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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
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 10, 2022

Time: 1:30 p.m.

Judge: Percy Anderson

Ctrm.: 9A

Filed: April 12, 2021

Removed: June 14, 2021

Trial date: None set

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 have and will continue to adequately represent the interest of all
9 other similarly employed Class Members. I am informed the proposed Class
10 includes 44 other California Route Sales Representatives or Relief Route Sales
11 Representatives employed by Smithfield Direct sometime during the period from
12 April 12, 2017 through November 30, 2020.

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

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 served on me, which included requests for production of
12 documents and interrogatories. I worked closely with my attorneys to provide full
13 and complete answers to those interrogatories and responsive documents.

14 11. I was informed my deposition may likely be taken, and that the
15 preparation and the deposition itself could take multiple days. To familiarize me
16 with the process, my attorneys started my preparation early so I would be prepared
17 and comfortable when the date and time were set. My deposition was scheduled,
18 but not taken. I feel I would have been adequately prepared if I needed to give my
19 testimony.

20 12. To prepare for the certification motion, my attorneys asked me to
21 work with them to prepare a declaration describing my experiences that led to the
22 filing of this case. I spent many hours with them to draft, review and revise before
23 it was signed. I understand that my declaration was filed with the Court.

24 13. I also reached out to other RSRs directing them to call my attorneys
25 to discuss their experiences while employed as an RSR to assist them in drafting
26 the motion for class certification.

27 14. Because I stayed in touch with my attorneys, I knew mediation of the
28 case scheduled. I made myself available the entire by telephone for questions

1 asked by my attorneys during the mediation. Although the case did not settle that
2 day, a settlement was reached days later. I was provided with the Memorandum
3 of Understanding, which I reviewed, sought clarification, and then signed it. Later
4 I reviewed and signed the longer settlement agreement.

5 15. Since this case was filed as class action, as the sole representative for
6 the other RSRs, I have put the interests of the Class above my own at all times. I
7 have participated, and will continue to participate in this litigation throughout the
8 settlement processing period. By bringing this case, 44 other Class Members will
9 settlement payments they would have not otherwise received.

10 16. The \$10,000 service payment is requested to compensate me for my
11 role in coming forward on behalf of the Class and doing the following: 1)
12 initiating and filing this case; 2) staying in touch with my attorneys on a regular
13 basis; 3) searching for and sending documents and providing information to my
14 attorneys prior to filing the complaint; 4) working with my attorneys to provide
15 full and complete responses to multiple sets of discovery, and preparing to have
16 my deposition taken; 5) working with my attorneys to draft a declaration in
17 support of the motion for class certification; 6) making myself available by phone
18 during the mediation and consenting to the settlement; 7) reviewing and signing
19 the memorandum of understanding, and then later, the settlement agreement; 8)
20 risking a potential judgment in my name for Defendant's costs if this case had
21 been lost; 9) potential negative impact on future employment opportunities
22 because this class action was filed against a former employer; and 10) the

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1 substantial payments each Class Member will receive because this case was filed,
2 which I understand is estimated on average at \$3,867 per person.

3 I declare under penalty of perjury under the laws of the United States of
4 America and the State of California that the matters stated in this Declaration are
5 true and correct and that it was executed by me on December 8, 2021, in
6 Huntington Beach, California.

7 *Steve Kane*

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9 Steven Kane
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