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

Plaintiff,

vs.

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

Defendants.

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

CLASS ACTION

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

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

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

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

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

18 2. It appears to the Court on a preliminary basis that: (a) the non-
19 reversionary Gross Settlement Amount¹ is fair and reasonable to Class Members
20 when balanced against the probable outcome of further litigation relating to class
21 certification, liability and damages issues and potential appeals; (b) significant
22 investigation, research, and discovery, have been conducted by counsel for each
23 Party and they are able to reasonably evaluate their positions; (c) settlement at
24 this time will avoid substantial costs, delay, and risks that would be presented by
25 the further prosecution of the litigation; and (d) the proposed Settlement has been
26 reached through intensive, serious, and non-collusive arms’-length negotiations

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

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

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

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

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

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

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

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

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

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

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

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

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

25 9. IS FURTHER ORDERED that:

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

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

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

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

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

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

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

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

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

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

5
6 IT IS SO ORDERED.

7
8 Dated: _____

The Honorable Percy Anderson
United States District Court