

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 other similarly-situated employees

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 PLAINTIFF
STEVEN KANE 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, Steven Kane, hereby declare as follows:

2 1. I am the named Plaintiff in the above-captioned lawsuit. I am also a
3 representative of the State of California's Labor and Workforce Development
4 Agency seeking civil penalties for Labor Code violations. I have personal
5 knowledge of all matters stated in this declaration, and could competently testify
6 if call as a witness, except as to the matters stated upon information and belief,
7 and as to those matters, I believe them to be true.

8 2. I submit this declaration is support of the Motion for Award of
9 Attorneys' Fees, Litigation Costs, Class Representative Service Payment, and
10 Administration Expenses and Motion for Final Approval of the Class Action
11 Settlement obtained in this case.

12 3. I have and will continue to adequately represent the interest of all
13 other similarly employed Class Members. I am informed the proposed Class
14 includes 46 other California Route Sales Representatives or Relief Route Sales
15 Representatives employed by Smithfield Direct sometime during the period from
16 April 12, 2017 through November 30, 2020.

17 4. I worked for Smithfield Direct, LLC in California from
18 approximately December 26, 2016 until November 13, 2020 as a Route Sales
19 Representative ("RSR"). During my employment with Smithfield, I was classified
20 as an "exempt" commissioned sales employee under the outside sales exemption.
21 As an exempt commissioned sales employee, overtime wages were not paid.
22 Also, when meal periods were not free from all work-related duties, less than 30
23 minutes, or missed altogether, or late, Smithfield did not pay an hour's wage at
24 my regular rate of pay. The same was true for the non-compliant 10-minute rest
25 break. Smithfield did not pay an hour's wage at my regular rate of pay.

26 5. My duties as an RSR at Smithfield were driving, delivering, stocking,
27 and taking back expired products from large commercial retailers in California —
28 including Dollar General, Big Lots, other chains, local food markets, and other

1 contracted existing store locations that wanted Smithfield meat brands in their
2 stores. Sometimes, I'd make additional sales above the store's existing orders on
3 fixed delivery routes, but this only happened on very rare occasions and was not a
4 regular duty of mine as an RSR.

5 6. Throughout my employment, I was paid an hourly wage for all hours
6 worked, plus a guaranteed base, "commission" of \$425 per week. I earned this
7 whether or not I made any sales. Beyond this, RSRs could earn a small percentage
8 commission if they sold more than a certain dollar amount of product in one week
9 on the amount above that dollar amount. During my tenure with Smithfield, and
10 during the class period, I only earned such a commission on three occasions,
11 according to my pay records that I have reviewed with my attorneys. Outside of
12 these pay records, I do not recall ever receiving an enhanced commission. My job
13 entailed ordering product for the following week based on what I thought the store
14 would need based on its history, delivering these products to the store, and
15 stocking the product. After this, I would determine what might be needed the
16 following week and would record it in my computer—which would take about 10
17 minutes.

18 7. After I stopped working for Smithfield, I searched for and located
19 attorneys specializing in employment matters to talk to about my rights, and the
20 wages I believed I was owed for unpaid overtime and compensation for
21 noncompliant rest breaks and meal periods. I retained Cohelan Khoury & Singer
22 and the Davtyan Law Firm to pursue this case as a class action on behalf of myself
23 and all others who like me, were not properly compensated for all time worked
24 and provided with the proper rest breaks and meal periods, or paid when those
25 breaks were not compliant.

26 8. I am not related to any attorney working on the case, I am not aware
27 of any interests I have adverse to the interests of the other Class Members, and I
28 do not have any conflicts that would keep me from adequately representing the

1 Class. I have been and remain committed to prosecuting this case vigorously on
2 behalf of the Class.

3 9. When I decided to become involved as the representative for all other
4 RSRs, I understood I was not only seeking compensation for myself, but also for
5 them, and that by doing this, I would delay immediate redress available through
6 the Labor Commissioner's office. I agreed to do this because the others RSRs may
7 not have been aware of their rights, or afraid to complain to management for fear
8 of losing their jobs.

9 10. This case was filed on April 12, 2021 and I have remained in
10 constant contact with my attorneys at all times. I have responded to written
11 discovery that Smithfield directed to me, which included requests for production
12 of documents and interrogatories. I worked closely with my attorneys to provide
13 full and complete answers to those interrogatories and responsive documents.

14 11. I was told my deposition was scheduled for October 18, 2021. I
15 understood the questioning process would be difficult and intense. To help me
16 prepare and become comfortable with the process, I had multiple telephonic
17 deposition preparation sessions with Cohelan Khoury & Singer attorney Jason
18 Hill, during which we went through the deposition process, the information, facts
19 and documents that were exchanged in this case and the questions I would likely
20 be asked. I estimate these conversations took a about 5 hours.

