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[Additional counsel listed on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ROBERT SARABIA, MICHELLE HELAIRE and HUGH SMITH, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SMITHFIELD PACKAGED MEATS CORP., dba SARATOGA FOOD SPECIALTIES, a Delaware corporation; SMITHFIELD DISTRIBUTION, LLC, a Delaware limited liability company; KEVIN HOBBS, an individual; SMITHFIELD FRESH MEATS CORP., a Delaware corporation; SMITHFIELD FOODS, INC.; AEROTEK, INC., doing business as ASTON CARTER, a Maryland corporation; and

CASE NO.: CIVDS2011485

JCCP No. 5244

[Assigned for all purposes to the Hon. David Cohn in Dept. S26]

CLASS ACTION

JOINT STIPULATION RE: CLASS ACTION AND REPRESENTATIVE ACTION SETTLEMENT

Action Filed: May 29, 2020
Trial Date: None set

DOES 1 through 100, inclusive,
Defendants.

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SARABIA, and HUGH SMITH on behalf of themselves and all others similarly
situated and aggrieved

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiffs
3 ROBERT SARABIA (“Plaintiff Sarabia”), HUGH SMITH (“Plaintiff Smith”), and MICHELLE
4 HELAIRE (“Plaintiff Helaire” and collectively, “Plaintiffs”) individually and on behalf of the
5 Settlement Class, on the one hand; and defendants SMITHFIELD PACKAGED MEATS CORP.,
6 SMITHFIELD FRESH MEATS, CORP., SMITHFIELD FOODS, INC., and SMITHFIELD
7 DISTRIBUTION, LLC (collectively “Defendants”), on the other hand, in the lawsuit entitled
8 *Sarabia v. Smithfield Packaged Meats Corp, et al.*, filed in San Bernardino County Superior
9 Court, Case No. CIVDS2011485 (the “Action”). Plaintiffs and Defendants shall be, at times,
10 collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully,
11 finally, and forever resolve the claims as set forth herein, based upon and subject to the terms
12 and conditions of this Agreement.

13 **1. DEFINITIONS**

14 **A. “Action”** means *Sarabia v. Smithfield Packaged Meats Corp, et al.*, filed in San
15 Bernardino County Superior Court, Case No. CIVDS2011485.

16 **B. “Aggrieved Employees”** means Settlement Class Members working for
17 Defendants, either directly or through any staffing agency (including Aerotek and/or Citistaff)
18 and assigned to work for Defendants, during the PAGA Period as non-exempt employees in
19 California.

20 **C. “Class Counsel”** means: David D. Bibiyan, Diego Aviles, and Vedang J. Patel of
21 Bibiyan Law Group, P.C., as well as Joseph Lavi and Vincent Granberry of Lavi & Ebrahimian
22 LLP. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

23 **D. “Class Period”** means the period from January 2, 2017 through November 22,
24 2022.

25 **E. “Class Notice”** means and refers to the notice sent to Settlement Class Members
26 after preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
27 Agreement.

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1 **F.** “**Court**” means the Superior Court of the State of California for the County of
2 San Bernardino.

3 **G.** “**Final Approval Date**” means 65 calendar days after Notice of Entry of
4 Judgment is served and therefore after the time to challenge any aspect of this settlement by
5 appeal has lapsed, provided that no appeal has been filed (regardless of whether any objections
6 to the settlement were made). If any appeal is filed, “Final Approval Date” shall be five (5)
7 business days after a final resolution of all appeals that result in the upholding of the parties’
8 settlement.

9 **H.** “**Defendants**” means, collectively, Smithfield Packaged Meats Corp. (“SPMC”),
10 Smithfield Fresh Meats, Corp. (“SFMC”), Smithfield Foods, Inc. (“SFI”) and Smithfield
11 Distribution, LLC (“Smithfield Distribution”).

12 **I.** “**Employer Taxes**” means employer-funded taxes and contributions imposed on
13 the wage portions of the Individual Settlement Payments under the Federal Insurance
14 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
15 and contributions required of employers, such as for unemployment insurance.

16 **J.** “**General Release**” means the broader, general release of claims by Plaintiffs,
17 which is in addition to Plaintiffs’ limited release of claims as Participating Class Members.

18 **K.** “**Gross Settlement Amount**” means a non-reversionary fund in the sum of Eight
19 Million Dollars and Zero Cents (\$8,000,000.00),¹ which shall be paid by Defendants, from which
20 all payments under this Settlement shall be made, including the payments for the Individual
21 Settlement Payments to Participating Class Members, the Court-approved amounts for attorneys’
22 fees and reimbursement of litigation costs and expenses to Class Counsel, Settlement
23 Administration Costs, the Service Award, the PAGA Payment, and the LWDA Payment. It
24 expressly includes Employer Taxes. Defendants’ payment of the Gross Settlement Amount is
25 intended to resolve all Class Released Claims and PAGA Released Claims against Defendants
26 as set forth in this Agreement, including the dismissal of the *Helaire* PAGA Action, *Smith* Class
27 Action, and *Smith* PAGA Action. The Parties acknowledge that the following later-field class

28 ¹ As the same may be increased only in accordance with Paragraph 17, below.

