

# **EXHIBIT A**

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Attorneys for Plaintiff Steven Kane, on behalf of himself  
and other similarly-situated employees*[Additional Counsel, next page]***UNITED STATES DISTRICT COURT****CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**STEVEN KANE, on behalf of  
himself and other similarly-situated  
employees,

Plaintiff,

vs.

SMITHFIELD DIRECT, LLC, a  
Delaware Limited Liability  
Company; and DOES 1 through 10,  
inclusive,

Defendants.

**CASE NO. 21-CV-04832 PA (JCx)  
CLASS ACTION****STIPULATION OF CLASS ACTION  
AND PAGA SETTLEMENT AND  
RELEASE OF CLAIMS****Exhibits:**

1. **Class Notice**
2. **Change of Address Form**
3. **Preliminary Approval Order**
4. **Final Approval Order and Judgment**

Complaint filed: April 12, 2021

Removal date: June 14, 2021

Trial date: None set

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1 **STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE**

2 **IT IS HEREBY STIPULATED**, by and among Plaintiff Steven Kane, individually,  
3 and on behalf of all others similarly-situated and aggrieved, and Defendant Smithfield Direct,  
4 LLC subject to the approval of the Court, that this Class and representative action is  
5 compromised and settled pursuant to the terms and conditions set forth below in this Stipulation  
6 of Class Action and PAGA Settlement and Release:

7 **DEFINITIONS**

8 1. “Action” means the putative Class and PAGA action entitled *Steven Kane v.*  
9 *Smithfield Direct, LLC et al.*, filed on April 12, 2021 in the Superior Court of California,  
10 County of Los Angeles, Case No. 21STCV13736, and removed to the United States District  
11 Court, Central District of California, Case No. 21-CV-04832 PA (JCx) where it is currently  
12 pending.

13 2. “Administrator” or “Administration” means CPT Group, Inc. the third-party  
14 entity which the Parties mutually agree shall serve as Administrator.

15 3. “Administration Payment or Costs” means the payment to the Administrator for  
16 the actual and direct costs reasonably charged by the Administrator for its services in  
17 administering the Settlement as set forth in this Agreement. The Settlement Administration  
18 expenses are not to exceed \$6,500. The Settlement Administration Payment shall be paid from  
19 the Gross Settlement Amount.

20 4. “Agreement,” or “Settlement Agreement,” or “Settlement” means this  
21 Stipulation of Class Action and PAGA Settlement and Release.

22 5. “Attorneys’ Fees and Costs Payment” means such payment of attorneys’ fees  
23 and litigation costs as the Court may authorize to be paid to Class Counsel for the services  
24 they have rendered to the Plaintiff and the Class and expenses they have incurred in  
25 prosecuting the Action, including, but not limited to, costs associated with documenting the  
26 Settlement, securing the Court’s approval of the Settlement, and administering the Settlement.  
27 The Attorneys’ Fees and Costs Payment will be paid out of—and will not increase—the Gross  
28 Settlement Amount. Any portion of the Attorneys’ Fees and Costs Payment not awarded shall

1 remain with the Maximum Settlement Amount and made available for payments to  
2 Participating Class Members.

3 6. “Claims” means, and refers to, all allegations of wrongful conduct which were  
4 or could have been asserted in this Action based on the factual allegations pled in the Action,  
5 including allegations that Defendant failed (1) to pay minimum wage in violation of California  
6 Labor Code<sup>1</sup> §§ 204, 1194, 1194.2, and 1197; (2) to pay overtime in violation of Labor Code  
7 §§ 510 and 1194; (3) to pay vacation wages in violation of Labor Code §§ 227.3 and 218.5;  
8 (4) to provide meal periods or pay in lieu thereof in violation of Labor Code §§ 226.7 and 512;  
9 (5) to provide mandated rest periods or pay additional wages in lieu thereof in violation of  
10 Labor Code §§ 226.7, 558 and § 12 of the applicable Wage Order; (6) to provide sick pay in  
11 violation of Labor Code § 246; (7) to provide accurate itemized wage statements in violation  
12 of Labor Code §§ 226 and 1174; (8) to pay all wages owed at termination in violation of  
13 California Labor Code §§ 201–203, (9) based on these claims, unlawful, unfair, and/or  
14 fraudulent business acts or practices in violation of California Business & Professions Code §  
15 17200 et seq., and (10) civil penalties pursuant to the Private Attorneys General Act of 2004,  
16 Labor Code section 2698, *et. seq.*

17 7. “Class Member(s)” means: all individuals employed by Defendant in  
18 California as hourly Route Sales Representatives or Relief Route Sales Representatives at any  
19 time during the period from April 12, 2017 through November 30, 2020. Any person who  
20 previously settled or released all of the claims covered by this settlement, or any person who  
21 previously was paid or received awards through civil or administrative actions for all of the  
22 claims covered by this settlement, shall not be a Class Member.

23 8. “Class” means the collective group of those individuals who are Class Members.

24 9. “Class Counsel” means Cohelan Khoury & Singer and the Davtyan Law Firm,  
25 Inc.

26 10. “Class Notice” (or “Notice”) means the Court-approved Notice of Class Action  
27 Settlement informing Class Members of the terms of the proposed Settlement, of their rights to

28 <sup>1</sup> All references to the Labor Code refer to the California Labor Code.

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object to any term of the Settlement, to dispute the information upon which their Settlement Payments will be based, and of the right to request exclusion from the Class Action, substantially in the form attached as **Exhibit “1.”** The Class Notice will be mailed together with a Change of Address Form, attached as **Exhibit “2”**, and pre-printed return envelope, (“Notice Packet”).

11. “Class Period” means any time during the period from April 12, 2017 through November 30, 2020.

12. “Class Representative Service Payment” or “Service Payment” means the amount the Court authorizes to be paid to the Plaintiff over and above his individual Settlement Payment, in recognition of his initiation and prosecution of the Action, work and efforts in obtaining the benefits of the Settlement for the Class, for undertaking the risk for the payment of costs in the event this matter had not successfully resolved, and for providing a General Release of all claims against Released Parties. Plaintiff Steven Kane will request, and Defendant will not oppose, a Service Payment of Ten Thousand Dollars (\$10,000). The Service Payment shall be paid out of—and will not increase—the Gross Settlement Amount.

13. “Complaint” means the complaint commencing the Action on April 12, 2021 by Plaintiff Steven Kane, naming Smithfield Direct, LLC, as Defendant in Superior Court of the State of California, County of Los Angeles, Case No. 21 STCV 13736, which was subsequently amended on May 11, 2021 by a First Amended Complaint (“FAC”) adding claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA”), and on June 14, 2021 removed to the United States District Court, Central District of California, assigned Case No. 21-CV-04832 PA (JCx).

14. “Court” means the United States District Court, Central District of California in which this Action is currently pending.

15. “Defendant” means Smithfield Direct, LLC.

16. “Defendant’s Counsel” means Hunton Andrews Kurth LLP.

17. “Employer Tax Obligations” means the Defendant’s share of payroll taxes, including, but not limited to, FICA, Medicare, ETT, FUTA, and SUTA, etc., with respect to

1 the portion of the Gross Settlement Amount that is treated as wages.

2 18. "Effective Date of Settlement" means the later of (a) if any timely objections  
3 are filed and not subsequently withdrawn, the 30th day after the Court enters an order granting  
4 final approval of the Agreement; (b) if any timely appeals are filed, the date of the resolution  
5 (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement; or  
6 (c) if no timely objections are filed, or if all objections are withdrawn, the date upon which the  
7 Court enters an order granting final approval of the Agreement.

8 19. "Final Approval" means that the Final Approval Order and Judgment have been  
9 entered.

10 20. "Final Approval Hearing" means a hearing held before the Court to consider  
11 Final Approval of the Settlement, and in what amount Attorneys' Fees and Litigation Costs  
12 should be awarded to Class Counsel, and a Service Payment awarded to the Class  
13 Representative Plaintiff Steven Kane, and the merits of objections to the Settlement, if any.

14 21. "Final Approval Order and Judgment" means an Order and Judgment issued by  
15 the Court in substantially the form attached as **Exhibit "4,"** approving the Settlement and this  
16 Agreement as binding upon the Parties and all Participating Class Members;

17 22. "Gross Settlement Amount" (or "GSA") means the total amount Defendant will  
18 pay under this Settlement in full satisfaction of all Claims arising in the Action, which include  
19 Settlement Payments to Participating Class Members, the Class Representative Service  
20 Payment to Plaintiff, Administration Costs to CPT Group, Inc., the PAGA Payment (75% to  
21 the LWDA, and 25% to the PAGA Members), the Attorneys' Fees and Costs, and the  
22 Employer Tax Obligations. The GSA is equal to and shall not exceed \$350,000 (Three  
23 Hundred Fifty Thousand Dollars and Zero Cents).

24 23. "Net Settlement Amount" (or "NSA") means the amount remaining after the  
25 Court-approved deductions from the Gross Settlement Amount for the Administration Costs,  
26 the Class Representative Service Payment, Attorneys' Fees and Costs Payment, the PAGA  
27 Payment, and Employer Tax Obligations. The Net Settlement Amount will be distributed  
28 entirely to Participating Class Members without the need to return a claim form.

24. “Notice” (or “Class Notice”) means the Court-approved Notice of Class Action Settlement to be mailed to all Class Members, informing them of the terms of the proposed Settlement, of their rights to object, to dispute the information upon which their Settlement Payments will be based, and of the right to request exclusion from the Class Action substantially in the form attached as **Exhibit “1”**, among other things.

25. “Notice Packet” means the Notice of Class Action Settlement (**Exhibit “1”**), Change of Address Form (**Exhibit “2”**), and the pre-printed return envelope to be mailed to each Class Member by the Administrator.

26. “PAGA Members” means all individuals employed by Defendant in California as hourly Route Sales Representatives or Relief Route Sales Representatives at any time during the PAGA Period. Defendant has represented there are an estimated 28 PAGA Members employed during the PAGA Period.

27. “PAGA Payment” means an allocation from the Gross Settlement Amount of \$15,000 of which 75% (\$11,250) will be paid to the California’s Labor and Workforce Development Agency (“LWDA”) for all applicable civil penalties under the California Labor Code’s Private Attorneys General Act of 2004, Labor Code §§ 2699 *et seq.*, (“LWDA Payment”), and 25% (\$3,750) will be distributed proportionately to all PAGA Members, (“PAGA Member Payment”).

28. “PAGA Period” means that period from March 7, 2020 through November 30, 2020.

29. “PAGA Pay Periods” means the number of pay periods in which a PAGA Member performed compensable work for Defendant during the PAGA Period, as reflected in Defendant’s business and payroll records. Class and PAGA Members were paid weekly, which is a pay period. PAGA Members were employed an estimated 875 PAGA Pay Periods during the PAGA Period.

30. “Participating Class Members” means all members of the Class who do not return a valid and timely request for exclusion by the Response Deadline. Upon the Effective Date of Settlement, and as set forth in this Agreement, each Participating Class Member will



1 be mailed a Settlement Payment.

2 31. “Parties” means Plaintiff and Defendant collectively.

3 32. “Party” means either of said Parties.

4 33. “Plaintiff” or “Class Representative” means Steven Kane.

5 34. “Preliminary Approval” means the Court has entered the Preliminary Approval  
6 Order preliminarily approving the terms and conditions of this Settlement, conditionally  
7 certifying the Class, approving the Class Notice, including the form and manner of providing  
8 notice to the Class, and setting a date for the Final Approval Hearing.

