

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Diana M. Khoury (SBN 128643)

dkhoury@ckslaw.com

J. Jason Hill (SBN 179630)

jhill@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

DAVTYAN LAW FIRM, INC.

Emil Davtyan (SBN 299363)

support@davtyanlaw.com

880 E. Broadway

Glendale, CA 91205

Telephone: (818) 875-2008/Facsimile: (818) 722-3974

Attorneys for Plaintiff Steven Kane, on behalf of
himself and the Conditionally Certified Class

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

**DECLARATION OF DIANA M.
KHOURY IN SUPPORT OF MOTION
FOR ORDER GRANTING AWARD
OF ATTORNEYS' FEES,
LITIGATION COSTS, CLASS
REPRESENTATIVE SERVICE
PAYMENT, AND ADMINISTRATION
EXPENSES**

Date: August 1, 2022

Time: 1:30 p.m.

Judge: Percy Anderson

Ctrm.: 9A

Filed: April 12, 2021

Removed: June 14, 2021

1 I, Diana M. Khoury, declare as follows:

2 1. I am a Partner at the law firm of Cohelan Khoury & Singer, co-
3 counsel of record for Plaintiff and the Conditionally Certified Class. I submit this
4 declaration in support of Plaintiff's Motion for Order Granting Award of
5 Attorneys' Fees, Litigation Costs, Class Representative Service Payment, and
6 Administration Expenses. The following facts are within my personal knowledge
7 and if called to testify I could and would competently testify to them.

8 2. I am a 1986 Western State University College of Law graduate and
9 was admitted to the California State Bar in June, 1987. I am admitted to practice
10 in all state courts in California and in the all federal courts in California.

11 3. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan &
12 Khoury, a Partnership of Professional Law Corporations, and within a few years
13 began to focus on class actions. In 2009, Cohelan & Khoury became Cohelan
14 Khoury & Singer. Our firm represents plaintiffs in complex, class and
15 representative action litigation, including wage and hour, labor and employment,
16 antitrust, consumer protection, construction defect and other public interest type
17 class and representative actions.

18 4. I am AV – Preeminent rated by Martindale-Hubbell. For the years,
19 2012 through the present, I, together with my partners Isam C. Khoury and
20 Michael D. Singer, have been selected by our peers based on ethics, experience
21 and reputation as Super Lawyers in Civil Litigation by the Southern California
22 Super Lawyers Magazine for the years. Mr. Singer was admitted as a fellow to the
23 College of Labor and Employment Attorneys in 2020, and named to the Daily
24 Journal 2012, 2013, and 2018 list of Top California Labor and Employment
25 Attorneys.

26 5. Cohelan Khoury & Singer has been certified by the State Bar of
27 California to provide the Mandatory Continuing Legal Education activity entitled
28 "Litigating California Class Actions" and has conducted MCLE certified seminars

on this topic. Senior Partner, Timothy D. Cohelan, is the author of Cohelan on California Class Actions (1997-2022, updated annually), part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing author on the CEB publication California Wage and Hour Law: Compliance and Litigation (2010-2022 updated annually), in which he wrote the opening chapter overview on California Wage and Hour laws, including the public policy underpinnings for those laws, and the Private Attorneys General Act (PAGA) Claim chapter. He is also a contributing author to the CEB Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr. Singer has served as a columnist for the California State Bar, Litigation Section on wage and hour litigation and has contributed articles on wage and hour and class action issues through the years to numerous California publications. Prior to COVID, he typically lectured several times per year for continuing education courses on wage and hour and class action issues at events in San Diego, Orange County, Los Angeles, and San Francisco. For over twelve years, Mr. Singer has served as wage and hour amicus co-chair and liaison for the California Employment Lawyers Association, drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and employment law since 2000, handling well over 200 wage and hour class and PAGA actions and several individual labor cases. He has litigated several types of employment actions, including complex ERISA employee welfare benefit plan cases, as well as wage and hour class actions before Federal and State Courts in California. In 2014, Mr. Singer, along with Partner J. Jason Hill, tried a wage and hour class action involving claims for illegally deducted wages and unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the trial court ruling in *Dilts* finding state laws preempted by the FAAAA for truck drivers.

1 6. Since admission to the California State Bar, I have been a member of
2 the San Diego County Bar Association, Consumer Attorneys of San Diego,
3 Consumer Attorneys of California, and served on numerous committees
4 throughout the years for these organizations. For six years from 2010 through
5 2015, I served on the Board of Directors for Consumer Attorneys of San Diego,
6 and chaired numerous committees during those terms as well.