1 action and representative PAGA cases against Defendants exist and were coordinated with the
2 Action, *Helaire* PAGA Action, *Smith* Class Action, and *Smith* PAGA Action in a coordinated
3 proceeding with the title of “Smithfield Wage and Hour Cases” and case number JCCP 5244:
4 *Consuelo Galindo v. Citistaff Solutions, Inc.*, et al. (Los Angeles Superior Court Case No.
5 21STCV10625), *Tracy Turner v. Smithfield Distribution, LLC and Smithfield Packaged Meats*
6 *Corp.* (LASC Case No. 21STCV27309) and *Juana Murillo v. Smithfield Packaged Meats Corp.*
7 (LASC Case Nos. 21STCV37148 and 21NWCV00809) (collective, the “Later-Filed
8 Actions”). The Parties acknowledge that the individual claims in the Later-Filed Actions were
9 subsequently settled after the mediation in the Action, the named Plaintiffs in the Later-Filed
10 Actions have each subsequently signed a general release in connection with these settlements,
11 and that the Later-Filed Actions are in the process of being dismissed pursuant to those later-
12 signed settlement agreements.

13 **L. “Individual PAGA Payment”** means a payment made to an Aggrieved
14 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
15 Individual Settlement Share if he or she is also a Participating Class Member.

16 **M. “Individual Settlement Payment”** means a payment to a Participating Class
17 Member of his or her net share of the Net Settlement Amount.

18 **N. “Individual Settlement Share”** means the gross amount of the Net Settlement
19 Amount that a Participating Class Member is projected to receive based on the number of
20 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
21 shall be reflected in his or her Class Notice.

22 **O. “LWDA Payment”** means the payment to the State of California Labor and
23 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
24 amount allocated toward penalties under the PAGA, all of which is to be paid from the Gross
25 Settlement Amount. The Parties have agreed that Five Hundred Thousand Zero Cents
26 (\$500,000.00) shall be allocated toward PAGA penalties, of which Three Hundred Seventy Five
27 Thousand Dollars and Zero Cents (\$375,000.00) will be paid to the LWDA (*i.e.*, the LWDA
28 Payment) and One Hundred Twenty Five Thousand Dollars and Zero Cents (\$125,000.00) will

1 be paid to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked for
2 Defendants as a non-exempt employee in California in the PAGA Period (*i.e.* the PAGA
3 Payment).

4 **P. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
5 (as defined in Paragraph K) that is available for distribution to the Participating Class Members
6 after deductions for the Court-approved allocations for Settlement Administration Costs, a
7 Service Award to Plaintiffs, an award of attorneys’ fees, reimbursement of litigation costs and
8 expenses to Class Counsel, the LWDA Payment, the PAGA Payment, and Employer Taxes.

9 **Q. “Operative Complaint” or “Complaint”** means the Second Amended
10 Complaint to be filed with the Court, attached hereto as **Exhibit “A.”**

11 **R. “PAGA Payment** is the 25% portion of the Five Hundred Thousand Dollars and
12 Zero Cents (\$500,000.00) that is allocated toward PAGA penalties (One Hundred Twenty-Five
13 Thousand Dollars and Zero Cents (\$125,000.00)) that will be paid to Aggrieved Employees on a
14 *pro rata* basis based on the Workweeks worked in California during the PAGA Period, which
15 would be in addition to their Individual Settlement Payment if they are Participating Class
16 Members, as well.

17 **S. “PAGA Period”** means the period from May 16, 2019 through the end of the
18 Class Period.

19 **T. “Participating Class Members”** means all Settlement Class Members who do
20 not submit a timely and valid Request for Exclusion.

21 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
22 Settlement Amount that a Participating Class Member is eligible to receive based on the number
23 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
24 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
25 may be entitled if he or she is also an Aggrieved Employee.

26 **V. “Plaintiffs,” “Named Plaintiffs,” or “Class Representatives”** shall refer to
27 Plaintiffs Robert Sarabia, Hugh Smith and Michelle Helaire.
28

1 **W. “Preliminary Approval Date”** means the date on which the Court enters an
2 Order granting preliminary approval of the Settlement.

3 **X. “Released Parties”** shall mean Defendants, Aerotek, Inc (“Aerotek”), Citistaff
4 Solutions (“Citistaff”), Kevin Hobbs, and each of their respective present and former parents,
5 owners, subsidiaries, and any affiliated or related persons or entities, and each of their respective
6 officers, directors, employees, partners, shareholders, attorneys, and agents, and any other
7 successors, assigns, or legal representatives.