9 35. “Preliminary Approval Order” means the order issued by the Court substantially  
10 in the form attached as **Exhibit “3”**.

11 36. “Released Claims” means all claims, demands, rights, liabilities, and causes of  
12 action, arising during the Class Period, that were pled in the Complaint, or which could have  
13 been pled based on the facts alleged, whether in tort, contract, statute, rule, ordinance, order,  
14 regulation, or otherwise, for state and federal wage and hour laws (including, but not limited  
15 to, California Labor Code §§ 201-203, 227.3, 218.5, 226, 226.7, 246, 510, 512, 551, 552, 558,  
16 1174, 1194 1194.2, 1197 or 2698 *et seq.* (PAGA) and the Industrial Welfare Commission  
17 Wage Orders), whether for economic damages, non-economic damages, restitution, penalties,  
18 wages, liquidated damages, interest or attorneys’ fees, including but not limited to: the causes  
19 of action asserted in the Complaint for Defendant’s alleged failure (1) to pay wages including  
20 minimum wages and overtime, (2) to pay vacation and sick leave, (3) to provide meal or rest  
21 periods or pay additional wages in lieu thereof, (4) to provide accurate itemized wage  
22 statements, (5) to timely pay all wages upon termination, and (6) as related to the foregoing,  
23 the causes of action for alleged unlawful, unfair and/or fraudulent business practices under  
24 California Business and Professions Code § 17200, *et seq.*, and (7) civil penalties pursuant to  
25 the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

26 37. “Released Parties” means Defendant and each of its respective past, present and  
27 future owners, stockholders, parent corporations, related or affiliated companies, subsidiaries,  
28 officers, directors, shareholders, employees, agents, principals, heirs, representatives,

1 accountants, attorneys, auditors, consultants, insurers and re-insurers, and each of their  
2 company-sponsored employee benefit plans of any nature (including, without limitation,  
3 profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their  
4 respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and  
5 any individual or entity which could be jointly liable with Defendant.

6 38. "Response Deadline" means the deadline by which Class Members must  
7 postmark and return to the Administrator their written requests for exclusion, challenges to the  
8 information on which their Settlement Payment will be calculated, or written statements  
9 setting forth specific reasons for objections to the Settlement. The Response Deadline will be  
10 sixty (60) calendar days from the initial mailing of the Notice Packet by the Administrator,  
11 unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline  
12 will be extended to the next day on which the U.S. Postal Service is open. The Response  
13 Deadline will be extended fifteen (15) calendar days for any Class Member who is re-mailed a  
14 Notice Packet by the Administrator, unless the 15th day falls on a Sunday or Federal holiday,  
15 in which case the Response Deadline will be extended to the next day on which the U.S. Postal  
16 Service is open. The Response Deadline may also be extended by express agreement between  
17 Class Counsel and Defendant. Under no circumstances, however, will the Administrator have  
18 the authority to unilaterally extend the deadline for Class Members to submit a request for  
19 exclusion.

20 39. "Settlement" means the terms and conditions set forth in this Agreement.

21 40. "Settlement Payment" means the gross amount (including any taxes or other  
22 standard withholdings) each Participating Class Member is entitled to receive based on their  
23 number of Workweeks worked during the Class Period, and if eligible, the number of PAGA  
24 Pay Periods employed during the PAGA Period.

25 41. "Workweek" or "Weeks worked" is defined as any week in which the Class  
26 Member worked at least one (1) day in that week as reflected by Defendant's employment  
27 records. Defendant represents there are an estimated 5,114 Workweeks worked by the Class  
28 during the Class Period. If the aggregate number of Workweeks increases by more than 10%,

i.e., by more than 5,625.4 (10% of 5,114), the Parties will meet and confer in good faith regarding the potential increase of the Gross Settlement Amount. If the Parties do not agree, then Plaintiff in his sole discretion within ten (10) business days of notification of the increased number of Workweeks, shall notify Defendant in writing of his intention to nullify this Settlement in its entirety. The aggregate number of Workweeks must be determined and provided to Plaintiff's Counsel by the Administrator following receipt of the Class List and Data at least five (5) business days prior to the mailing of the Notice Packet to the Class.

### **PROCEDURAL HISTORY, INVESTIGATION AND DISCOVERY**

42. On April 12, 2021 Plaintiff filed a complaint in the Superior Court of California, County of Los Angeles, Case No. 21STCV13736 entitled: *Steven Kane v. Smithfield Direct, LLC*. On May 11, 2021 the complaint was amended to add claims for civil penalties arising under PAGA, and on June 14, 2021, Defendant removed the Action to the United States District Court, Central District of California, Case No. 21-CV-04832 PA (JCx) where it is currently pending. On June 21, 2021 filed its Answer to the Complaint (ECF 10).

43. The Parties have conducted substantial formal discovery and informal investigation in connection with the claims and allegations asserted in the Action. The Parties have conducted depositions, propounded written discovery, and researched and briefed the relevant legal and factual issues arising from all of the claims and facts that are alleged in, or could have been alleged in the Action. The Parties conducted the depositions of Plaintiff Steven Kane and of Defendant's corporate representative(s) pursuant to Fed. R. Civ. P. 30(b)(6). Plaintiff also filed his motion for class certification.

44. Following agreement to attend mediation, Class Counsel requested and Defendant informally produced data, documents and information to allow assessment of Class-wide liability and damages that included (1) 781 pages of documents of relevant time keeping, meal and rest period and expense reimbursement policies and procedures; (2) relevant job descriptions for years 2017 - 2020; (3) total number of Class Members and their Workweeks during the Class Period; (4) total number of PAGA Members and their Pay Periods during the PAGA period; (5) number of terminated employees; (6) the average hourly

1 rates for Class Members during the periods from April 12, 2017 to December 31, 2017 and  
2 January 1, 2018 through November 2020; and (7) two Microsoft excel spreadsheets containing  
3 over 23,000 lines of data of time punch details for Plaintiff and 14 randomly selected Class  
4 Members. Class Counsel reviewed and analyzed the data, and extrapolated the damages to the  
5 entire Class for the Class Period.

6 45. On October 25, 2021, the Parties attended a day-long mediation with Deborah  
7 Saxe, an experienced and well-regarded mediator, facilitating the arms'-length settlement  
8 negotiations. Taking all discussions and negotiations into consideration, by the end of the day,  
9 the Parties reached agreement on the principal terms of the proposed Settlement, and entered  
10 into a memorandum of understanding. Since then, the Parties have diligently continued to  
11 negotiate the balance of the terms contained in this Agreement. The Parties have considered:  
12 (1) Plaintiff's ability to certify a class; (2) the relative merits of the case and the uncertainties  
13 of trial; (3) the benefits of settlement; (4) the costs, risks, and delays associated with litigating  
14 this Action; and (5) the likely appeals from any dispositive rulings or denial of class  
15 certification. Based on these considerations, the Parties agreed to completely settle this Action  
16 to avoid the costs of continued litigation and trial.

### 17 **PLAINTIFF'S CLAIMS**

18 46. Plaintiff has claimed and continues to claim that the Released Claims have merit  
19 and give rise to the Released Parties' liability. Neither this Agreement nor any documents  
20 referred to, or any action taken to carry out this Agreement is, or may be construed as, or may  
21 be used as, an admission by or against the Class Members or Class Counsel or any Party or  
22 Counsel as to the merits or lack thereof of the claims asserted, except to show resolution of the  
23 Released Claims.

### 24 **NO ADMISSION OF LIABILITY**

25 47. This Agreement represents a compromise and settlement of the Action. Neither  
26 this Agreement, nor any document referred to or contemplated, nor any action taken to carry  
27 out this Agreement may be construed as, or may be used as an admission, concession, or  
28 indication by or against Released Parties that Plaintiff's claims in the Action have merit or that

1 they have any fault, wrongdoing, or liability to Plaintiff or the Class on those claims  
2 whatsoever, including any concession that certification of a class continues to be appropriate  
3 in this case.

4 48. It is the intention of the Parties to this Settlement Agreement to settle and  
5 dispose of, fully and completely, any and all claims, demands and causes of action that are, or  
6 could have been, set forth in the Action based on the facts and causes of action alleged in the  
7 Complaint.

8 49. This Agreement is made for the sole purpose of consummating settlement of all  
9 causes of action, or related claims arising out of those contained in the Complaint. By  
10 entering into this Agreement, the Parties do not admit the allegations or contentions of the  
11 other Party, and each Party is entering into this Agreement for the sole purpose of resolving  
12 this matter and avoiding the time and expense incidental to protracted litigation. The Released  
13 Parties specifically deny all of Plaintiff's claims as to liability and remedies, as well as  
14 Plaintiff's Class and representative allegations, and expressly reserve all rights to challenge all  
15 such claims and allegations upon all procedural and substantive grounds, including  
16 challenging class certification and manageability under PAGA and the assertion of any and all  
17 other defenses if the Court does not approve this Agreement and/or if the Settlement does not  
18 become effective as defined by this Agreement.

#### 19 **INADMISSIBILITY OF SETTLEMENT AGREEMENT**

20 50. Whether or not the Settlement is finally approved, neither the Settlement, nor  
21 any of its terms, nor any document, statement, proceeding, or conduct related to this  
22 Agreement, nor any reports or accounts thereof, shall in any event be:

23 A. Construed as, offered, or admitted in evidence as, received as, or deemed  
24 to be evidence for any purpose adverse to the Released Parties, including, but not limited to,  
25 evidence of a presumption, concession, indication, or admission by any of the Released Parties  
26 of any liability, fault, wrongdoing, omission, concession or damage; or

27 B. Disclosed, referred to or offered or received in evidence against any of  
28 the Released Parties, in any further proceeding in the Action, or in any other civil, criminal, or

administrative action or proceeding except for purposes of settling this Action pursuant to the terms of this Agreement or enforcing the release of the Released Claims.

### **FAIRNESS AND BENEFITS OF SETTLEMENT TO THE CLASS**

51. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in obtaining and maintaining class certification. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's defenses, and the difficulties in establishing damages for the Class. Plaintiff has also considered the information exchanged at the mediation facilitated by Mediator Deborah Saxe to reach agreement on all material terms of this Settlement Agreement. Based on the foregoing, Plaintiff, Class Counsel, Defendant, and Defendant's Counsel have determined that the Settlement set forth in this Agreement, and its terms, are fair, adequate, equitable and reasonable, the product of good faith, arms'-length negotiations between the Parties, are consistent with public policy, and fully comply with applicable provisions of law, and in the best interests of all Class Members.

### **RELEASE AS TO ALL CLASS MEMBERS**

52. Plaintiff does, and all Participating Class Members will, agree that upon the Effective Date of Settlement, they shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, released the Released Parties from the Released Claims. The Settlement Payments shall be paid to Participating Class Members specifically in exchange for the release of the Released Parties from the Released Claims.

### **GENERAL RELEASE BY PLAINTIFF**

53. In addition to the Released Claims given by Participating Class Members, Plaintiff also gives a General Release of all Claims, known and unknown, as of the Effective Date of Settlement in exchange and consideration of Plaintiff's Service Payment. The General Release includes any unknown claims that Plaintiff does not know or suspect to exist in his

1 favor at the time of the General Release, which, if known by him, might have affected his  
 2 settlement with, and release of, the Released Parties or might have affected his decision not to  
 3 object to this Settlement or the General Release. With respect to the General Release, Plaintiff  
 4 stipulates and agrees that, upon the Effective Date, he shall be deemed to have, and by  
 5 operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest  
 6 extent permitted by law, the provisions, rights and benefits of Section 1542 of the California  
 7 Civil Code, which reads as follows:

8       Section 1542. [General Release – Claims Extinguished.] A general release does not  
 9       extend to claims that the creditor or releasing party does not know or suspect to exist in  
 10       his or her favor at the time of executing the release, that if known to him or her must  
 11       have materially affected his or her settlement with the debtor or released party.