7 7. As a part of our overall firm philosophy lawyers perform community
8 service and pro bono work. Firm volunteer work includes service through the
9 Legal Aid at Work, San Diego Volunteer Lawyer Program, the San Diego County
10 Bar Foundation and Consumer Attorneys of San Diego. Since 2014, I have
11 actively served as a director on the San Diego County Bar Foundation, the
12 501(c)(3) non-profit entity and the charitable arm of the San Diego County Bar
13 Association. Partner Jeff Geraci is past recipient of the Wiley W. Manuel Award
14 for Pro Bono Service, and during law school interned for the ACLU and Equal
15 Rights Assistance assisting on impact litigation class action lawsuits. Mr. Singer
16 has served on the Legal Aid at Work Board of Directors since 2011. Mr. Cohelan
17 served as the Chair of the San Diego Volunteer Lawyers Program from 2015-
18 2018, and currently sits on the Board as past Chair. He completed 24 years of
19 volunteer judicial service as a Judge Pro Tem of the San Diego Superior Court.
20 Since admission to the California Bar, Partner Our firm's recent pro bono
21 victories include a settlement which prohibits the City of San Diego from
22 targeting homeless people for illegal lodging tickets under Penal Code Section
23 467(j). (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).)
24 The *Spencer* settlement had the effect of increasing the number of available
25 shelter beds in San Diego.

26 8. Cohelan Khoury & Singer has been certified Class Counsel in the
27 following contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego
28 County Superior Court Case No. 00700810; *Andino v. Kaiser Foundation*

1 *Hospitals*, Alameda County Superior Court Case No. RG11580548; *Arellano, et*
2 *al. v. Container Connection of Southern California, Inc.*, Los Angeles County
3 Superior Court Case No. BC500675; *Bank Of America Wage And Hour*
4 *Employment Practices Litigation*, United States District Court, District of Kansas
5 MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair*
6 *Corporation*, United States District Court, Southern District of California Case
7 No. 13CV1901; *Dilts, et al. v. Penske Logistics, L.L.C., et al.*, United States
8 District Court, Southern District of California Case No. 08CV0318; *Englert, et al.*
9 *v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second Circuit, State
10 of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*, Orange
11 County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*,
12 United States District Court, Southern District of California Case No. 05CV2340;
13 *Gerard v. Les Schwab Tire Centers of California, Inc.*, Sacramento County
14 Superior Court Case No. 2007-30000003; *Grana, et al. v. PICO Enterprises, Inc.*
15 *dba Phyle Inventory Control Specialist and PICS L.A.S.C.* Case No. BC472891;
16 *Gutierrez v. Save Mart Supermarkets* San Mateo County Superior Case No.
17 CIV530955; *Wilcox v Albertsons*, San Diego County Superior Court Case No.
18 GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange*
19 *County Register*, Orange County Superior Court Case No. 03CC08756; *Graham,*
20 *et al. v. Overland Solutions, Inc.*, United States District Court, Southern District of
21 California Case No. 10CV0672 (FLSA Conditional Certification); *Hicks v.*
22 *Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No.
23 B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego
24 County Superior Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*,
25 Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *Liberty*
26 *Mutual Overtime Cases*, Los Angeles County Superior Court Case No. JCCP
27 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company,*
28 *United States District Court, Central District of California Case No.11CV07196*

(FLSA Conditional Certification); *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992; Steroid Hormone Product Cases, Los Angeles County Superior Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Co Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*, United States District Court, Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of California Case No. 10CV0634; and *Weigele v. FedEx Ground Package System, Inc.*, United States District Court, Southern District of California Case No. 06CV1330, among others, as well as being appointed Class Counsel in connection with well over 200 class action settlements.

9. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has actively commenced, prosecuted and concluded numerous state and federal class and representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the resolution of over 200 such cases, including the following, which have received court approval: (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court,

1 Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*,
2 Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle;
3 (c) *Czuchaj v. Conair Corporation*, United States District Court, Southern District
4 of California, Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v.*
5 *TSYS*, United States District Court, Central District of California, Case No. 18-cv-
6 00415, Hon. David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles
7 County Superior Court, Case No. BC472891, Hon. Stephanie M. Bowick; (f)
8 *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case
9 No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises*
10 *WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu
11 M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County
12 Superior Court, Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v.*
13 *Caliber Home Loans, Inc.*, Orange County Superior Court, Case No. 2018-
14 01017838; (j) *Klein v. Loomis Armored US, LLC*, San Bernardino County
15 Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The*
16 *Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon.
17 Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*,
18 United States District Court, Southern District of California, Case No. 17-CV-
19 010624 JM, Hon. Jeffrey T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*,
20 Orange County Superior Court Case No. 2013-0043958, Hon. Kim. G. Dunning;
21 (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et al.*, United
22 States District Court, Southern District of California, Case. No. 15-CV-1631 JM,
23 Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County
24 Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v.*
25 *The Los Angeles Country Club*, Los Angeles County Superior Court, Case No.
26 BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management*
27 *Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon.
28 Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County

1 Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton*
2 *v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case No. CIV-
3 DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District
4 of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas*
5 *v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767,
6 Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*,
7 Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth
8 Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case
9 No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's*
10 *Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-
11 00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San*
12 *Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon.
13 Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco
14 County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa)
15 *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No.
16 CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern
17 District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc)
18 *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court
19 Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods*
20 *Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon.
21 William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles
22 County Superior Court Case No. BC487290, Hon. William F. Highberger; among
23 others.

