

## **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 Paragraph 9, 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. See Paragraphs 14-15. 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. See Paragraph 16. 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 alleged by Plaintiff in the Action. 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 “Class.” Each person covered by the Class definition is a “Class Member.” One court decides the issues for all Class Members. In this Action, United States District Court, Central District of California Judge Percy Anderson is in charge of this class action lawsuit.

#### 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 47 Class Members who worked an estimated 5,156 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.

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 5,156 Work Weeks worked by the 47-member Class during the Class Period, a Class Member can expect to receive an estimated **\$33.75** 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 **\$4.29** 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 the April 12, 2017 through November 30, 2020 Class Period, and worked «WorkWeeksTotal» Work Weeks during the Class Period. Smithfield’s records also show that you were employed «Def\_PAGA\_PayPeriods» 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 «TotalestAmount», 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.**

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 Kane v. Smithfield Direct, LLC, c/o CPT Group, Inc. 50 Corporate Park, Irvine, CA 92606, stating what

you believe to be the correct number of Work Weeks or Pay Periods. Your letter must be postmarked on or before April, 18, 2022.

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 April, 18, 2022 in the envelope provided or in a separate envelope addressed to:

Kane v. Smithfield Direct, LLC  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606

### **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 April, 18, 2022.

### **15. 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.

And Yes, even if you opt out of the Class and the Settlement, California law provides that you will receive a portion of the \$3,750 of the PAGA Payment based on the number of Pay Periods you were employed during the PAGA Period.

## **OBJECTING TO THE SETTLEMENT**

### **16. 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 April, 18, 2022.

Kane v. Smithfield Direct, LLC  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606

## THE COURT'S FINAL FAIRNESS HEARING

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

The Court will hold a Final Approval hearing in Courtroom 9A of the United States District Court, Central District of California, Western Division located at 350 West First Street, Los Angeles, California 90012 on August 1<sup>st</sup>, 2022 at 1:30 p.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.

### 18. 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.

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

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

## RELEVANT INFORMATION AND COURT DOCUMENTS

### 20. How May I Review the Documents Concerning this Settlement?

This Notice is a summary of the basic terms of the Settlement. For more information, you may examine the Settlement Agreement, and other important documents filed in this Action online on the Court's website located at: [www.pacer.gov](http://www.pacer.gov), or at the office of the clerk of the United States District Court, Central District of California, 350 W 1st Street, Suite 4311 Los Angeles, CA 90012-4565, during the Court's business hours between 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding court-observed holidays. 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 Administrator by calling toll free 1-888-694-2450, or view the documents pertaining to the Settlement of this Action on the Administrator's website located at <https://www.cptgroupcaseinfo.com/smithfielddirectsettlement/>.

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.