8 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
9 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
10 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
11 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
12 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
13 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
14 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
15 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
16 Workweek Dispute was submitted by the Response Deadline.

17 **Z. “Request for Exclusion”** means a written request to be excluded from the
18 Settlement Class pursuant to Paragraph 9(C) below.

19 **AA. “Service Award”** means monetary amounts to be paid to Plaintiffs of up to Ten
20 Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Helaire, and up to Seven Thousand
21 Five Hundred Dollars and Zero Cents (\$7,500.00) each to Plaintiffs Sarabia and Smith, which,
22 subject to Court approval, will be paid out of the Gross Settlement Amount.

23 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
24 Administrator in administration of the Settlement, including, but not limited to, translating the
25 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
26 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
27 Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated
28 taxes and withholdings, providing declarations, generating Individual Settlement Payment

1 checks and related tax reporting forms, doing administrative work related to unclaimed checks,
2 transmitting payment to Class Counsel for the Court-approved amounts for attorneys' fees and
3 reimbursement of litigation costs and expenses, to Plaintiffs for their Service Award, and to the
4 LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related
5 information, and any other actions of the Settlement Administrator as set forth in this Agreement,
6 all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated
7 not to exceed \$37,500.00. If the actual amount of the Settlement Administration Costs is less
8 than \$37,500.00 the difference between \$37,500.00 and the actual Settlement Administration
9 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
10 \$37,500.00 then such excess will be paid solely from the Gross Settlement Amount and
11 Defendants will not be responsible for paying any additional funds in order to pay these
12 additional costs.

13 **CC. "Settlement Administrator"** means the Third-Party Administrator mutually
14 agreed upon by the Parties that will be responsible for the administration of the Settlement
15 including, without limitation, making and overseeing all of the Settlement Administration Costs
16 set forth above.

17 **DD. "Settlement Class" or "Settlement Class Members"** means all current and
18 former non-exempt employees who worked in California for Defendants or were placed to work
19 for Defendants by any staffing agency (including Aerotek or Citistaff), at any time during the
20 Class Period.

21 **EE. "Workweeks"** means the number of weeks that a Settlement Class Member was
22 employed by and worked for the Defendants as non-exempt employees during the Class Period
23 in California, based on hire dates, re-hire dates (as applicable), and termination dates (as
24 applicable).

25 **2. BACKGROUND**

26 **A.** On February 14, 2020, Plaintiff Helaire filed with the LWDA and served on
27 Defendants a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a
28 proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for various

1 Labor Code violations (“Helaire PAGA Notice”). On November 18, 2020, Plaintiff Sarabia filed
2 with the LWDA and served on Defendants a notice under Labor Code section 2699.3 stating
3 Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of
4 Aggrieved Employees for various Labor Code violations (“Sarabia PAGA Notice”). On June 22,
5 2021, Plaintiff Smith filed with the LWDA and served on Defendants a notice under Labor Code
6 section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil
7 penalties on behalf of Aggrieved Employees for various Labor Code violations. (“Smith PAGA
8 Notice” and with the Helaire PAGA Notice and Sarabia PAGA Notice, the “PAGA Notices”).

9 **B.** On May 29, 2020, Plaintiff Helaire filed a putative wage-and-hour class action
10 alleging that, during the Class Period, Aerotek, SMPC, and Kevin Hobbs (“Mr. Hobbs”), as it
11 pertains to Settlement Class Members: (1) failed to pay overtime wages; (2) failed to pay
12 minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to
13 provide rest periods or compensation in lieu thereof; (5) failed to all wages due upon separation
14 from employment; (6) failed to issue accurate and compliant wage statements; (7) failed to timely
15 pay wages; (8) failed to indemnify; and (9) engaged in unfair competition (the “*Helaire* Class
16 Action”).

17 **C.** On July 20, 2020, after sixty-five (65) days had passed since Plaintiff Helaire filed
18 and served the Helaire PAGA Notice, without any action by the LWDA with respect to the
19 alleged Labor Code violations in the Helaire PAGA Notice, Plaintiff Helaire filed a separate
20 representative action under PAGA seeking PAGA civil penalties against Aerotek, SPMC, and
21 Mr. Hobbs for the Labor Code violations alleged in the Helaire PAGA Notice (“*Helaire* PAGA
22 Action”).

23 **D.** On December 11, 2020, the Court granted Defendants’ motion to compel
24 arbitration as to Plaintiff Helaire’s individual wage and hour claims.

25 **E.** On February 17, 2021, Plaintiff Helaire filed a First Amended Complaint in the
26 *Helaire* PAGA Action, adding Plaintiff Sarabia as a named plaintiff and representative.