24 10. We consider ourselves experienced and qualified to evaluate class
25 claims and viability of the defenses. That experience and those qualifications
26 allowed our firm to assist in achieving an efficient resolution of the claims in this
27 matter in exchange for the non-reversionary Gross Settlement Amount of
28 \$350,000.00 which includes: (1) Settlement Payments to Participating Class

Members; (2) attorneys' fees of up to \$116,666.00 to compensate Class Counsel for work performed and remaining to be performed in securing final approval; (3) reimbursement of litigation costs up to \$19,000.00 (presently at \$16,293.78); (4) administration costs of \$6,500.00; (5) a Class Representative Service Payment of \$10,000 to Plaintiff Steven Kane in consideration of his initiation and prosecution of the Action, representation of the Class, work performed, risks undertaken for costs if the case had not concluded successfully, stigma, the substantial benefits conferred on the Class, and for general releases; and (6) a PAGA Payment to the Labor Workforce and Development Agency ("LWDA") of \$11,250.00 (75% of \$15,000.00), and 25% (\$3,750.00) to PAGA Members distributed based on the number of Pay Periods worked during the PAGA Period.

11. After all Court-approved deductions from the GSA, less the Employer Tax Obligations estimated at \$8,936.85, the remaining Net Settlement Amount (NSA) of \$176,603.37 will be distributed entirely to Participating Class Members based on the number of Weeks Worked during the Class Period. With an aggregate 5,156 Weeks Worked, Class Members may expect to receive an estimated \$34.25 for per Week Worked during the Class Period.

12. The proposed Settlement will pay Class Members based on tenure using the number of weeks worked during the Class Period, paying Class Members on average \$3,757.52 and highest payments of \$6,473.63. Those Class Members who worked during the PAGA Period will also receive a proportional share of the \$3,750 PAGA Payment, paying on average \$79.79 and highest PAGA Payment estimated at \$158.57.

13. By this motion, Plaintiff Steven Kane moves for an award of attorneys' fees of \$116,666.00 representing one-third of the Gross Settlement Amount. This sum is reasonable and appropriate based on the substantial hours expended to achieve this result, the litigation risks and complexities of prosecuting these types of cases, the contingent nature of any fee, their experience of handling

1 cases of this type, the fees commonly awarded in these cases, and the vindication
2 of the Class' rights by securing a \$350,000.00 non-reversionary Settlement.

3 14. Plaintiff consented in writing to attorneys' fees of up to one-third
4 percent of any recovery to be distributed to Plaintiff's Counsel in the following
5 amounts: one-third to the Davtyan Law Firm, Inc., and two-thirds to Cohelan
6 Khoury & Singer.

7 15. To produce the favorable results on behalf of the Class and to bring
8 this matter to final approval, will have expended 412.1 (382.1 current and 30.0
9 future) attorney and para-professional hours since the inception of this case
10 resulting in a lodestar of \$240,272.00 (\$223,772.00 current and \$16,500.00
11 future). Attached as Exhibit 1 is a true and correct copy of the Consolidated
12 Summary of Class Counsel's Hours and Costs for my firm as well as co-Class
13 Counsel.

14 16. Plaintiff Steven Kane was employed by Smithfield as an RSR at
15 Smithfield's Ontario, California location for nearly five years, from November 30,
16 2015 through November 13, 2020. Plaintiff contends that, throughout the Class
17 Period, his job entailed driving, delivering and stocking products to, and taking
18 back expired products from, large commercial retailers in California such as
19 Dollar General, Big Lots, local food markets, and other chain stores.

20 17. Smithfield paid Plaintiff, and other RSRs, a base hourly rate of
21 \$10.00 to \$10.50 per hour, plus the greater of a \$425.00 commission or actual
22 commissions earned each workweek. Including these commissions, RSRs were
23 paid at least minimum wage for all hours worked.

24 18. Plaintiff alleges that during his tenure with Smithfield, there were
25 only three instances where he earned commissions from sales greater than the
26 \$425.00 minimum weekly commission. Other Class Members had similar
27 experiences. See Declarations of David Gillum and Victor Davila, Dkt. Nos. 27-
28 15, 27-16 respectively, filed in support of class certification.

1 19. The proposed Class is defined as all individuals employed by
2 Smithfield in California as hourly Route Sales Representatives or Relief Route
3 Sales Representatives (“RSRs”) during the Class Period, April 12, 2017 through
4 November 30, 2020. There are 47 Class Members, including Plaintiff, who
5 worked 5,156 weeks during the Class Period. A subset of the Class, PAGA
6 Members, were employed sometime during the March 7, 2020 through November
7 30, 2020 PAGA Period. There are 28 PAGA Members with 875 Pay Periods
8 during the PAGA Period.

9 20. The Parties conducted significant formal written discovery prior to
10 the filing of Plaintiff’s Motion for Class Certification and engaged in informal
11 discovery prior to the scheduled mediation.

12 21. On July 6, 2021, Plaintiff served Smithfield with interrogatories, to
13 which it responded on August 6, 2021. Smithfield served Plaintiff with
14 interrogatories and requests for document production on August 13, 2021, to
15 which Plaintiff responded and produced documents on September 15, 2021.

