released as against the Released Parties. All Settlement Class  
28 Members as of the Effective Date are hereby forever barred and enjoined from

1 prosecuting Released Federal Claims against the Released Parties.

2 8. The Stipulation and Settlement are not an admission by Frito-Lay or  
3 any of the other Released Parties, nor is this Judgment a finding, of the validity of  
4 any claims in the Action or of any wrongdoing by Frito-Lay or any of the other  
5 Released Parties. Neither this Judgment, the Stipulation, nor any document referred  
6 to herein, nor any action taken to carry out the Stipulation is, may be construed as,  
7 or may be used as an admission by or against Frito-Lay or any of the other Released  
8 Parties of any fault, wrongdoing or liability whatsoever. The entering into or  
9 carrying out of the Stipulation, and any negotiations or proceedings related thereto,  
10 shall not in any event be construed as, or deemed to be evidence of, an admission or  
11 concession with regard to the denials or defenses by Frito-Lay or any of the other  
12 Released Parties and shall not be offered in evidence in any action or proceeding  
13 against Frito-Lay or any of the Released Parties in any court, administrative agency  
14 or other tribunal for any purpose whatsoever other than to enforce the provisions of  
15 this Judgment, the Stipulation, or any related agreement or release.  
16 Notwithstanding these restrictions, any of the Released Parties may file in the  
17 Action or in any other proceeding the Judgment, Stipulation, or any other papers  
18 and records on file in the Action as evidence of the Settlement to support a defense  
19 of res judicata, collateral estoppel, release, or other theory of claim or issue  
20 preclusion or similar defense as to the Released Claims.

21 9. The Court hereby dismisses the Action on the merits and with  
22 prejudice against the Named Plaintiff and all Class Members in favor of Frito-Lay  
23 and without costs or attorneys' fees to any of the Parties as against any other settling  
24 party, except as provided for in the Stipulation. Without affecting the finality of  
25 this Judgment in any way, this Court hereby retains continuing jurisdiction over the  
26 interpretation, implementation and enforcement of the Settlement and all orders and  
27 judgments entered in connection therewith.

28 10. The Court hereby awards Class Counsel attorneys' fees ("Fees

1 Award") in the amount of \$660,000.00 and costs ("Costs Award") in the amount of  
2 \$22,226.21. Class Counsel shall not be entitled to any other award of attorneys'  
3 fees or costs in any way connected with this Action. The Court also hereby  
4 approves an Incentive Award to the Named Plaintiff in the amount of \$15,000.00.  
5 The Court also approves the payment of claims administration expenses in the  
6 amount of \$40,000.00. Any separate appeal from the portion of this Judgment as to  
7 the Fees Award shall not operate to terminate or cancel the Stipulation or otherwise  
8 affect the finality of this Judgment.

9 11. The Court approves the settlement of claims under the California  
10 Labor Code Private Attorneys General Act ("PAGA"), California Labor Code §  
11 2698, et seq., and approves the payment of \$10,000 to the California Labor &  
12 Workforce Development Agency ("LWDA") as the LWDA's share of the  
13 Settlement attributable to civil penalties under the PAGA.

14 12. After administration of the Settlement has been completed in  
15 accordance with the Stipulation and all amounts calculated, and in no event later  
16 than 180 days after the Effective Date, Frito-Lay shall file a report with this Court  
17 setting forth the total of the Gross Settlement Amounts for the Settlement Class  
18 Members and certifying compliance with the terms of the Settlement.

19 13. The Court finds that the Stipulation is in good faith and constitutes a  
20 fair, reasonable and adequate compromise of the Released Claims and Released  
21 Federal Claims against Frito-Lay.

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

6 IT IS SO ORDERED.

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8 DATED: October 29, 2012

*David O. Carter*  
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The Honorable David O. Carter  
United States District Court Judge

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11 Submitted by:

12 MESERVY LAW, P.C.  
13 THE LAW OFFICE OF DAVID P. STRAUSS  
14 SCHOR & FREELAND LLP

15  
16 By: /s/ London D. Meservy  
LONDON D. MESERVY

Dated: August 6, 2012

17 Attorneys for Plaintiff  
18 Edward De Stefan and for  
19 Class Members and SubClass Members  
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