#### 12       **FUNDING AND DISTRIBUTION OF GROSS SETTLEMENT AMOUNT**

13       54. Within five days (5) days of the Effective Date of Settlement, Defendant shall  
 14       pay the Gross Settlement Amount to the Administrator.

15       55. Following the anticipated Court-approved deductions for the Attorneys' Fees  
 16       (\$116,666), and Litigation Costs (up to \$19,000), Service Payment (\$10,000), the PAGA  
 17       Payment (\$15,000), Administration Costs (\$6,500), and Employer Tax Obligations estimated  
 18       at \$8,806.50, the remaining sum, the Net Settlement Amount estimated at \$174,027.50 will be  
 19       entirely distributed to Class Members as provided for by this Agreement. In addition, the  
 20       PAGA Payment will be paid as provided for by this Agreement (75% to the LWDA and 25%  
 21       paid proportionally to all PAGA Members).

22       56. Within ten (10) business days of the receipt of the Gross Settlement Amount by  
 23       the Administrator, it shall distribute the Settlement Payments to Participating Class Members,  
 24       the LWDA Payment to the LWDA, the PAGA Member Payments to the PAGA Members, the  
 25       Court-approved sums for Attorneys' Fees and Costs to Class Counsel, the Service Payment to  
 26       the Class Representative, and the Administration Costs Payment to itself.

27       ///

28       ///

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**NOTICE/APPROVAL OF SETTLEMENT AND**  
**SETTLEMENT IMPLEMENTATION**

57. As part of this Settlement, the Parties agree to the following procedures for obtaining Preliminary Approval of the Settlement, and providing notice of the Settlement to the Class:

A. Preliminary Approval Hearing. Class Counsel shall notice a hearing before the Court to request Preliminary Approval of the Settlement. In conjunction with this hearing, Class Counsel will submit this Agreement (including all exhibits) setting forth the terms of this Settlement.

B. Information Regarding Class. Within fourteen (14) calendar days of Preliminary Approval Order, Defendant shall provide the Administrator with a list showing for each Class Member the following information: name, most current mailing address, telephone number(s) and email address as indicated in Defendants' records, social security number, dates of employment, the aggregate number of Workweeks, and the aggregate number of PAGA Pay Periods, (the "Class List and Data"). Once the Class List and Data have been received and reviewed by the Administrator, it shall provide the Parties, at least five (5) business days following its receipt, with the aggregate number of Workweeks worked by Class Members, and the aggregate number of PAGA Pay Periods worked by PAGA Members.

C. Notice Packets to Class Members. The Administrator shall mail within 35 days of receipt of the Class List and Data, the Court-approved Notice of Class Action Settlement, Change of Address Form, and preprinted return envelope by U.S. First Class Mail to all persons shown by Defendant's records to be Class Members.

D. Notice Procedure. The Parties agree to the following procedures for giving notice of this Settlement to the Class:

1. Prior to mailing the Notice Packets, the Administrator will update the mailing addresses for all Class Members by first using the National Change of Address ("NCOA") database and other available resources deemed suitable by the Administrator. After conducting the NCOA search and making the address corrections indicated, the Administrator



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will mail the Notice Packet to each Class Member. The envelope containing the Notice Packet shall include the following language on the exterior:

**IMPORTANT LEGAL DOCUMENT:**  
**You may get Money from a Class Action Settlement; your prompt reply to correct a BAD address is required.**

2. Notice Packets returned to the Administrator with a forwarding address shall be re-mailed by the Administrator within three (3) business days of receipt of the returned Notice Packet.

3. All Notice Packets returned to the Administrator as non-deliverable without a forwarding address shall be researched by the Administrator using the Class Member's social security number and Accurint, or substantially similar skip tracing method to ascertain a more recent mailing address. If a new address is located, the Notice Packet shall be re-mailed within five (5) business days of receipt of the returned Notice Packet.

4. If a Notice Packet belonging to a currently employed Class Member is returned as undeliverable, the Administrator will notify the Parties and Defendant shall thereafter confirm the most recent address it has and provide same to the Administrator for remailing of the Notice Packet within three (3) business days of receipt of the updated address.

5. All Class Members who receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) calendar days from the original Response Deadline.

6. The Class Notice will inform Class Members they will be responsible for keeping the Administrator apprised of any changes in their mailing address to ensure receipt of their Settlement Payments checks.

E. Administrator. The Administrator shall be responsible for (a) performing a National Change of Address database search to update Class Member addresses prior to mailing the Notice Packets, and on the return of an undelivered Notice Packet, skip tracing using Accurint and the Class Member's social security number; (b) printing and mailing the

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content of the Notice Packet as directed by the Court; (c) establishing a toll-free number and post-office box for receipt of Class Member communications; (d) receiving and reviewing all communications from Class Members and others seeking information on eligibility as a Class Member; (e) consulting with counsel for the Parties as necessary concerning the data, resolution of disputed claims, and status of the settlement process, and weekly status reports; (g) providing weekly status reports; (h) tracking requests for exclusion and objections received from Class Members; (i) calculating Settlement Payments, including applicable taxes and withholdings; (j) printing and distributing Settlement Payment checks to Participating Class Members and to others as Ordered by the Court; (k) submitting tax documents to applicable taxing authorities; (l) handling uncashed checks; (m) cooperating with counsel for the Parties as necessary to prepare declarations in support of the approval motions; and (m) for such other tasks as the Parties set forth in this Agreement or as the Parties mutually agree or the Court orders the Administrator to perform. The Parties each represent they do not have any financial interest in the Administrator or otherwise have a relationship with the Administrator that could create a conflict of interest. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the Administration Costs.

**PROCEDURE FOR OBJECTING TO OR  
REQUESTING EXCLUSION FROM THE SETTLEMENT**

58. Class Members who wish to object to the Settlement or to exclude themselves from the Class shall use the following procedures:

A. Procedure for Objecting. All Class Members shall have the right to submit objections to the Settlement. The Class Notice shall indicate that any Class Member who wishes to object to the Settlement, including to Class Counsel's application for attorneys' fees, must return to the Administrator a written statement which includes the specific reasons for the objections and supporting briefs or other materials on or before the Response Deadline, and as set forth in the Class Notice. Class Counsel shall file their fee request no later than 14 days before the Response Deadline. No Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the

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settlement, and no written objections or briefs submitted by any Settlement Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the Settlement Class Member's intention to appear at the Final Approval Hearing, and copies of any written objections or briefs, have been submitted to the Administrator on or before the Response Deadline. Settlement Class Members who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the settlement, or any aspect of the settlement, including, without limitation, the fairness, reasonableness, or adequacy of the proposed settlement or to Class Counsel's attorneys' fee request.

B. Procedure for Requesting Exclusion from the Settlement. Class Members must return a written statement (as directed by the Class Notice) no later than the Response Deadline. The written request for exclusion must contain the name, address, telephone number, and the last four (4) digits of the social security number of the Class Member requesting exclusion. In the event that the postmark is illegible, the request for exclusion shall be deemed untimely unless it is received within five (5) calendar days of the Response Deadline. Any eligible person who properly opts out of the Class using this procedure will not be entitled to any payment from the Net Settlement Amount and will not be bound by the Settlement or have any right to object, appeal, or comment thereon. However, if such opting out Class Member is an eligible PAGA Member, he or she will nevertheless receive a PAGA Member Payment because no right under PAGA exists to request exclusion from a PAGA Settlement, and will release all claims for civil penalties alleged under PAGA.

Class Members who do not return a valid and timely request for exclusion in the manner described in this paragraph, shall receive a Settlement Payment and shall be bound by all terms of the Settlement and any Judgment entered in this Action if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely request exclusion from the Settlement, and will receive a Settlement Payment.

///

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C. Defendant's Option to Reject the Settlement. Not later than five (5) business days after the close of the regular or extended Response Deadline, whichever is later, the Administrator shall provide to Class Counsel and Defendant's Counsel a complete list of all persons who have timely requested exclusion from the Class. If more than ten percent (10%) of the Class opts out of the Class by submitting timely requests for exclusion, Defendant will have the option at its sole discretion of rejecting the Settlement in its entirety. Counsel for Defendant shall make such election to reject the Settlement in a writing served on Class Counsel no later than ten (10) business days following the issuance of the Administrator's notification of the persons who timely requested exclusion from the Class. If Defendant makes this election, it will assume full responsibility for the payment of the Administrator's Costs through the date of its election.

D. Plaintiff's Right to Void Settlement

The Settlement is based on representations made by Defendant there are an estimated 5,114 Weeks Worked by the Class during the Class Period. Upon receipt of the Class List and Data, the Administrator shall tabulate the aggregate number of Weeks Worked by the Class and notify the Parties of the aggregate number within five (5) business days of receipt of the Class List and Data. If the aggregate number of Workweeks during the Class Period, as calculated from the Class List and Data, is more than 10% of 5,114, the Parties shall meet and confer in good faith regarding a potential increase in the Gross Settlement Amount. If the Parties do not agree, then Plaintiff shall have the option in his sole and absolute discretion to void this Settlement Agreement by notifying Counsel for Defendant in writing of his intention to do so. The Settlement Agreement shall become void seven (7) business days after receipt of such written notification unless, during that period, the Parties agree in writing to a mutually acceptable resolution. Should Plaintiff exercise his right under this paragraph, Plaintiff will assume full responsibility for the payment of the Administrator's Costs through the date of his election.

///

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**NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS**

59. The Parties agree to use their best efforts to carry out the terms of this Agreement. At no time shall any of the Parties or their counsel or agents (or the Administrator) seek to solicit or otherwise encourage anyone to submit written objections to the Settlement or requests for exclusion from eligible Class Members or encourage anyone to appeal from the Court's Judgment.

**CALCULATION OF SETTLEMENT PAYMENTS**

**AND TAX OBLIGATIONS PAYMENT**

60. The Administrator shall have the authority and obligation to calculate the amounts of the Settlement Payments in accordance with the methodology set forth in this Agreement and orders of the Court. Each Participating Class Member will be eligible to receive a Settlement Payment based on the total number of his/her Workweeks Worked during the Class Period in relation to the aggregate number of Workweeks Worked by all Participating Class Members during the Class Period, e.g.

$$\text{Settlement Payment} = \text{NSA (x)} \frac{\text{Class Member's Total Weeks Worked in Class Period}}{\text{All Participating Class Members Workweeks Worked}}$$

If the Class Member also worked during the PAGA Period, he or she would also be eligible to receive a proportionate share of the PAGA Payment allocated to them, e.g.:

$$\text{PAGA Member Payment} = \$3,750 \text{ (x)} \frac{\text{PAGA Member's Total PAGA Pay Periods in PAGA Period}}{\text{All PAGA Members' PAGA Pay Periods in PAGA Period}}$$

61. If a Participating Class Member wishes to challenge the number of Workweeks reported by Defendant to the Administrator, the Participating Class Member must submit the challenge in writing and provide the Administrator with any supporting documents or evidence no later than the Response Deadline. The Parties will cooperate fully to investigate and resolve any such disputes. Defendant's records will be presumed determinative, absent evidence to rebut Defendant's records. The Administrator will initially resolve any Workweek disputes. If either Party objects to the Administrator's determination, the dissatisfied Party may ask the Court to resolve the issue, no later than the Final Approval Hearing.