16 22. The Parties exchanged FRCP Rule 26(a) Initial Disclosure
17 Statements identifying numerous potential witnesses possessing information
18 relevant to the alleged claims on August 30, 2021. Plaintiff’s disclosures included
19 147 pages of pay stubs, wage statements and IRS Form W-2 Wage and Tax
20 Statements, company handbook materials and policies, and various other
21 documents.

22 23. With respect to the discovery and release of Class Member contact
23 information to Plaintiff’s Counsel, the Parties agreed upon the use of a *Belaire-*
24 *West* opt-out privacy notice. On September 27, 2021, the agreed-upon privacy
25 notice was mailed to all 45 Class Members giving them until October 27, 2021 to
26 opt out of the release of their contact information. Following the close of the
27 November 3, 2021 opt out deadline, Plaintiff’s Counsel was provided with the
28 contact information for all Class Members.

1 24. Prior to the release of the Class' contact information, and in support
2 of Plaintiff's class certification motion, Plaintiff's Counsel conducted several
3 telephonic interviews of Class Members whose names had been obtained through
4 their own investigation. Declarations from two class members were filed in
5 support of Plaintiff's certification motion. Dkts 27-15, and 27-16.

6 25. Smithfield's counsel deposed Plaintiff Kane on October 18, 2021. On
7 October 19, 2021, pursuant to FRCP 30(b)(6), Plaintiff's Counsel took depositions
8 of Smithfield's persons most knowledgeable: Crystal Delorey, Senior Director of
9 Payroll, and Michael Hughley, Senior Director of Operations for DSD, Direct
10 Store Delivery.

11 26. On October 8, 2021, following agreement to attend mediation,
12 Smithfield informally produced 781 pages of documents that included (1)
13 relevant timekeeping and meal and rest period policies and procedures; (2) job
14 descriptions for years 2017 - 2020; (3) total number of Class Members and their
15 Work weeks during the Class Period; (4) total number of PAGA Members and
16 their Pay Periods during the PAGA period; (5) number of terminated employees;
17 and (6) hourly rates paid from April 12, 2017 to December 31, 2017 - \$10/hour;
18 and from January 1, 2018 through November 2020 - \$10.50/hour. Smithfield also
19 produced two Microsoft excel spreadsheets containing over 23,000 lines of data of
20 time punch details for Plaintiff and fourteen randomly-selected Class Members.
21 On receipt of the data, and review of the information gathered from Class
22 Counsel's investigations and informal Class Member interviews, Plaintiff's
23 Counsel analyzed the data and calculated its assessment of Class-wide damages
24 for mediation.

25 27. On October 25, 2021, the Parties attended mediation with Deborah
26 Saxe, Esquire of JAMS, an experienced and respected wage and hour mediator in
27 Southern California. After a full day of negotiations facilitated by Ms. Saxe, the
28 Parties were not able to reach agreement, although considerable progress had been

1 made. A mediator's proposal was tendered to the Parties, which was accepted with
2 minor modifications on October 27, 2021. The Parties thereafter continued to
3 negotiate at arms'-length the balance of the terms contained in the long-form
4 Settlement Agreement preliminarily approved on December 29, 2021. Dkt. 34-3.

5 28. On December 10, 2021, Plaintiff's Motion for Preliminary Approval
6 was filed and served on the LWDA the same date. The hearing was noticed for
7 January 10, 2022.

8 29. On December 29, 2021, the Court issued its Order Granting
9 Plaintiff's Motion for Preliminary Approval and Conditional Certification of the
10 Class, and vacated the January 10, 2022 hearing. Having evaluated the terms of
11 the Settlement that provided for direct notice to the Class via First Class U.S.
12 Mail, and a notice plan that included the Administrator's search of the National
13 Change of Address database to update stale addresses prior to the initial mailing
14 of the Notice Packet, and skip-tracing of returned and undelivered Notice Packets
15 using the Class Member's social security number, the Court determined the
16 Settlement's "notice plan was reasonably calculated to reach the members of the
17 Class".

18 30. The Court further stated, "The proposed notice describes the essential
19 terms of the proposed Settlement Agreement, defines the class, sets forth the
20 procedures for opting out of the class, filing objections to the proposed Settlement
21 Agreement, and provides information on the date, time, and location of the
22 fairness hearing. The Court finds that these notice methods are reasonably
23 calculated to afford the class members an opportunity to present their objections.
24 As such, the parties are ordered issue settlement notices to the class pursuant to
25 the proposed notice plan and substantially in the form submitted for the Court's
26 approval ..."

27 31. On February 16, 2022, the Notice of Class Action Settlement,
28 Change of Address form and pre-printed return envelope, ("Notice Packets") were

1 mailed to all identified Class Members giving them through April 18, 2022 to
2 postmark and return written objections, requests for exclusion, and disputes of the
3 information on which their Settlement Payments would be calculated.

4 32. An extended deadline of May 3, 2022 is provided to Class Members
5 whose Notice Packets were returned as undelivered, and remailed to an updated
6 mailing address. Through the present, no objections or requests for exclusion have
7 been returned to the Administrator by any member of the Class.

