

1 **WAGNER, JONES, KOPFMAN,  
& ARTENIAN LLP**

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10 Attorneys for Plaintiffs, DANIEL ACOSTA, JOSE HERNANDEZ, DENNIS EASLEY,  
11 ORLANDO CASTILLO

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 DANIEL ACOSTA, JOSE HERNANDEZ,  
16 DENNIS EASLEY, and ORLANDO  
17 CASTILLO,

Case No.: 15-cv-02128-JSC

CLASS ACTION

18 Plaintiffs,  
19 vs.

Magistrate Judge:  
Hon. Jacqueline Scott Corley

20 FRITO-LAY, INC.; FL TRANSPORTATION  
21 INC.; PEPSICO, INC.; and DOES 1-100,  
22 inclusive,

**DECLARATION OF NICHOLAS  
WAGNER IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEY FEES AND  
EXPENSES**

23 Defendants.

Date: 5/3/2018  
Time: 11 am  
Dept.: F (15<sup>th</sup> Floor)

24 I, NICHOLAS WAGNER, declare as follows

25 1. I am an attorney duly licensed to practice in all courts of the State of California, and  
26 a senior founding partner in the law firm of Wagner, Jones, Kopfman & Artenian LLP,  
27 attorneys for Plaintiffs herein.  
28

1 2. I have knowledge of the facts stated herein and if called upon to testify, would  
2 competently do so.

3 3. This declaration is given in support of Plaintiffs' Motion for Attorneys' Fees and  
4 Expenses.  
5

6 4. I graduated from the University of Notre Dame Law School in 1983 and was admitted  
7 to the California Bar in December, 1983. I have been practicing law throughout California  
8 continuously since that time for 33 years. I have been practicing employment law for 27 years. I  
9 have been prosecuting class action cases since 2004. I have lectured at seminars and have  
10 testified before the California State Assembly on employment law issues. I have argued  
11 employment law issues before the California Supreme Court. I have been named one of the elite  
12 attorneys in California by several legal publications.

13 5. The Law Firm of Wagner, Jones, Kopfman & Artenian LLP has been named as Class  
14 Counsel in numerous cases including the following: (a) *Matt Batrich v Prudential Overall*  
15 *Supply*, Fresno County Superior Court Case No. 01CECG02512; (b) *Juarez v BCI Coca-Cola*  
16 *Bottling Company of Los Angeles*, Fresno County Superior Court Case No. 02CECG00796; (c)  
17 *Collins v Superstores of America, Inc. dba MOR Furniture*, Fresno County Superior Court Case  
18 No. 03CECG01393; (d) *Galanti v. Cambridge Investments LLC*, San Diego County Superior  
19 Court Case No. GIC 828845, (e) *Krispy Kreme Overtime Cases; Coordinated Actions: Avina v.*  
20 *Krispy Kreme Doughnut Corp., et al. Hashimoto v. Krispy Kreme Doughnut Corp., et al.*  
21 *Alameda County Superior Court Case No. JCC4489*, (f) *Vanessa Alvarado v. Bobby Salazar's*  
22 *Restaurant*, (g) *Janet Orlando v. Alarm One*, Fresno Superior Court Case No.: 05ECG01585, (h)  
23 *Brett Goodman v. The Pepsi Bottling Group, Inc.*, Ventura Superior Court Case No.: CIV  
24 241341, (i) *Carol Lane v. Stewart Title of California*, Fresno Superior Court Case No.:  
25 07ECG01735, (j) *Lisa English v Financial Title*, Fresno County Superior Court Case No.  
26 05ECG01766, (k) *Tamara Cardoso v. First American Title Company*, Orange County Superior  
27 Court Case No.: 66 CC00197, (l) *Danielle Brewer v. First American Title Company*, Orange  
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1 County Superior Court Case No.: 30-2007-00035365-CU-OE-CAC, (m) *Raymond C. Martinez v.*  
2 *Gerrard, Inc., Richard Gorubec*, Fresno Superior Court Case No.: 04 ECG 02833, (n) *Vanessa*  
3 *Alvarado v. Bobby Salazar's Restaurant*, Fresno Superior Court Case No.: 05 ECG 00159, (o)  
4 *Lloyd Martin and Grady O'Bryant v. Ameripride Services, Inc.*, U.S. District Court, Southern  
5 District of California Case No. 08-CV-0440, (p) *Jones, et al. v. Seven-Up RC Bottling Company*  
6 *of Southern California*, Los Angeles County – Central Civil West Case No.: BC381293, (q)  
7 *Cortina v. North American Title Company and North American Services, LLC*, Fresno Superior  
8 Court Case No. 07CECG01169, (r) *Chaffin v. Landamerica, Financial Group, et al.*, Los  
9 Angeles Superior Court Case No. BC381693, (s) *Hay v. Landamerica Financial Group, et al.*,  
10 Los Angeles Superior Course Case No. BC382210, (t) *Williams et al. v. Ruan, et al.*, Tulare  
11 County Superior Court, Case No. VCU09-231325, (u) *Erickson, et al. v. Old Republic*, United  
12 States District Court, Southern District of California, Case No. 13-cv-1210, (v) *Ridgeway, et al.*  
13 *v. Wal-Mart Stores, Inc., et al.*, United States District Court, Northern District of California, Case  
14 No. 3:08-cv-05221.