21 12. On October 17, 2021, the day before my deposition, I spent an
22 additional 6 to 7 hours with Mr. Hill in an intense preparation for my deposition.

23 13. On October 18, 2021, the day of my deposition, I drove from my
24 home in Huntington Beach to the Cohelan Khoury & Singer law offices in San
25 Diego. I was deposed remotely by the attorney for Smithfield via Zoom
26 videoconferencing. I spoke with Jason Hill prior to the start of the deposition as
27 well. I sat in a small conference room, while Mr. Hill sat in his office during the
28 deposition. My videotaped deposition began around 10:00 a.m. and ended around

1 2:00 p.m. After the deposition, I discussed my testimony with Mr. Hill prior to
2 driving back to Huntington Beach. Altogether, I estimate I spent 12 hours on
3 travel to and from the deposition, and the deposition itself.

4 14. My attorneys explained a motion for class certification would need to
5 be filed requesting the court to allow this case to continue as a class action. I
6 worked with them to write a declaration describing my experiences which led to
7 initiating this case. I spent at least 3 hours working with them to draft, review and
8 revise my declaration before it was signed, which I understand was filed with the
9 Court.

10 15. I also reached out to other employees and asked them to call my
11 attorneys to discuss their experiences as RSRs to assist them in drafting the
12 motion for class certification.

13 16. Because I stayed in touch with my attorneys, I knew mediation was
14 scheduled. To help them prepare for mediation, I had multiple conversations with
15 attorney Jason Hill, answering questions and providing additional information. On
16 the day of mediation, I made myself available the entire day by telephone to
17 answer any questions my attorneys or mediator may have. Although the case did
18 not settle that day, a settlement was reached days later. I was provided with the
19 memorandum of understanding, which I reviewed, sought clarification, and then
20 signed it. Later I reviewed and signed the longer settlement agreement.

21 17. As the sole representative for the other RSRs, I have put the interests
22 of the Class above my own at all times, since this case was started. I have
23 participated, and will continue to participate in this litigation throughout the
24 settlement processing period. By bringing this case, 46 other Class Members will
25 receive settlement payments they would have not otherwise received.

26 18. Since it was filed, nearly every week, I have had some aspect of it
27 pop up in my mind, maybe only for a couple seconds, or even just for a few
28 minutes on days where I was not actively working on something my attorneys

1 requested. Since prior to the filing of the complaint which started this litigation in
2 April 2021, I've worked extremely hard doing all that was asked of me by my
3 attorneys. It is truly difficult to estimate the total time I dedicated to this case, but
4 I would estimate conservatively somewhere between 70 to 80 hours.

5 19. Time spent on this case has included the time to search for, and
6 interview attorneys to take my case; retaining my attorneys, speaking with them
7 the phone, as well as composing and reading numerous email exchanges with
8 them and their staff; responding to written discovery sent to me by Smithfield, and
9 going over those responses with my attorneys; preparing for and sitting for my
10 videotaped deposition, working with my attorneys to draft my declaration to
11 support the motion for class certification; speaking with other class members and
12 putting them in touch with my attorneys; speaking with my attorneys prior to the
13 mediation; consenting to the settlement, and then reviewing and signing the
14 memorandum of understanding, and later reviewing and signing the long-form
15 Settlement Agreement, among other tasks I've taken on.

16 20. I have taken many risks in deciding to move forward with filing this
17 case against a former employer. It was a difficult decision to make. I was naturally
18 concerned about the possible negative impact that serving as the only Plaintiff in a
19 class action might have.

20 21. The \$10,000 service payment is requested to compensate me for my
21 role in coming forward on behalf of the Class and doing the following: 1)
22 initiating and filing this case; 2) staying in touch with my attorneys on a regular
23 basis; 3) searching for and sending documents and providing information to my
24 attorneys prior to filing the complaint, and afterwards; 4) working with my
25 attorneys to provide full and complete responses to multiple sets of discovery; 5)
26 preparing for and providing videotaped deposition testimony; 6) working with my
27 attorneys to draft a declaration in support of the motion for class certification; 7)
28 making myself available by phone during the mediation and consenting to the

1 settlement; 8) reviewing and signing the memorandum of understanding, and then
2 later, the settlement agreement; 9) risking a potential judgment entered in my
3 name for Smithfield's costs if this case had been lost; 10) the potential negative
4 impact on future employment opportunities because I filed this class action
5 against a former employer; and 11) the substantial payments each Class Member
6 will receive because this case and settlement, which I understand is estimated on
7 average to be \$3,867 per person.

8 I declare under penalty of perjury under the laws of the United States of
9 America and the State of California that the matters stated in this Declaration
10 are true and correct and that it was executed by me on April 1, 2022 in
11 Huntington Beach, California.

12 *Steve Kane*

13 _____
14 Steven Kane
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