8 33. Class Members will receive an estimated \$34.25 for each week
9 worked during the Class Period (\$176,603.37 NSA /5,156 weeks); and based on
10 this rate, will receive Settlement Payments averaging \$3,757.52, and highest
11 payments of \$6,473.63.

12 34. Additionally, if a Class Member is also a PAGA Member, they will
13 also receive a portion of the \$3,750.00 PAGA Member Payment based on the
14 number of Pay Periods worked during the PAGA Period. With 875 Pay Periods
15 worked by 28 PAGA Members, each may expect to receive \$4.29 per Pay Period,
16 with an average payment of \$79.79, and highest payment of \$158.57, whether or
17 not they opt out of the Class settlement. PAGA Members will receive an IRS
18 Form 1099 for their portion of the \$3,750.00 PAGA Payment.

19 35. Following Final Approval and the Effective Date of settlement,
20 Participating Class Members will receive their Settlement Payment checks, and
21 PAGA Members will receive a share of the \$3,750.00 PAGA Payment even if
22 they opt-out of the Class settlement. A postcard reminding Class Members to cash
23 their checks will be mailed 30 days of issuance of the checks, and after 90 days of
24 issuance, all uncashed checks will be voided and funds forwarded to California's
25 Controller, Unclaimed Property Division for further handling on behalf of the
26 Class Member whose check was voided.

27 36. The method of distribution provided for by the Settlement Agreement
28 allocates funds based on each Class Member's tenure with Smithfield, i.e., using

1 the number of weeks worked during the Class Period and does not give preference
2 to any Class Member. The information and data needed to distribute the funds is
3 readily available from Smithfield's records, and the Administrator can apply the
4 formula fairly and transparently. Settlement Payments will be allocated one-third
5 to wages, for which an IRS W-2 Form will be issued, and two-thirds to interest
6 and penalties, for which IRS 1099 Forms will be issued. Participating Class
7 Members will release the Released Parties from the Released Claims arising from
8 the factual allegations of the First Amended Complaint.

9 37. Class Counsel seeks an award of attorneys' fees of \$116,666.00
10 which represents one-third of the GSA. This percentage is reasonable and
11 appropriate based on the substantial hours expended to achieve this result, the
12 litigation risks and complexities of prosecuting these types of cases, the contingent
13 nature of any fee recovered, Class Counsels' experience in handling cases of this
14 type, the fees commonly awarded in these cases, and the vindication of the Class'
15 rights by securing a \$350,000.00 non-reversionary Settlement.

16 38. Plaintiff achieved an outstanding result for the Class, against a well-
17 funded Defendant with excellent and experienced counsel by performing quality
18 work. A positive outcome was not certain and risky given the FMCSA's opinion
19 issued in late December, 2018 holding that interstate drivers were not subject to,
20 and not protected by California's rest and meal period laws and which was upheld
21 by the Ninth Circuit in the *IBT* case on January 15, 2021. Any payment of
22 attorneys' fees was completely contingent on a successful outcome for the Class.

23 39. The request fee of one-third of a common fund achieved, is in line
24 with awards made in similar cases in California, consistent with market rates and
25 is reasonable. See, e.g., *Gomez v. USF Reddaway, Inc.*, (C.D.Cal. Sep. 21, 2020,
26 No. LA CV16-05572 JAK (FFMx)) 2020 U.S.Dist.LEXIS 172911 (finding 33-
27 1/3% reasonable in a wage and hour class action settlement); *Stuart v. RadioShack*
28 *Corp.* (N.D.Cal. Aug. 9, 2010, No. C-07-4499 EMC) 2010 U.S.Dist.LEXIS

1 92067) (finding 33% fee award “well within the range of percentages which
2 courts have upheld as reasonable in other class action lawsuits”; *Barbosa v.*
3 *Cargill Meat Solutions Corp.* (E.D.Cal. July 2, 2013) 297 F.R.D. 431, (awarding
4 33-1/3% of the \$1,290,000 common fund, and identifying other cases where
5 similar fee awards were granted); *Vasquez v. Coast Valley Roofing, Inc.*, 266
6 F.R.D. 482 (E.D. Cal. 2010) (approving attorney’s fee award of 33.3% of the
7 common fund of in a wage and hour putative class action settlement); *Benitez v.*
8 *Western Milling, LLC* (E.D.Cal. June 19, 2020, No. 1:18-cv-01484-SKO) 2020
9 U.S.Dist.LEXIS 108900, finding 33-1/3% of the \$650,000 common fund
10 reasonable); *Beaver v. Tarsadia Hotels* (S.D.Cal. Sep. 28, 2017, No. 11-cv-01842-
11 GPC-KSC) 2017 U.S.Dist.LEXIS 160214 (approving a fee award of one-third of
12 the \$51,150,000 settlement fund in a class action settlement); *McGrath v.*
13 *Wyndham Resort Dev. Corp.* 2018 U.S. Dist. LEXIS 16095 (S.D. Cal. Jan. 31,
14 2018) awarding 33-1/3% of the \$7,250,000 common fund in a pre-certification
15 wage and hour class action settlement; *Birch v. Office Depot, Inc.*, No. 06 CV
16 1690 DMS (WMC), 2007 U.S. Dist. LEXIS 102747 (S.D. Cal. September 28,
17 2007) (attorneys’ fee award of 40% of \$16,000,000 settlement in pre-certification
18 meal and rest period class action); *Rippee v. Bos. Mkt. Corp.*, No. 05cv1359
19 *BTM(JMA)*, 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. October 10, 2006)
20 (attorneys’ fee award of 40% of \$3,750,000 wage and hour class action
21 settlement); *Watson v. Raytheon Company*, USDC Southern District, Case No.
22 CV-10-cv-00634 LAB (RBB) (S.D. Cal. March 7, 2011) (33-1/3% in \$2,000,000
23 settlement in certified misclassification class action); *Dirienzo v. Dunbar*
24 *Armored, Inc.*, No. 09 cv 2745 DMS (JMA), 2011 U.S. Dist. LEXIS 166615 (S.D.
25 Cal. August 5, 2011) (33-1/3% of \$1,500,000 settlement in pre-certification
26 reimbursement, rest and meal period class action); *Green, et al. v. Penske*
27 *Logistics, L.L.C., et al.*, USDC Southern District, Case No. CV-09-0069 DMS
28 (CAB) (S.D. Cal. May 28, 2010) (33% of \$500,000 settlement in pre-certification