15 6. I have already personally spent 207.6 hours in prosecuting this case. I anticipate that  
16 I will spend approximately 20-30 additional hours on reading, reviewing and amending Final  
17 Approval documents, attending the Final Approval hearing, and meeting and conferring with  
18 class members about the settlement and the settlement process. The time records I have  
19 submitted do not necessarily reflect all of the hours I have worked on the case. Due to my  
20 sometimes crazy workdays, I typically do not record all of the routine discussions among  
21 attorneys, instructions to paralegals, law clerks and staff members, strategy discussions over  
22 lunch, evenings and weekend phone calls and text messages, and other activities that actually  
23 contribute to the advancement of a case.

24 7. The present action necessitated a significant financial risk taken on by my firm. As a  
25 result of the hundreds of hours of time devoted to the case by my firm, and the expenditure of  
26 over \$36,000.00 in litigation costs, we have been unable to undertake representation of various  
27 other clients/cases during the more than three (3) years that this case has been litigated, which  
28

1 cases the firm would normally have taken on, in order to allow the time and money needed for  
2 the prosecution of this case against Frito-Lay.

3 8. As a direct result of the demands of this litigation, my firm was required to pass up  
4 case opportunities that could have produced more immediate financial results. The firm also was  
5 required to finance various costs and expenses associated with the case.

6 9. During the more than three (3) years that this case has been litigated, the members of  
7 my firm have pursued a cause we all believe in. We have worked without any compensation at  
8 all for over three (3) years while attempting to recover unpaid wages for the hard working class  
9 of men and women we proudly represent.

10 10. In summary, my firm took on a substantial when electing to take on this contingency  
11 fee based case, and in advancing all of the required out-of-pocket costs and expenses. Since the  
12 outset of this litigation there has always been a reasonable possibility that we could lose the case  
13 and receive no compensation whatsoever. In addition, a small firm like ours necessarily faces a  
14 loss of opportunity in regard to other cases that had to be rejected, as a result of pursuing class  
15 litigation of this size and duration. We simply do not have the capacity to support multiple such  
16 cases at the same time, so that many other potentially profitable cases must be turned away on a  
17 regular basis to preserve our ability to respond to the demands of this type of class litigation.

18 11. When originally evaluating and then ultimately deciding to accept the substantial  
19 risks inherent in taking on the claims for the benefit of this Class, we believed and expected that  
20 if we were eventually successful we would be compensated by way of an award of a reasonable  
21 fee. Indeed, considering the magnitude of the risk and the lengthy commitment of resources  
22 required to prosecute such a class action suit against a defendant of this size and wealth, very few  
23 class litigants would be able to obtain effective legal representation if successful counsel were  
24 not paid at least market rate contingency fee compensation. In my opinion, it would be  
25 unreasonable that any trial counsel should be compensated in the "marketplace" with anything  
26 less than a 25% contingency fee for their efforts in engaging in three (3) years of litigation,  
27 devoting over 1,000 attorney hours to the litigation, and achieving an excellent result for the  
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1 Class. As such, we ask that the Court award a reasonable one-quarter (25%) fee to compensate  
2 Class Counsel for their work on the case, the risks undertaken and weathered to date, and the  
3 excellent results delivered for all the class members.

4 12. The average class member in this settlement will receive just over \$24,000.00 after  
5 the requested 25% attorney fees, litigation expenses, class administration costs and requested  
6 class representative enhancements are deducted from the gross settlement amount of \$65 million.  
7 Such an award per person is exceptional not only in employment class actions, but also in  
8 individual employment wage and hour cases. When the class representatives retained our  
9 services, they signed contingency fee agreements, agreeing to pay attorney fees of 40 percent of  
10 any recovery. Based upon the significant success of obtaining the settlement, the three (3) year  
11 battle to get there, the expenditure of over \$36,000.00 in litigation costs, more than three (3)  
12 years of work without any compensation on a complex and risky litigation, an attorney fee award  
13 of 25% of the class recovery is eminently reasonable, and we respectfully and humbly request  
14 that the Court award such.

15  
16 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
17 14th day of March, 2018, at Fresno, California.

18  
19           /s/          Nicholas Wagner  
20 Nicholas Wagner

21 In compliance with Local Rule 5-1(i)(3) and as the filer of this declaration and its attached  
22 exhibits, I have obtained the concurrence of each other signatory to file this document.

23           /s/          Daniel M. Kopfman  
24 Daniel M. Kopfman