62. The Parties agree that the formula for allocating the Settlement Payments to the Class is reasonable and that the payments are designed to provide a fair settlement to the Class, despite the uncertainties of the compensation and penalties alleged to be owed to the Class and the calculation of them.

63. The Parties agree that each Settlement Payment will be characterized as one-third percent (33.3%) wages for which the Administrator shall make all ordinary deductions from the Settlement Payment for local, state, and federal taxes and withholdings or any other applicable payroll deductions for which an IRS Form W-2 shall be issued, one-third percent (33.3%) penalties, and one-third percent (33.3%) interest for which IRS Forms 1099 will be issued and reported to the appropriate taxing authorities. PAGA Members shall receive an IRS Form 1099 for their share of the PAGA Member Payment.

64. Each Participating Class Member will be responsible for paying all applicable local, state, and federal taxes on their Settlement Payments. Each Participating Class Member shall cooperate with Defendant and the Administrator and provide documentation as requested to demonstrate such payment should any taxing authority challenge the allocation of the Settlement Payments.

65. It shall be the responsibility of the Administrator or its designee to timely calculate and withhold from the Settlement Payments all Participating Class Member tax obligations and payroll deductions on the portion allocated as wages; and, to cause the appropriate deposits of withholding taxes and informational and other tax return filing to occur. The Administrator shall pay the Employer Tax Obligations and withholdings to the appropriate taxing authorities within thirty (30) days of distribution.

66. Defendant makes no representations as to the tax treatment or legal effect of the payments called for by this Agreement, and Plaintiff and Participating Class Members are not relying on any statement or representation by Defendant in this regard. Plaintiff and Participating Class Members understand and agree that except for Defendant's payment of the employer's portion of any payroll taxes, they will be solely responsible for the payment of any taxes and penalties assessed on the payments described by this Agreement.

**ATTORNEYS' FEES AND COSTS PAYMENT AND SERVICE PAYMENT**

67. Class Counsel shall be paid up to one-third of the Gross Settlement Amount, \$116,666.00 for their Attorneys' Fees, and up to \$19,000 as reimbursement of litigation costs. Class Counsel shall not be permitted to petition the Court for, or accept, any additional payments for fees or costs. The amounts paid in fees and costs shall be for all claims for attorneys' fees, expenses, or costs past, present, and future incurred in the Action. Defendant shall not oppose Class Counsel's Attorneys' Fees and Costs Payment request in these amounts.

68. The Attorneys' Fees and Costs Payment to Class Counsel shall constitute full satisfaction of any obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses, or costs in the Action incurred by any attorney on behalf of the Plaintiff and the Class, and shall relieve Released Parties of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of the Plaintiff, the Class and/or the PAGA Members.

69. Plaintiff Steven Kane shall be paid up to \$10,000 as a Class Representative Service Payment for having initiated this Action, work performed in furtherance of the Action, the risks associated with the payment of attorneys' fees and costs in the event this Action had not successfully concluded, reputational injury for having filed this Action, for the substantial benefits conferred upon the Class, and a General Release of all claims. Defendant shall not oppose the Service Payment request in this amount. The Service Payment approved by the Court shall be a part of, and paid from, the Gross Settlement Amount. This payment shall not have any state or federal taxes withheld and shall be reported on IRS Form 1099 and provided to the Plaintiff and applicable governmental authorities by the Administrator. Plaintiff shall be responsible for characterizing this payment for tax purposes and for paying any taxes owing.

70. Plaintiff's Settlement Payment will be paid in addition to the Service Payment.

**PAGA PAYMENT**

71. The Parties have allocated \$15,000 for the Gross Settlement Amount for the claims for civil penalties under Labor Code § 2699. Labor Code § 2699(i) requires any



1 settlement under this section be distributed 75% to California's Labor Workforce  
 2 Development Agency ("LWDA") for enforcement of labor laws and education of employers  
 3 and 25% to the PAGA Members. Accordingly, the \$11,250 LWDA Payment will be paid to  
 4 the LWDA, and the remaining \$3,750.00 PAGA Member Payment will to be distributed on a  
 5 proportional basis to all PAGA Members.

#### 6 **DEFENDANT'S LEGAL FEES**

7 72. All of Defendant's own legal fees, costs, and expenses incurred in the Action as  
 8 well as the employment related taxes normally paid by an employer shall be borne by  
 9 Defendant.

#### 10 **FINAL APPROVAL HEARING AND ENTRY OF ORDER AND JUDGMENT**

11 73. Following the Response Deadline, the Parties will ask the Court to conduct a  
 12 Final Approval Hearing. Upon final approval of the Settlement by the Court at or after the  
 13 Final Approval Hearing, the Parties shall present the Final Approval Order and the Judgment  
 14 to the Court for its approval and entry. Class Counsel shall endeavor to provide the final  
 15 approval motion to Defendant's Counsel for review at least two (2) business days prior to  
 16 filing such papers with the Court.

#### 17 **PROCEDURE FOR PAYMENT OF SETTLEMENT PAYMENTS**

18 74. Following the Final Approval Order and Judgment and the Effective Date of  
 19 Settlement, and solely for purposes of this Agreement, the Settlement Payments shall be  
 20 distributed in accordance with the following eligibility requirements:

21 A. Participating Class Members. All Participating Class Members shall  
 22 receive a Settlement Payment under the plan of allocation and will be bound by the terms of  
 23 the Settlement and any order or judgment entered by the Court approving this Settlement.

24 B. Class Members Who Request Exclusion. Class Members return a valid  
 25 and timely request for exclusion, are not Participating Class Members, are not entitled to a  
 26 share of the Net Settlement Amount, and will not be bound by this Settlement or any order or  
 27 judgment entered by the Court approving this Settlement. If any Class Member requests to be  
 28 excluded from the Class, their share of the Settlement funds shall remain part of the Net



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Settlement Amount and shall proportionally increase each Participating Class Member's final Settlement Payment Check. If such opting out Class Member is an eligible PAGA Member, he or she will nevertheless receive a PAGA Member Payment and will release all claims alleged in the Action under PAGA.

75. Settlement Payments to Participating Class Members shall be paid pursuant to the formula and at the times set forth in this Agreement. The Administrator's determination of eligibility for, and the calculations of, any Settlement Payments under the terms of this Agreement, shall be conclusive, final, and binding on all Parties, including all Class Members.

76. Any Settlement Payment checks issued to Participating Class Members shall remain valid and negotiable until 90 calendar days after the date of issuance of the checks and may thereafter automatically be canceled if not cashed by a Participating Class Member within that time. All sums represented by uncashed checks will be transmitted to the State of California Controller's Unclaimed Property Division for further handling on behalf of the Participating Class Member whose check was voided.

77. If a Participating Class Member has not cashed a Settlement Payment check by the 30th day from the date of the mailing, the Administrator shall send a postcard to the Class Member to remind them to cash their check before the void date.

78. No person shall have any claim against the Released Parties, Defendant's Counsel, the Plaintiff, the Class, Class Counsel, or the Administrator based on mailings, calculations, distributions and payments made in accordance with or pursuant to this Agreement.

#### **NULLIFICATION OF SETTLEMENT AGREEMENT**

79. In the event: (i) the Court does not enter any Order as requested; (ii) the Court does not finally approve the Settlement; (iii) the Court does not enter a Judgment which becomes final, or (iv) the Settlement does not become effective for any other reason, including Defendant's decision to reject the Settlement in the event more than ten percent (10%) of the Class timely requests exclusion, or an objection which is sustained in the trial court and on all appeals, or Plaintiff's decision to reject the Settlement pursuant to paragraph 58.D., this

Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In such a case, the Parties shall be returned to their respective statuses as of the date and time immediately before the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed. In the event an appeal is filed from the Court's Judgment, or any other appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

#### **NOTIFICATION AND CERTIFICATION BY ADMINISTRATOR**

80. The Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions of Settlement Payments and upon completion of administration of that portion of the Settlement, the Administrator shall provide written certification of progress of such completion to counsel for all Parties and the Court as requested.

#### **PRIVACY OF DOCUMENTS AND INFORMATION**

81. Class Counsel agrees none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution and resolution of this Action.

#### **NO EFFECT ON EMPLOYEE BENEFITS**

82. The Settlement Payments issued and paid to Participating Class Members and the Service Payment issued and paid to Plaintiff shall be deemed not to be "pensionable" earnings and shall not have any effect on the eligibility for, accrual of, or calculation of, any of the employee benefits (e.g. vacations, holiday pay, retirement plans, 401(k), Employee Stock Purchase Plan, etc.) of the Plaintiff or Participating Class Members. The Parties agree that any Settlement Payments to Participating Class Members and the Service Payment under the terms of this Agreement do not represent any modification of Participating Class Members' previously credited hours of service or other eligibility criteria under any employee stock purchase plan, employee pension benefit plan, or employee welfare benefit plan sponsored by Defendant. Further, any Settlement Payments or Service Payment shall not be considered

“compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an employee stock purchase plan, employee pension benefit plan, or employee welfare benefit plan sponsored by Defendant.

### **GENERAL PROVISIONS**

83. Exhibits. The terms of this Agreement include the terms included in Exhibits 1-4, which are incorporated by reference as though fully set forth. Any exhibits to this Agreement are an integral part of the Settlement. Any changes to exhibits following preliminary approval by the Court, shall be approved by all Parties, but shall not be re-submitted to the Court if changes are minor, clerical, and do not materially alter the originally submitted documents.

84. Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

85. Interim Stay of Proceedings. The Parties agree to hold all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Final Approval Hearing to be conducted by the Court.

86. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

87. Entire Agreement. This Agreement and any attached Exhibits constitute the entire agreement among these Parties, and no oral or written representations, warranties, inducements, or covenants have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, inducements, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, agreements, understandings, and representations, whether written or oral, are expressly superseded and are of no further force and effect. Each of the Parties acknowledges that it has not relied on any promise, representation, or warranty, express or implied, not contained in this Agreement.

88. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to

1 negotiate this Agreement and to take all appropriate action required or permitted to be taken  
 2 by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other  
 3 documents required to effectuate the terms of this Agreement. The Parties and their counsel  
 4 will cooperate with each other and use their best efforts to effectuate the implementation of the  
 5 Settlement. In the event the Parties are unable to reach agreement on the form or content of  
 6 any document needed to implement the Settlement, or on any supplemental provisions that  
 7 may become necessary to effectuate the terms of this Settlement, the Parties may seek the  
 8 assistance of the Mediator or the Court to resolve such disagreement.

9 89. Binding Agreement. Subject to the limitations in Paragraph 79, the Parties  
 10 intend this Agreement shall be fully enforceable and binding on all Parties, including Class  
 11 Members, and that it shall be admissible and subject to disclosure in any proceeding to enforce  
 12 its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply  
 13 under federal or state law. The Parties further agree that this Agreement is enforceable  
 14 pursuant to California Code of Civil Procedure section 664.6.

15 90. Binding on Successors. This Agreement shall be binding upon, and inure to the  
 16 benefit of, the heirs, beneficiaries, or successors of the Parties.