1 wage and hour class action).

2 40. Within the past several years, Cohelan Khoury & Singer has been
3 awarded one-third of a common fund, in the following class and representative
4 action settlements:

5 a) *Luareno v. The Art of Shaving*, Los Angeles Superior Court, Case
6 No. BC550093 (Hon. Amy D. Hogue – approving attorneys’ fees of 33-1/3% of
\$950,000 Settlement in a pre-certification wage and hour class action);

7 b) *Ramirez v. Kirkhill-TA CO.*, Los Angeles Superior Court, Case No.
8 BC557207 (Hon. Kenneth Freeman – approving attorneys’ fees of 33-1/3% of
\$1,100,000 Settlement in a pre-certification wage and hour class action);

9 c) *Gutierrez v. Benchmark*, San Diego Superior Court, Case No. 2014-
10 00032287 (Hon. Joel M. Pressman – approving attorneys’ fees of 33-1/3% of
\$350,000 Settlement in a pre-certification wage and hour class action);

11 d) *Morales v. The Los Angeles Country Club*, Los Angeles Superior
12 Court, Case No. BC566493 (Hon. William F. Highberger – approving attorneys’
13 fees of 33-1/3% of \$600,000 settlement n a pre-certification wage and hour class
14 action);

15 e) *Rodriguez v. Healthcare Partner Medical Group, Inc.*, Los Angeles
16 Superior Court, Case No. BC541313 (Hon. Kenneth Freeman – approving
attorneys’ fees of 33-1/3% of \$6,000,000 settlement in a pre-certification wage
and hour class action);

17 f) *Smith v. Unionbancal Corp.*, San Francisco Superior Court, Case
18 No. CGC-11-508019 (Hon. Harold E. Kahn – approving attorneys’ fees of 33-
19 1/3% of \$1,450,000 settlement in a pre-certification wage and hour class action);

20 g) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles Superior Court,
Case No. BC487290 (Hon. William F. Highberger – approving attorneys’ fees of
21 33-1/3% of \$500,000 settlement in a pre-certification wage *and* hour class
22 action);

23 h) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino Superior Court,
Case No. CIV-DS-1511918 (Hon. Donald Alvarez – approving attorneys’ fees of
24 33-1/3% of \$3,750,000 settlement in a pre-certification wage and hour class
25 action);

26 i) *Mena v. Wolfgang Puck Catering*, Los Angeles Superior Court, Case
27 No. BC582743 (Hon. John Shepard Wiley, Jr. – approving attorneys’ fees of 33-
1/3% of \$600,000 settlement in a pre-certification wage and hour class action);

j) *Syed v. M.I. Swaco*, USDC Eastern District of California, Case No. 12-CV-01718 DAD (Hon. Dale A. Drozd – approving fees of 33-1/3% of \$7,000,000 settlement in a pre-certification wage and hour class action);

k) *Magdaleno v. Shelly Automotive, LLC*, Orange Superior Court, Case No. 2013-0043958 (Hon. Kim. G. Dunning – approving attorneys’ fees of 33-1/3% of \$900,000 settlement in a pre-certification wage and hour class action);

l) *Grana v. PICO Enterprises, Inc.*, Los Angeles Superior Court, Case No. BC472891 (Hon. Stephanie M. Bowick – approving attorneys’ fees of 33-1/3% of \$1,500,000 settlement in a certified wage and hour class action);

m) *McGrath v. Wyndham*, USDC Southern District of California, Case No. 15-CV-1631 JM (Hon. Jeffrey T. Miller – approving attorneys’ fees of 33-1/3% of \$7,250,000 settlement in a pre-certification wage and hour class action)

n) *Arellano v. Container Connection*, Los Angeles Superior Court, Case No. BC500675 (Hon. Ann I. Jones – approving attorneys’ fees of 33-1/3% of \$1,625,000 settlement in a certified wage and hour class action);

o) *Nijmeh v. Bon Appetit*, Santa Clara Superior Court, Case No. 16CV294127 (Hon. Thomas E. Kuhnle – approving attorneys’ fees of 33-1/3% of \$1,350,000 settlement in a pre-certification wage and hour class action);

p) *Vaquero v. Stoneledge*, Los Angeles Superior Court, Case No. BC522676 (Hon. Elihu M. Berle – approving attorneys’ fees of 33-1/3% of \$3,900,000 settlement in a certified wage and hour class action);

q) *Gutierrez v. Save Mart Supermarkets*, San Mateo Superior Court, Case No CIV530955 (Hon. Marie S. Weiner – approving attorneys’ fees of 33-1/3% of \$5,000,000 settlement in a certified wage and hour class action);

r) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los Angeles Superior Court, Case No. BC590913 (Hon. Elihu M. Berle – approving attorneys’ fees of 33-1/3% of \$778,000 settlement in a pre-certification wage and hour class action);

s) *Ramos v. Home Depot U.S.A., Inc.*, Alameda Superior Court, Case No. RG15797737 (Hon. Da Ioana Petrou – approving attorneys’ fees of 33-1/3% of \$2,600,000 settlement in a PAGA action);

t) *Klein v. Loomis*, San Bernardino Superior Court, Case No. CIVDS1704547 (Hon. David Cohn – approving attorneys’ fees of 33-1/3% of \$1,014,000 settlement in a pre-certification wage and hour class action).

u) *Gutierrez v. Southern Counties Oil*, San Diego Superior Court, Case No. 2017-00040850 (Hon. Ronald F. Frazier – approving attorneys’ fees of 33-1/3% of \$637,500 settlement in a pre-certification wage and hour class action).

1 v) *Lawson v. Staples*, Los Angeles Superior Court, Case No.
2 BC542237 (Hon. Kenneth R. Freeman – approving attorneys’ fees of 33-1/3% of
3 \$58,275 settlement in a pre-certification wage and hour class action).

4 w) *Hanson v. Leisure Sports, Inc.*, Contra Costa Superior Court, Case
5 No. MSC17-00078 (Hon. Edward G. Weil – approving attorneys’ fees of 33-
6 1/3% of \$200,000 settlement in a pre-certification wage and hour class action).

7 x) *Horton v. Neostrata Company Inc., et al.*, USDC Southern District
8 of California, Case No. 16-CV-2189 JLB (Hon. Anthony J. Battaglia – approving
9 attorneys’ fees of 33-1/3% of \$355,000 settlement in a pre-certification wage and
10 hour class action).

11 y) *Schaffer v. Rady Children’s Hospital – San Diego, et al.*, San Diego
12 Superior Court, Case No. 2015-00022978 (Hon. Joel R. Wohlfeil – approving
13 attorneys’ fees of 33-1/3% of \$12,500,000 settlement in a certified wage and
14 hour class action).

15 z) *Hubbard v. Caliber Home Loans, Inc.*, Orange Superior Court, Case
16 No. 2018-01017838 (Hon. Glenda Sanders – approving attorneys’ fees of 33-
17 1/3% of \$175,000 settlement in a PAGA action).

18 aa) *Redin v. Accountabilities Professional Group, Et al.*, Orange
19 Superior Court, Case No. 2017-00929734 (Hon. Glenda Sanders –attorneys’ fees
20 of 33-1/3% of \$255,000 settlement in Class action).

21 bb) *White v. Sacramento Regional Transit District, Sacramento* Superior
22 Court, Case No. 234-2018-00240461 (Hon. David D. Alba –attorneys’ fees of
23 33-1/3% of \$385,000 settlement in Class action).

24 cc) *Burris v. Resort Vacations, Inc.*, Orange County Superior Court,
25 Case No. 30-2018-00997260 (Hon. Randall J. Sherman –attorneys’ fees of 33-
26 1/3% of \$1,485,000 settlement in Class action).

27 dd) *Jimenez v. Reyes Holdings, LLC, et al.*, San Diego Superior Court,
28 Case No. 37-2019-00051577 (Hon. Joel R. Wohfeil –attorneys’ fees of 33-1/3%
of \$216,666 settlement in Class and Representative action).

ee) *Santos, et al. v. National General Management Corp.*, San
Bernardino Superior Court, Case No. CIVDS 1918865 (Hon. David Cohn –
attorneys’ fees of 33-1/3% of \$680,000 settlement in PAGA action).

ff) *Loreto v. General Dynamics Information Technology, Inc.*, USDC
Southern District of California, Case No. 3:19-cv-01366-GPC-MSB (Hon.
Gonzalo P. Curiel – approving attorneys’ fees of 33-1/3% of \$900,000 settlement
in a pre-certification wage and hour class action).

1 gg) *Romanov v. Amazon Services LL.*, USDC Central District of
2 California, Case No. 2:20-cv-02692-SB-KS (Hon. Stanley Blumenfeld, Jr. –
3 approving attorneys’ fees of 33-1/3% of \$700,000 settlement in a pre-
certification wage and hour class action).