17 91. Assignment. None of the rights, commitments, or obligations recognized under  
 18 this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defendant's  
 19 Counsel without the express written consent of each other Party and their respective counsel.  
 20 The representations, warranties, covenants, and agreements contained in this Agreement are  
 21 for the sole benefit of the Parties under this Agreement and shall not be construed to confer  
 22 any right or any remedy to any other person.

23 92. California Law Governs. All terms of this Agreement and the Exhibits shall be  
 24 governed by and interpreted according to the laws of the State of California.

25 93. Venue. Any adjudicated dispute regarding the interpretation or validity of or  
 26 otherwise arising out of this Agreement, or relating to the Action or the Released Claims, shall  
 27 be subject to the exclusive jurisdiction of the Court in which the Parties seek approval of this  
 28 Settlement, and the Plaintiff, Class Members, and Defendant agrees to submit to the personal

1 and exclusive jurisdiction and venue of that Court.

2 94. Class Action Certification for Settlement Purposes Only. The Parties agree to  
3 stipulate to class action certification only for purposes of the Settlement described in this  
4 Agreement. If, for any reason, the Settlement is not approved, the stipulation to certification  
5 will be void. The Parties further agree that certification for purposes of the Settlement is not an  
6 admission that class action certification is proper under the standards applied to contested  
7 certification motions and that this Settlement Agreement will not be admissible in this or any  
8 other proceeding as evidence that either: (a) a class action should be certified or (b) Defendant  
9 is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

10 95. Confidentiality. Plaintiff, Plaintiff's Counsel, Class Counsel, Defendant and  
11 their counsel agree that they will not issue any press releases, initiate any contact with the  
12 press, respond to any press inquiry or have any communication with the press about the fact,  
13 amount or terms of the Settlement Agreement. Plaintiff shall instruct his attorneys not to use  
14 Defendant's name in marketing materials. Plaintiff will not make, and Plaintiff shall instruct  
15 his attorneys not to make, any posting on any website, instant messaging site, blog, or social  
16 networking site that uses Defendant's name in any mailings, publicity, or other similar forums  
17 or materials. Nothing in this Settlement Agreement shall limit Defendant's ability to fulfill  
18 disclosure obligations reasonably required by law or in furtherance of business purposes,  
19 including the fulfillment of obligations stated in this Settlement Agreement.

20 96. Return of Documents and Information. Plaintiff and Class Counsel agree that  
21 none of the documents and information provided to them by Defendant shall be used for any  
22 purpose other than prosecution and Settlement of the Action. No later than ten (10) days after  
23 Class Counsel receives any Court-approved award of attorneys' fees, Plaintiff and Class  
24 Counsel shall destroy or return to Defendant's Counsel the original and all copies of any  
25 documents that Defendant produced or provided to Plaintiff or Class Counsel during the  
26 Action. Should Class Counsel elect to destroy those documents, Class Counsel shall certify  
27 under penalty of perjury that such documents have been destroyed.

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1           97. Representations and Warranties. Each party to this Settlement Agreement  
2 represents and warrants that he, she or it has not heretofore assigned or transferred, or  
3 purported to assign or transfer, any of the claims released pursuant to this Settlement  
4 Agreement to any other person and that he, she, or it is fully entitled to compromise and settle  
5 same.

6           98. Counterparts. This Agreement may be executed in one or more counterparts.  
7 All executed counterparts and each of them shall be deemed to be one and the same  
8 instrument.

9           99. Facsimile and Electronic Signatures. A signed facsimile or electronic version of  
10 this Agreement shall have the same force and effect as a signed original of this Agreement.

11           100. Jurisdiction of the Court. The Court shall retain jurisdiction solely with respect  
12 to the interpretation, implementation, and enforcement of the terms of this Agreement and all  
13 orders and judgments entered in connection with the Agreement, and the Parties and their  
14 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and  
15 enforcing this Agreement and all related orders and judgments entered in connection. In the  
16 event judicial intervention or enforcement is necessary, the prevailing Party shall be entitled to  
17 an award or attorneys' fees, costs and interest.

18           101. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and  
19 preparation of this Agreement; and the drafting of this Agreement shall not be construed  
20 against any of the Parties.

21           102. Invalidity of Any Provision. The Parties request that before declaring any  
22 provision of this Agreement invalid, the Court shall first attempt to construe all provisions  
23 valid to the fullest extent possible consistent with applicable precedents.

24           103. Severability. In the event any covenant or other provision herein is held to be  
25 invalid, void, or illegal, the same shall be deemed severed from the remainder of this  
26 Settlement Agreement and shall in no way affect, impair, or invalidate any other covenant,  
27 condition, or other provision herein. If any covenant, condition, or other provision herein is  
28 held to be invalid due to its scope or breadth, such covenant, condition, or other provision shall

1 be deemed valid to the extent of the scope or breadth permitted by law

2 104. Plaintiff's Waiver of Right to be Excluded and Object. Plaintiff agrees to sign  
3 this Agreement and by signing this Agreement is bound by the terms stated and further agrees  
4 not to request exclusion from the Class and agrees not to object to any of the terms of this  
5 Agreement. Any such request for exclusion or objection shall be void and of no force or  
6 effect.

7 105. Notice. All notices, demands or other communications given under this  
8 Agreement will be in writing and deemed to have been duly given as of the third business day  
9 after mailing by United States mail addressed as follows:

10 **Counsel for Plaintiff, Steven Kane:**

11 **COHELAN KHOURY & SINGER**

12 Michael D. Singer  
13 J. Jason Hill  
14 605 C Street, Suite 200  
15 San Diego, CA 92101

16 **DAVTYAN LAW FIRM, INC.**

17 Emil Davtayan  
18 880 E. Broadway  
19 Glendale, CA 91205

20 **Counsel for Defendant, Smithfield Direct, LLC**

21 **HUNTON ANDREWS KURTH LLP**

22 Roland M. Juarez  
23 550 South Hope Street, Suite 2000  
24 Los Angeles, California 90071-2627

25 IN WITNESS THEREOF, the Parties and their Counsel have executed this Stipulation  
26 of Settlement and Release of Claims on the date below their signatures or the signature of their  
27 representatives. The date of the Stipulation shall be the date of the latest signature.

28 **Plaintiff Steven Kane**

12/8/2021  
Dated: December \_\_, 2021

By: Steve Kane  
Steven Kane, as an individual and as a  
representative of the Class and PAGA  
Members



**Defendant Smithfield Direct, LLC**

Dated: December 8, 2021

By: Russell Dokken  
Title: Chief Sales Officer  
Print Name: Russell Dokken

**Approval As To Form**

**COHELAN KHOURY & SINGER**

Dated: December \_\_, 2021

By: \_\_\_\_\_  
Michael D. Singer / Jason J. Hill  
Attorneys for Plaintiff and the Class  
**DAVTYAN LAW FIRM, INC.**

Dated: December \_\_, 2021

By: \_\_\_\_\_  
Emil Davtyan  
Attorneys for Plaintiff and the Class  
**HUNTON ANDREWS KURTH LLP**

Dated: December 9, 2021

By: \_\_\_\_\_  
Roland M. Juarez  
Attorneys for Defendant, Smithfield Direct, LLC

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San Diego, CA 92101



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San Diego, CA 92101

**Defendant Smithfield Direct, LLC**

Dated: December \_\_, 2021

By: \_\_\_\_\_

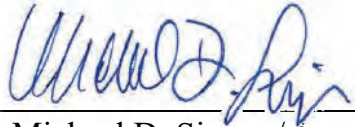
Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Approval As To Form**

**COHELAN KHOURY & SINGER**

Dated: December 7, 2021

By:  \_\_\_\_\_

Michael D. Singer / Jason J. Hill

Attorneys for Plaintiff and the Class

**DAVTYAN LAW FIRM, INC.**

Dated: December 7, 2021

By:  \_\_\_\_\_

Emil Davtyan

Attorneys for Plaintiff and the Class

**HUNTON ANDREWS KURTH LLP**

Dated: December \_\_, 2021

By: \_\_\_\_\_

Roland M. Juarez

Attorneys for Defendant, Smithfield Direct, LLC

# **EXHIBIT 1**

**NOTICE OF CLASS ACTION SETTLEMENT**

*Steven Kane, Plaintiff v. Smithfield Direct, LLC., Defendant*  
 United States District Court, Central District of California, Western Division  
 Case No. 21-CV-04832 PA (JCx)

*This Notice was authorized by the Court. This is not a solicitation from a lawyer.*

*This is not a lawsuit against you and you are not being sued.*

*However, your legal rights are affected whether you act or don't act.*

**TO: All individuals employed by Smithfield Direct, LLC in California as hourly Route Sales Representatives or Relief Route Sales Representatives at any time during the period from April 12, 2017 through November 30, 2020 (“Class Member(s)”).**

If you are a Class Member, as described above, you are eligible for a payment from the Class Action Settlement described in this Notice without the need to return a claim form.

**PLEASE READ THIS NOTICE CAREFULLY**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>DO NOTHING TO RECEIVE A PAYMENT</b>	To receive your Settlement Payment shown in <b>Paragraph 9</b> , you do not need to do anything other than assuring your address is correct. Your estimated Settlement Payment will be mailed to you after the Court grants final approval of the Settlement. <i>[You must keep a current address on file with the Administrator to ensure receipt of your Settlement Payment].</i>
<b>UPDATE YOUR ADDRESS</b>	Update your personal information with the Administrator to make sure your Settlement Payment is sent to the correct address. (A Change of Address Form and pre-printed return envelope are enclosed.)
<b>EXCLUDE YOURSELF</b>	You may ask to exclude yourself from the Class (to opt out), if you do not wish to participate in the Settlement. <b>See Paragraphs 14-16</b> . If you opt out, you will not release the Class claims, and you will not receive a Settlement Payment. This is the only option that allows you to pursue your own claims (in your own lawsuit) against the same Defendant about the legal claims raised in this case.
<b>OBJECT</b>	You may also object and tell the Court why you don't like the Settlement. <b>See Paragraph 17</b> . If the Court approves the Settlement despite your objection, you will still be bound by the terms of the Settlement, and a Settlement Payment will be mailed to you. Your objection must be submitted in writing.

- YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**

## BASIC INFORMATION

### 1. Why did I receive this Notice?

You received this Notice because company records of Defendant Smithfield Direct, LLC show that you were employed by Defendant Smithfield Direct, LLC in California as an hourly Route Sales Representative or Relief Route Sales Representative sometime during the period from April 12, 2017 through November 30, 2020, and as such, are a member of the “Class” (as defined below).

A Court authorized this Notice because you have a right to know about the proposed Settlement of the class action Lawsuit, and about all of your options, before the Court decides whether to finally approve it. This Notice explains the Lawsuit, the Settlement, your rights, the Settlement Payment you are entitled to receive under the terms of the Settlement if you do not opt out of the Class, and how to get it.

### 2. What is this Lawsuit about?

The Complaint filed in this Lawsuit, *Kane v. Smithfield Direct, LLC.*, was filed on April 12, 2021 by Plaintiff Steven Kane on behalf of himself and all other members of the Class in the Superior Court of California, County of Los Angeles, and amended by a first amended complaint filed May 11, 2021. On June 14, 2021, Defendant removed the case from the Superior Court of California, County of Los Angeles to the United States District Court, Central District of California – Western Division, Case No. 21-CV-04832 PA (JCx) (“the “Lawsuit” or “Action”).