4 41. Class Counsels’ attorneys’ fees request is reasonable under either
5 method, as the amount of requested fee is less than the \$223,772.00 lodestar
6 through the filing date of this Motion; and, the results and quality of the
7 settlement, the contingent risk, and comparator cases further support the
8 reasonableness of Class Counsels’ request.

9 42. As stated above, Class Counsel will have worked 412.1 hours for a
10 lodestar fee of \$240,272.00 based on rates ranging from \$595 to \$900 per hour.

11 43. Class Counsel’s hours includes an anticipated 30 hours between the
12 time shortly prior to filing this motion, and the time of the Final Approval Hearing
13 in August, 2022, to draft the Motion for Final Approval, interact with the
14 administrator regarding the Class’ participation, disputes, if any received, its final
15 declaration, preparation for and attendance at the Final Approval Hearing, and
16 upon Final Approval, interact with counsel for Smithfield and the Administrator to
17 approve the payment documents and mailing of the checks, respond to Class
18 Member inquiries, and uncashed checks.

19 44. Class Counsel’s skill and experience support their hourly rates, which
20 are in line with those approved in wage and hour class action litigation in
21 California, and which have been approved by numerous California state and
22 federal courts.

23 45. Class Counsels’ practice is limited to litigating class actions on
24 behalf of employees and consumers, and they have been appointed Class Counsel
25 in numerous cases.

26 46. As leading attorneys in the field, Class Counsel continually monitors
27 prevailing market rates of defense and plaintiff law firms and sets the billing rates
28

1 to follow those attorneys and staff of comparable skill, qualifications and
2 experience. Other wage and hour attorneys working as Class Counsel before
3 California courts charge comparable if not higher rates. Attached as Exhibit 2 is a
4 true and correct copy of the 2014 National Law Journal survey of hourly billing
5 rates for Partners and Associates.

6 47. All of the work performed by Class Counsel to secure the Settlement
7 was reasonable and necessary, and their efforts are reflected in the excellent result
8 achieved for the Class.

9 48. Plaintiff does not request an upward adjustment, as the lodestar is
10 more than the percentage of the common fund sought by this Motion. The
11 requested fee results in a so-called “negative multiplier” which “suggests that the
12 negotiated fee award is a reasonable and fair valuation of the services rendered to
13 the class.” *Chun-Hoon v. McKee Foods Corp.*, 716 F.Supp.2d 848, 854 (N.D.
14 Cal. 2010).

15 49. Class Counsel obtained an excellent Settlement providing substantial
16 compensation to Class Members for unpaid wages for overtime and premium
17 payments for non-compliant meal and rest breaks. Class Counsel litigated this
18 case purely on a contingency fee basis and the requested fee of one-third of the
19 Gross Settlement Amount is in line with what other Ninth Circuit courts have
20 awarded in similar cases, which often award a higher percentage, as set for above.

21 50. Class Counsel incurred \$16,293.78 in ordinary and reasonable
22 litigation costs that are reimbursable under the terms of the settlement agreement
23 for up to \$19,000.00. Attached as Exhibit 3 is a true and correct copy of Cohelan
24 Khoury & Singer’s Itemization of Costs expended in this matter.

25 51. Class Counsel seeks payment of \$6,500.00 to CPT Group, Inc., the
26 appointed Administrator for its work in noticing the Class, and administration of
27 the Settlement as described in its declaration filed herewith, and as set forth in the
28 Settlement Agreement. The Parties have no objection to this payment, and no

1 objections have been asserted by any Class Member.

2 52. Class Counsel seeks a Class Representative Service Payment of
3 \$10,000.00 to Plaintiff Steven Kane, for acting as the sole representative for the
4 Class, work performed, risks undertaken for Smithfield's costs if the case had
5 been lost, stigma, and the substantial benefits conferred upon 44 other members of
6 the Class.

7 53. On February 22, 2021, Plaintiff filed charges with the Labor and
8 Workforce Development Agency, and on April 12, 2021 Plaintiff filed a wage and
9 hour class action complaint against Smithfield in the Los Angeles County
10 Superior Court for various Labor Code violations, which was removed to this
11 Court.

12 54. Without indication that the LWDA intended to investigate the
13 charges against Smithfield, on May 11, 2021, Plaintiff filed a First Amended
14 Class Action Complaint adding PAGA claims. Since prior to the filing of the
15 charges with the LWDA, and agreeing to represent the Class, Plaintiff has been
16 continuously involved with this case, by providing responding to written
17 discovery requests, preparing for and sitting for his day-long deposition, working
18 with Class Counsel to draft a declaration in support of his certification motion,
19 putting other Class Members in touch with Class Counsel and from whom
20 declarations in support of certification were filed, and generally staying in regular
21 contact with Class Counsel regarding the litigation and the settlement process.

22 55. Mr. Kane has spent considerable time both before and after initiating
23 this class action litigation. By filing charges against his former employer, Mr.
24 Kane has risked the loss of future employment opportunities because prospective
25 employers may conduct background checks to determine if applicants have filed
26 lawsuits, with some employers considering the filing of a class action lawsuit
27 costing a former employer millions of dollars a disqualifying factor.

28