Plaintiff alleges that Smithfield Direct, LLC (“Defendant” or “Smithfield”): (1) failed to pay the Class minimum wage in violation of California Labor Code §§ 204, 1194, 1194.2, and 1197; (2) failed to pay the Class overtime in violation of California Labor Code §§ 510 and 1194; (3) failed to pay the Class vacation wages in violation of California Labor Code §§ 227.3 and 218.5; (4) failed to provide the Class with meal periods or pay in lieu thereof in violation of California Labor Code §§ 226.7 and 512; (5) failed to provide the Class with mandated rest periods or pay additional wages in lieu thereof in violation of California Labor Code §§ 226.7, 558 and § 12 of the applicable Wage Order; (6) failed to provide the Class with sick pay in violation of California Labor Code § 246; (7) failed to provide the Class accurate itemized wage statements in violation of California Labor Code §§ 226 and 1174; (8) failed to pay the Class all wages owed at termination in violation of California Labor Code §§ 201–203; and (9) engaged in unlawful, unfair, and/or fraudulent business acts or practices in violation of California Business & Professions Code § 17200 et seq. Plaintiff also seeks penalties against Defendant pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, et seq. (“PAGA”) based on the aforementioned claims.

Defendant has denied and continues to deny each and every allegation by Plaintiff. Defendant denies that it violated California law and maintains it has fully complied with the law at all times. Defendant contends that Plaintiff and the members of the Settlement Class were timely provided all compensation as required by law. Defendant maintains that it does not owe any damages or civil penalties to Plaintiff, any other hourly route sales representatives/associates of Defendant, or the State of California. The Settlement is not an admission that Defendant did anything wrong or an indication any law was violated, and the Court overseeing this Action has not ruled on whether Defendant violated any law.

### 3. What is a Class Action?

In a class action, a person called a Class Representative (here, Steven Kane) sues on behalf of themselves and all other people who may have similar claims. The group of people with similar claims is called a

**4. Why is there a Settlement?**

The Court did not decide in favor of Plaintiff Steven Kane or Defendant. Instead, both sides agreed to a settlement of the Action (“Settlement”). That way, they avoid the cost of a trial, and members of the Class will receive compensation from the Settlement. Mr. Kane, who was appointed the Class Representative by the Court, and his attorneys, believe the Settlement is best for all Class Members.

**5. Who are the Parties in this Lawsuit?**

Plaintiff Steven Kane was employed by Smithfield Direct, LLC in Los Angeles County as a Route Sales Representative from December 26, 2016 through November 13, 2020.

Defendant is Smithfield Direct, LLC., the employer for Plaintiff and all other Class Members

The Class, for purposes of this Settlement only, is defined as all individuals employed by Defendant in California as hourly Route Sales Representatives and/or Relief Route Sales Representative at any time during the period from April 12, 2017 through November 30, 2020. There are an estimated 45 Class Members who worked an estimated 5,114 weeks during the Class Period.

**6. Who are the Attorneys for Plaintiff and the Class?**

The Court appointed Cohelan Khoury & Singer and Davtyan Law Firm, Inc. as Class Counsel and found they are competent and experienced and will adequately represent the Class. Their addresses are:

COHELAN KHOURY & SINGER  
Diana M. Khoury/Rosemary C. Khoury  
605 C Street, Suite 200  
San Diego, California 92101  
Telephone: (619) 595-3001

DAVTYAN LAW FIRM, INC.  
Emil Davtyan  
880 E. Broadway  
Glendale, California 91205  
Telephone: (818) 875-2008

**7. What is the Settlement Amount?**

The proposed Settlement provides for a maximum payment of \$350,000 to fully and finally resolve all claims in the Action (referred to as the “Gross Settlement Amount”). From this amount, Class Counsel will apply to the Court for: (1) attorneys’ fees of up to \$116,666; (2) litigation costs estimated at \$19,000; (3) a Class Representative Service Payment to Steven Kane of \$10,000 for his work and efforts in initiating and prosecuting the Action, for undertaking the risks of payment of costs in the event of an unsuccessful outcome, and a general release of all claims; (4) Administration expenses not to exceed \$6,500 to CPT Group, Inc.; and (5) a payment to the California Labor Workforce and Development Agency, under California Labor Code’s Private Attorneys General Act of 2004 (“PAGA”) of \$11,250 (75% of \$15,000 PAGA Payment) to cover the State of California’s share of all applicable civil penalties implicated or raised by the allegations of the Action. (The exact sum of attorneys’ fees and costs, Class Representative Service Payment, and Administration expenses will be determined by the Court at a Final Approval hearing). In addition, \$3,750 (25% of the \$15,000 PAGA Payment) will be distributed to a subset of Class Members who were employed at any time from March 7, 2020 through November 30, 2020 (“PAGA Members”) based on the number of pay periods each worked during that time period. Regardless of whether a Class Member requests to be excluded from the Class, if he or she is a PAGA Member, he or she will receive a proportionate share of the \$3,750.

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The remaining balance, \$182,834, less the employer's share of payroll taxes estimated at \$8,806.50, (the "Net Settlement Amount") will be apportioned and paid out entirely to all Class Members who do not request to be excluded from the Class, a "Participating Class Member". **A claim form is not required to receive this Settlement Payment.**

Any portion of the Net Settlement Amount which would otherwise have been paid to Class Members who have requested to be excluded from the Class will be redistributed and paid to Class Members who remain in the Class. No portion of the Gross Settlement Amount will return to Defendants under any circumstances.

## 8. How will Settlement Payments be Calculated?

Class Members who do not request to be excluded from the Class will receive their share of the Net Settlement Amount based on the number of their Work Weeks worked at any time from April 12, 2017 through November 30, 2020, ("Class Period"). A Work Week is defined as any week in which a Class Member worked at least one day in that week as reflected by Defendants' employment records.

With an estimated 5,114 Work Weeks worked by the 45-member Class during the Class Period, a Class Member can expect to receive an estimated **\$34.03** for each Work Week worked during the Class Period. The Settlement Payment will be characterized as one-third percent unpaid wages and subject to payroll taxes and withholdings for which an IRS W-2 Form will be issued; one-third percent as payment of penalties, and one-third percent as payment of interest both of which will be reflected on IRS 1099 Forms issued to Participating Class Members. Participating Class Members should consult with their tax advisors concerning the tax consequences of the Settlement Payments received pursuant to the Settlement.

A subset of the Class, PAGA Members, are those who worked at any time during the PAGA Period (March 7, 2020 through November 30, 2020 ("PAGA Period")). There are 28 PAGA Members who worked an estimated 875 Pay Periods during the PAGA Period. Each will receive a proportionate share of the \$3,750 (25% the \$15,000 PAGA Payment) based on the number of Pay Periods each worked during the PAGA Period. With an aggregate 875 Pay Periods worked by PAGA Members, each will receive an estimated \$4.28 for each Pay Period worked during the PAGA Period, and will release all PAGA claims alleged in the Action regardless of whether they request exclusion from the Class.

## 9. How much will my Settlement Payment be?

Smithfield's business and personnel records reflect that you worked as an hourly Route Sales Representative and/or Relief Route Sales Representative at some time during April 12, 2017 through November 30, 2020 Class Period, and worked [redacted] Work Weeks during the Class Period. Smithfield's records also show that you *were [were not]* employed [redacted] Pay Periods during March 7, 2020 through November 30, 2020 PAGA Period.

Based on this information, your share of the available settlement funds is estimated to be \$ [redacted], less payroll taxes. **Your Settlement Payment check will be mailed to you at the address on file with the Administrator.** The actual amount you receive may be more or less than the estimated amount shown, depending on a number of factors including whether other Class Members request exclusion from the Settlement and how much the Court approves in attorneys' fees, litigation expenses, and other costs of suit.

## HOW TO GET A SETTLEMENT PAYMENT

## 10. How can I get my Settlement Payment?

You do not need to do anything to receive your Settlement Payment. **A claim form is not required.**

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NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Settlement Administrator at [insert]



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If the Court approves the Settlement at the scheduled Final Approval Hearing, your Settlement Payment will be mailed to the address this Notice was mailed to, unless you have updated your address with the Administrator. **It is your responsibility to keep the Administrator informed of any change in your mailing address.** A Change of Address form is enclosed with this Notice for your convenience. It is strongly recommended you retain a copy of any completed Change of Address form until you receive your entire Settlement Payment.

**11. What if the number of Work Weeks or Pay Periods Shown in this Notice is Wrong?**

If you believe the number of Work Weeks or Pay Periods shown in **Paragraph 9** is wrong, send a letter addressed to the Smithfield Direct LLC Class Action Administrator, c/o CPT Group, Inc., P. O. Box \_\_\_\_\_, Irvine, CA 9\_\_\_\_, stating what you believe to be the correct number of Work Weeks or Pay Periods. Your letter must be postmarked on or before \_\_\_\_, 2022. *[45 days from mailing the Notice Packet]*

Include any documents or other information which supports what you believe to be the correct number of Work Weeks or Pay Periods. The Administrator will resolve any disputes using Smithfield's records and any information you provide. If the Parties disagree with the Administrator's determination, the Court will resolve the issue.

**12. When can I expect to receive my Settlement Payment?**

If no Class Member objects to the Settlement, and no appeal is sought, and the Court finally approves the Settlement, your share of the Settlement will be mailed to you approximately 45 days after the Court grants final approval of the Settlement.

**13. What am I giving up to get my Settlement Payment?**

You will give up or "release" the following claims described below:

**Released Claims:** Participating Class Members (those who do not return a request to be excluded from the Class) will release Smithfield Direct, LLC, and each of its respective past, present and future owners, stockholders, parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendant (the "Released Parties") from the "Released Claims," defined as all claims, demands, rights, liabilities, and causes of action that were pled in the Complaint, or which could have been pled based on the facts alleged, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, for state and federal wage and hour laws (including, but not limited to, California Labor Code §§ 201-203, 227.3, 218.5, 226, 226.7, 246, 510, 512, 551, 552, 558, 1174, 1194 1194.2, 1197 or 2698 *et seq.* (PAGA) and the Industrial Welfare Commission Wage Orders), whether for economic damages, non-economic damages, restitution, penalties, wages, liquidated damages, interest or attorneys' fees, including but not limited to: the causes of action asserted in the Complaint for Defendant's alleged failure (1) to pay wages including minimum wages and overtime, (2) to pay vacation and sick leave, (3) to provide meal or rest periods or pay additional wages in lieu thereof, (4) to provide accurate itemized wage statements, (5) to timely pay all wages upon termination, and (6) as related to the foregoing, the causes of action for alleged unlawful, unfair and/or fraudulent business practices under California Business and Professions Code § 17200, *et seq.*, and (7) civil penalties pursuant to the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* The Released Claims are limited to those that arose during the Class Period.

Class Members who remain in the Class, who do not exclude themselves, will be considered to have accepted the release and to have waived the Released Claims against the Released Parties.

Class Members who successfully exclude themselves from the Class will not receive a share of the Net Settlement Amount, but will receive their proportionate share of the \$3,750 PAGA Payment based on the number of Pay Periods employed during the PAGA Period, and will release only the claims alleged under PAGA.

#### EXCLUDING YOURSELF FROM THE SETTLEMENT?

##### 14. How do I get out of the Class Action?

If you wish to pursue your own separate lawsuit against Smithfield Direct, LLC for the claims alleged in the Action, or if you otherwise wish to not be in the Class or to participate in the Settlement for whatever reason, you should exclude yourself from this Lawsuit (that is, “opt out” of the Settlement). To opt out and exclude yourself from the Class and this Settlement, you must submit a written request for exclusion. Your request for exclusion must include (a) the case name and case number; (b) your full name, current address, telephone number, and last four digits of your social security number; and (c) your signature. The request for exclusion should state in substance:

“I wish to be excluded from the case entitled *Kane v. Smithfield Direct, LLC*, No. 21-CV 04832 PA (JCx) pending in the United States District Court, Central District of California. I understand that by requesting to be excluded from the Action and Settlement, I will receive no money from the Class Settlement described in this Notice.”

Your request for exclusion letter must be mailed to the Administrator postmarked no later than \_\_\_\_\_, 2022 (60 days of mailing) in the envelope provided or in a separate envelope addressed to:

*Kane v. Smithfield Direct LLC* Class Action Administrator  
c/o CPT Group, Inc.,  
P. O. Box \_\_\_\_\_  
Irvine, California \_\_\_\_\_

##### 15. If I do not opt out, can I sue Defendant Smithfield Direct, LLC for the same thing later?

No. Unless you exclude yourself from the Lawsuit, you give up any right to sue Defendant for the claims raised in this Lawsuit and which this Settlement resolves. ***If you have a claim or lawsuit already filed against Smithfield Direct, LLC you must speak to your lawyer in that case immediately.*** You may need to opt out of this Lawsuit to continue your own lawsuit. Remember, the deadline to postmark a valid request for exclusion is \_\_\_\_\_, 2022 (60 days of mailing).

##### 16. If I exclude myself from the Class Action and Settlement, can I still get a Settlement Payment?

No and Yes, if you worked during the PAGA period. No, you will not receive any portion of the Net Settlement Amount estimated at \$182,834 for the Work Weeks you worked during the Class Period. The Settlement Payment you would have received (as shown in **Paragraph 9** above) will be distributed on a proportionate basis to Participating Class Members.



## OBJECTING TO THE SETTLEMENT

### 17. How do I object if I don't think the Settlement is fair?

If you don't think the Settlement is fair, you can object to the Settlement and tell the Court you don't agree with the Settlement or some part of it. The Court will consider your views. You must state what your objection(s) are to the Settlement, and include the case name and number: *Kane v. Smithfield Direct, LLC.*, No. 21-CV 04832 PA (JCx), pending in the United States District Court, Central District of California. Be sure to include your full name, current address and telephone number, and the specific reasons you object to the Settlement. You may mail your written objection to the address listed below, on or before \_\_\_\_\_, 2022. (60 days of mailing)

*Kane v. Smithfield Direct LLC* Class Action Administrator  
c/o CPT Group, Inc.,  
P. O. Box \_\_\_\_\_  
Irvine, California \_\_\_\_\_

## THE COURT'S FINAL FAIRNESS HEARING

### 18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval hearing in Courtroom 9 A of the United States District Court, Central District of California, Western Division located at 350 West First Street, Los Angeles, California 90012 on \_\_\_\_\_, 2022 at \_\_\_\_\_.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representative's Service Payment, and the Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted a written objection will be notified by Class Counsel of any rescheduling of the date and time of the Final Approval hearing.

### 19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense. You may also hire and pay your own lawyer to attend.

### 20. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing.

## THE COURT'S FINAL FAIRNESS HEARING

### 21. Who may I contact if I have questions about the Settlement?

This Notice is a summary of the basic terms of the Settlement. For more information, you may examine the the Settlement Agreement, and other important documents filed in this Action online on the Court's website located at: [www.\\_\\_\\_\\_\\_](http://www._____.) [insert instructions.] The documents filed in this case are listed in the Register of Actions, some may be available to view at a minimal charge. You may also contact the

You may also contact the attorneys for the Plaintiff and the Class, whose contact information is included in Paragraph 6 above, for more information or if you have specific questions.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR ANY OF SMITHFIELD DIRECT, LLC'S MANAGERS, SUPERVISORS, HUMAN RESOURCES, OR ATTORNEYS ABOUT THIS SETTLEMENT.**

**ADDITIONAL IMPORTANT INFORMATION**

- A. It is your responsibility to ensure that the Administrator has your current mailing address and telephone number on file. It is the address to which your Settlement Payment will be mailed.
- B. Settlement Payment checks must be cashed soon after receipt. Proceeds of checks which remain uncashed 90 days after the date of issuance will be transmitted to the State of California, Controller's Office, Unclaimed Property Division for further handling. If you lose or misplace a check, you should contact the Administrator immediately to request a replacement.

# **EXHIBIT 2**

*Steven Kane, Plaintiff vs. Smithfield Direct, LLC Defendant*  
United States District Court, Central District of California – Western Division  
Case No. 21-CV-04832 PA (JCx)

**CHANGE OF ADDRESS FORM**

I wish to change my name and/or mailing address and/or other contact information, for purposes of receiving communications related to this Lawsuit, to the following:

Name (First, Middle, Last): \_\_\_\_\_

Former Names (if any): \_\_\_\_\_

Home Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number(s): Home: \_\_\_\_\_ Work: \_\_\_\_\_

Email: \_\_\_\_\_

Last 4 digits of Social Security Number: \_\_\_\_\_ **[Required]**

I understand all future correspondence in this Action, including but not necessarily limited to important notices or settlement payments, will be sent to the address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Signature

**[Required]**

**PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED  
OR VIA UNITED STATES FIRST CLASS MAIL TO:**

*Kane v. Smithfield Direct LLC* Class Action Administrator  
c/o CPT Group, Inc.,  
P. O. Box \_\_\_\_\_  
Irvine, California \_\_\_\_\_

QUESTIONS? CALL TOLL FREE 1-866-\_\_\_\_\_

# **EXHIBIT 3**

COHELAN KHOURY & SINGER  
605 C Street, Suite 200  
San Diego, CA 92101

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**

STEVEN KANE, on behalf of  
himself and other similarly-situated  
employees,

Plaintiff,

vs.

SMITHFIELD DIRECT, LLC, a  
Delaware Limited Liability  
Company; and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO. 21-CV-04832 PA (JCx)

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: January 10, 2022  
Time: 1:30 p.m.  
Judge: Percy Anderson  
Ctrm.: 9A

Complaint filed: April 12, 2021  
Removal date: June 14, 2021  
Trial date: June 14, 2022

COHELAN KHOURY & SINGER  
605 C Street, Suite 200  
San Diego, CA 92101

The Court, having fully reviewed the Motion for Order Granting Preliminary Approval of Class Action Settlement, the supporting Points and Authorities, Declarations of Class Counsel J. Jason Hill and Emil Davtyan, the Stipulation of Class Action and PAGA Settlement and Release of Claims (“Settlement Agreement”), and the proposed Notice of Class Action Settlement (“Class Notice”), and in recognition of the Court’s duty to make a preliminary determination as to the reasonableness of any proposed class action settlement and, if preliminarily determined to be reasonable, to ensure proper notice is provided to Class Members in accordance with due process, and to conduct a Final Approval hearing as to the good faith, fairness, adequacy and reasonableness of any proposed settlement, FINDS, CONCLUDES, and ORDERS:

1. The Court finds, on a preliminary basis, that the Settlement Agreement attached to the Declaration of J. Jason Hill as Exhibit A, incorporated by reference in full and made a part of this Order of preliminary approval, appears to be within the range of reasonableness of a settlement which could ultimately be given final approval by this Court.

2. It appears to the Court on a preliminary basis that: (a) the non-reversionary Gross Settlement Amount<sup>1</sup> is fair and reasonable to Class Members when balanced against the probable outcome of further litigation relating to class certification, liability and damages issues and potential appeals; (b) significant investigation, research, and discovery, have been conducted by counsel for each Party and they are able to reasonably evaluate their positions; (c) settlement at this time will avoid substantial costs, delay, and risks that would be presented by the further prosecution of the litigation; and (d) the proposed Settlement has been reached through intensive, serious, and non-collusive arms’-length negotiations

<sup>1</sup> Unless otherwise noted, “Gross Settlement Amount” and all other defined terms used in this Order carry the same meaning as they are defined in the Settlement Agreement.



1 between the Parties facilitated by an experienced mediator. ACCORDINGLY,  
2 PLAINTIFF'S MOTION FOR ORDER GRANTING PRELIMINARY  
3 APPROVAL OF CLASS ACTION SETTLEMENT IS GRANTED.

4 3. As a part of the preliminary approval, the Court accepts and  
5 incorporates the Settlement Agreement and conditionally certifies the following  
6 Class for Settlement purposes only:

7 All individuals employed by Smithfield Direct, LLC in  
8 California as hourly Route Sales Representatives or Relief  
9 Route Sales Representatives at any time during the period from  
April 12, 2017 through November 30, 2020.

10 4. For settlement purposes only, the Court appoints Plaintiff Steven  
11 Kane as the Class Representative.

12 5. For settlement purposes only, the Court appoints Cohelan Khoury &  
13 Singer and Davtyan Law Firm, Inc. as Class Counsel.

14 6. The Court appoints CPT Group, Inc. as the Settlement Administrator  
15 to administer the Settlement pursuant to the terms of the Settlement Agreement.

16 7. The Court finds that the Class Notice advises the Class of the  
17 pendency of the Class Action, of the proposed Settlement terms, of preliminary  
18 Court approval of the proposed Settlement, of the automatic payment of a  
19 proportionate share of the Settlement monies without the need to return a claim  
20 form, of the Released Claims, of the PAGA Release, of the estimated amount  
21 each Participating Class Member may expect to receive if they do not request  
22 exclusion from the Class; of the manner and timing of requests for exclusions,  
23 disputes, and objections, and of the date set for the Final Approval Hearing. The  
24 Court further finds that the Class Notice fairly and adequately advises Class  
25 Members and PAGA Members of the terms of the proposed Settlement and the  
26 benefits available to them, and of the Final Approval hearing date, time and place  
27 and the right to file documentation in support of or in opposition to the Settlement  
28 and to appear in connection with that hearing. The Court further finds that the

COHELAN KHOURY & SINGER  
605 C Street, Suite 200  
San Diego, CA 92101

Class Notice clearly comports with all constitutional requirements including those of due process. ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES THE CLASS ACTION ATTACHED AS AN EXHIBIT 1 TO THE SETTLEMENT AGREEMENT;

8. The Court finds the mailing to the present and last known addresses of the members of the Class, with safeguards to perform reasonable skip traces of returned Notice Packets, constitutes an effective method of notifying Class and PAGA Members of their rights with respect to the Class Action and Settlement. ACCORDINGLY, IT IS HEREBY ORDERED that:

(a) Within fourteen (14) calendar days of the Preliminary Approval Order, Defendant shall forward the Class List and Data to the appointed Administrator, as provided for by the terms of the Settlement Agreement;

(b) Within thirty-five (35) calendar days of receipt of the Class List and Data, the Administrator shall mail to each Class Member, by first class, postage pre-paid, the Notice of Class Action Settlement, Change of Address Form, and preprinted return envelope (Notice Packet”);

(c) All mailings shall be made to the present and/or last known mailing address of the Class Members based on Defendant’s records, as well as addresses that may be updated and located by the Administrator who will conduct reasonable address searches in cases of returned mail as set forth in the Settlement Agreement. The Court finds and so orders that the mailing of Notice Packets to Class Members is the best means practicable by which to reach Class Members and is reasonable and adequate pursuant to all constitutional and statutory requirements including all due process requirements; and,

9. IS FURTHER ORDERED that:

(a) Requests for Exclusion (“Opt-Out”). Requests for Exclusion from the Class and Settlement must be postmarked and mailed to the Administrator no later than sixty (60) calendar days from the initial mailing of the

1 Notice Packets to the Class (“Response Deadline”). The Response Deadline will  
 2 be extended fifteen (15) calendar days for any Class Member who is re-mailed a  
 3 Notice Packet by the Administrator, unless the 15th day falls on a Sunday or  
 4 Federal holiday, in which case the Response Deadline will be extended to the  
 5 next day on which the U.S. Postal Service is open. A Request for Exclusion is  
 6 only valid if it is timely postmarked and mailed on or before the closure of the  
 7 Response Deadline, and includes (1) the name, address, telephone number and  
 8 last four digits of the social security number of the Class Member requesting  
 9 exclusion, (2) a statement expressing that the Class Member elects to be excluded  
 10 from the Settlement, and (3) a signature by the Class Member. A non-  
 11 participating Class Member who is also a PAGA Member will be bound by the  
 12 PAGA Release.

13 (b) Objections. Class Members may return written objections to  
 14 any term of the Settlement in the manner set forth in the Settlement Agreement  
 15 and the Class Notice. Written objections must be postmarked and mailed to the  
 16 Administrator on or before the closure of the Responses Deadline. Written  
 17 objections must be signed by the Class Member and should include the Class  
 18 Member’s full name, address and telephone number, the grounds for each  
 19 objection made, and whether the Class Member intends to appear at the Final  
 20 Approval Hearing.

21 (c) Challenges to the Number of Workweeks. Class Members  
 22 may dispute the information upon which their Settlement Payments will be  
 23 calculated in the manner provided as set forth in the Settlement Agreement. Any  
 24 dispute must be postmarked and mailed to the Administrator on or before the  
 25 closure of the Responses Deadline.

26 10. IT IS FURTHER ORDERED that Class Counsel shall file their  
 27 Motion for Order Granting Attorneys’ Fees and Litigation Costs 14 days prior to  
 28 the Response Deadline.

COHELAN KHOURY & SINGER  
605 C Street, Suite 200  
San Diego, CA 92101

11. IT IS FURTHER ORDERED that the Final Approval hearing shall be held before the undersigned at 1:30 p.m. on \_\_\_\_\_, 2022, in Courtroom 9A of the United States District Court for the Central District of California, Western Division located at 350 West 1st Street, Los Angeles, California 90012 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Order of Preliminary Approval, and to consider the application of Class Counsel for an award of reasonable attorneys' fees and litigation expenses, the Class Representative Service Payment, and for the Administrator expenses incurred.

12. IT IS FURTHER ORDERED that the Motion for Order Granting Final Approval and Entering Judgment shall be filed 28 days prior to the Final Approval Hearing date.

13. IT IS FURTHER ORDERED that if, for any reason, the Court does not execute and file an Order Granting Final Approval and Judgment, or if the Effective Date, as defined by the Agreement, does not occur for any reason whatsoever, the Settlement Agreement and the proposed Settlement subject of this Order and all evidence and proceedings had in connection therewith, shall be null and void and without prejudice to the *status quo ante* rights of the Parties to the litigation as more specifically set forth in the Settlement Agreement.

14. IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in this matter except those contemplated in this Order and set forth in the Settlement Agreement are stayed.

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1           15. The Court expressly reserves the right to adjourn or continue the  
2 Final Approval Hearing from time-to-time without further notice to Class  
3 Members, except that notice of a continuance shall be provided to Class Members  
4 who return written objections.

5  
6 IT IS SO ORDERED.

7  
8 Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Percy Anderson  
United States District Court

COHELAN KHOURY & SINGER  
605 C Street, Suite 200  
San Diego, CA 92101

# **EXHIBIT 4**

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STEVEN KANE, on behalf of  
himself and other similarly-situated  
employees,

Plaintiff,

vs.

SMITHFIELD DIRECT, LLC, a  
Delaware Limited Liability  
Company; and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO. 21-CV-04832 PA (JCx)

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND  
ENTERING JUDGMENT**

Complaint filed: April 12, 2021  
Removal date: June 14, 2021  
Trial date: June 14, 2022



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This matter came on for hearing on \_\_\_\_\_, 2022 at 1:30 p.m. in Courtroom 9A of the above-captioned Court on Plaintiff's Unopposed Motion for Order Granting Final Approval of Class Action Settlement and Entering Judgment pursuant to this Court's Order Granting Preliminary Approval of Class Action Settlement [Dkt. \_\_\_\_], and the fully-executed Stipulation of Class Action and PAGA Settlement and Release of Claims ("Settlement Agreement"), [Dkt. \_\_\_\_\_, pgs \_\_\_\_]. Pursuant to the Preliminary Approval Order, Class Members were given notice of the terms of the Settlement pursuant to the Settlement Agreement ("Settlement"), and the opportunity to comment upon, request to be excluded or object to the Settlement or any of its terms. Having received and considered the Settlement, the supporting papers filed by the Parties, and the evidence and argument received by the Court in conjunction with the Motion for Order Granting Preliminary Approval of Class Action Settlement [Dkt. \_\_\_\_], and the Motion for Order Granting Final Approval, the Court grants final approval of the Settlement as set forth in the Settlement Agreement and HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

1. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, the Court-approved Notice of Class Action Settlement, Change of Address Form, and preprinted return envelope (Notice Packet") were mailed to all Class Members by first-class mail. The Notice Packet notified Class Members of their rights (1) to receive their share of the Settlement without a claim form, (2) to object to the Settlement and the deadline to submit an objection; (3) to request exclusion and the deadline to do so; (4) to appear at the Final Approval Hearing; (5) the number of Work Weeks and Pay Periods upon which their Settlement Payments would be calculated and the estimated amount of their Individual Settlement Payments; and (6) how to dispute the number of Work Weeks and Pay Periods upon which their Settlement Payments would be calculated.

2. The Court finds and determines that this notice procedure afforded adequate protections to Class Members and provides the basis for the Court to make an informed decision regarding approval of the Settlement based on the response of the Class. There were no objections presented by Class Member and no Class Member requested exclusion from the Settlement. The Court finds and determines that the notice provided in this case was the best notice practicable, which satisfied the requirements of law and due process.

3. The Court further finds and determines that the terms of the Settlement are fair, reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered finally approved, and that all terms and provisions of the Settlement should be and hereby are ordered to be consummated subject to the Effective Date expiration periods and other conditions set forth in the Settlement Agreement.

4. The Court confirms the law firms of Cohelan Khoury & Singer and Davtyan Law Firm, Inc. as Class Counsel.

5. The Court confirms the Plaintiff Steven Kane as the sole Class Representative.

6. The Court finds and determines that the Settlement Payments to be paid to Participating Class Members as provided for by the Settlement Agreement are fair and reasonable. The Court hereby grants final approval to and following the Effective Date and other conditions set forth in the Settlement Agreement orders the payment of those amounts be made in accordance with the terms of the Settlement Agreement.

7. Pursuant to the terms of the Settlement, and the authorities, evidence and argument submitted by Class Counsel, the Court awards Class Counsel attorneys' fees of \$116,666.00 and reimbursement of their litigation costs of \$. The Court finds and determines that such amounts are fair and reasonable and following the Effective Date and other conditions set forth in the

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1 Settlement Agreement orders the Administrator to make these payments in  
2 accordance with the terms of the Settlement Agreement.

3 8. The Court approves Class Representative Service Payment of  
4 \$10,000 to Plaintiff Steven Kane, in consideration of (i) his initiation and  
5 prosecution of the Action, (ii) service as the sole representative for the Class, (iii)  
6 work performed, (iv) risks undertaken for the payment of costs in the event the  
7 case had not concluded successfully, (v) general release of all claims, and (vi) the  
8 substantial benefits conferred upon all Participating Class Members.

9 9. The Court finds and determines that payment to the California Labor  
10 and Workforce Development Agency of \$11,250.00 (75% of \$15,000) as its share  
11 of the Settlement for civil penalties under the Private Attorneys Generals Act is  
12 fair, reasonable, and appropriate. The Court hereby grants final approval to and  
13 following the Effective Date and other conditions set forth in the Settlement  
14 Agreement orders that amount be paid in accordance with the Agreement.

15 10. The Court further finds and determines that payment of the fees and  
16 costs of the appointed Administrator, CPT Group, Inc., of \$6,500 for services  
17 rendered and to be rendered in connection with the completion of its  
18 administrative duties pursuant to the Settlement is fair and reasonable, and  
19 following the Effective Date and other conditions set forth in the Settlement  
20 Agreement orders that amount be paid in accordance with the Agreement.

21 11. The Court further finds and determines that, pursuant to the  
22 Settlement Agreement, all Class Members, except those who have requested  
23 exclusion from the settlement, are conclusively deemed to have released any and  
24 all "Released Claims" against the "Released Parties" as described below and in  
25 paragraph 52 of the Settlement Agreement:

26 (a) Released Parties

27 For purposes of the Settlement Agreement and this Final Judgment,  
28 "Released Parties" means Defendant Smithfield Direct, LLC and each of its

1 respective past, present and future owners, stockholders, parent corporations,  
2 related or affiliated companies, subsidiaries, officers, directors, shareholders,  
3 employees, agents, principals, heirs, representatives, accountants, attorneys,  
4 auditors, consultants, insurers and re-insurers, and each of their company-  
5 sponsored employee benefit plans of any nature (including, without limitation,  
6 profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of  
7 their respective officers, directors, employees, administrators, fiduciaries, trustees  
8 and agents, and any individual or entity which could be jointly liable with  
9 Defendant.

10 (b) Released Claims

11 For purposes of the Settlement Agreement and this Final Judgment,  
12 “Released Claims” means all claims, demands, rights, liabilities, and causes of  
13 action, arising during the Class Period, that were pled in the Complaint, or which  
14 could have been pled based on the facts alleged, whether in tort, contract, statute,  
15 rule, ordinance, order, regulation, or otherwise, for state and federal wage and  
16 hour laws (including, but not limited to, California Labor Code §§ 201-203,  
17 227.3, 218.5, 226, 226.7, 246, 510, 512, 551, 552, 558, 1174, 1194 1194.2, 1197  
18 or 2698 *et seq.* (PAGA) and the Industrial Welfare Commission Wage Orders),  
19 whether for economic damages, non-economic damages, restitution, penalties,  
20 wages, liquidated damages, interest or attorneys’ fees, including but not limited  
21 to: the causes of action asserted in the Complaint for Defendant’s alleged failure  
22 (1) to pay wages including minimum wages and overtime, (2) to pay vacation and  
23 sick leave, (3) to provide meal or rest periods or pay additional wages in lieu  
24 thereof, (4) to provide accurate itemized wage statements, (5) to timely pay all  
25 wages upon termination, and (6) as related to the foregoing, the causes of action  
26 for alleged unlawful, unfair and/or fraudulent business practices under California  
27 Business and Professions Code § 17200, *et seq.*, and (7) civil penalties pursuant  
28 to the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

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12. Without affecting the finality of this Order in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this order and the Settlement.

13. Nothing in this order shall preclude any action to enforce the Parties' obligations under the Settlement or under this Order.

14. The Parties are hereby ordered to comply with the terms of the Settlement.

15. The Parties shall bear their own costs and attorneys' fees except as otherwise provided by the Settlement Agreement and this Order Granting Class Counsels' attorneys' fees and reimbursement of litigation costs.

16. The Court hereby enters final judgment in this case in accordance with the terms of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Order.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Percy Anderson  
United States District Court