27 **F.** On April 9, 2021, the Court granted Plaintiff Helaire’s motion to amend the
28 complaint in the *Helaire* Class Action, dismissing Plaintiff Helaire and replacing her with

1 Plaintiff Sarabia as a class representative, and also dismissing Aerotek from the *Helaire* Class
2 Action (hereinafter, the “*Sarabia* Class Action”).

3 **G.** On July 22, 2021, Plaintiff Smith filed a putative wage-and-hour class action in
4 the Los Angeles County Superior Court, alleging Defendants: (1) failed to pay minimum wages;
5 (2) failed to provide meal periods or compensation in lieu thereof; (3) failed to provide rest
6 periods or compensation in lieu thereof; (4) failed to timely pay wages; (5) failed to timely pay
7 wages due at the time of separation from employment; and (6) violated the Business and
8 Professions Code. (“Smith Class Action”).

9 **H.** On August 31, 2021, after sixty-five (65) days had passed since Plaintiff Smith
10 filed and served the Smith PAGA Notice, without any action by the LWDA with respect to the
11 alleged Labor Code violations, Plaintiff Smith filed a separate representative action seeking
12 PAGA civil penalties against Defendants for the Labor Code violations alleged in the Smith
13 PAGA Notice (“Smith PAGA Action”).

14 **I.** Shortly thereafter, Plaintiff Helaire, Plaintiff Sarabia, and Defendants agreed to
15 exchange informal discovery and attend an early mediation, in which Plaintiffs Helaire and
16 Sarabia were provided with, among other things: (1) a 10% sampling of time and payroll records
17 for the estimated 4,499 Settlement Class Members through mediation; (2) data points for
18 Settlement Class Members, including rates of pay, hire dates, and termination dates through
19 mediation; (3) all policy documents, including handbooks and collective bargaining agreements;
20 and (4) all documents pertaining to Plaintiff Sarabia and Plaintiff Helaire.

21 **J.** On March 31, 2022, Plaintiff Helaire, Plaintiff Sarabia, and Defendants
22 participated in a full-day mediation before Deborah Crandall Saxe, Esquire (“Ms. Saxe”), a well-
23 regarded mediator experienced in mediating complex labor and employment matters. The
24 mediation was unsuccessful.

25 **K.** Thereafter, the Parties continued negotiations, exchanged additional informal
26 discovery, and agreed to attend a second mediation. Prior to the second mediation, Defendants
27 provided additional time and payroll records for Settlement Class Members since the initial
28 mediation and through the second mediation.

1 **L.** On September 15, 2022, the Chief Justice of California and Chair of Judicial
2 Council Tani Cantil-Sakauye issued an order coordinating the above actions, as well as several
3 others, with the title of “Smithfield Wage and Hour Cases” and case number JCCP 5244.²

4 **M.** On September 23, 2022, the Parties, including Plaintiff Smith, attended a second
5 mediation with Ms. Saxe. With the aid of the mediator’s evaluation, the Parties reached the
6 Settlement to resolve the Action.

7 **N.** As a material term of this Agreement, the Parties agree to stipulate to Plaintiffs’
8 filing a Second Amended Complaint in the *Sarabia* Class Action, and dismiss the *Helaire* PAGA
9 Action, the Smith Class Action and the Smith PAGA Action, all without prejudice, thereby
10 effectively consolidating the Class Action and PAGA Action, as further set out below
11 (hereinafter, the “Action”).

12 **O.** Class Counsel has conducted significant investigation of the law and facts relating
13 to the claims asserted in the Class Action, and the PAGA Notices, and has concluded that that
14 the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the
15 Settlement Class, taking into account the sharply contested issues involved, the expense and time
16 necessary to litigate the Action through trial and any appeals, the risks and costs of further
17 litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation,
18 the information learned through informal discovery regarding Plaintiffs’ allegations, and the
19 substantial benefits to be received by Settlement Class Members.

20 **P.** Defendants deny each of the allegations and claims asserted against them in the
21 Action and the PAGA Notices. However, Defendants nevertheless desire to settle the Action for
22 the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the
23 purpose of putting to rest all controversies arising from and related to the Action.

24
25 ² The coordinated cases are *Robert Sarabia v. Aerotek, Inc. et al.* (San Bernardino Superior Court
26 (“SBSC”) Case No. CIVDS2011485), *Michelle Helaire et al. v. Aerotek, Inc. et al.* (SBSC Case No.
27 CIVDS2014070), *Hugh Smith v. Smithfield Distribution, LLC* (Los Angeles Superior Court (“LASC”)
28 Case Nos. 21STCV23414 and 21STCV32223), *Consuelo Galindo v. Citistaff Solutions, Inc., et al.* (LASC
Case No. 21STCV10625), *Tracy Turner v. Smithfield Distribution, LLC and Smithfield Packaged Meats
Corp.* (LASC Case No. 21STCV27309) and *Juana Murillo v. Smithfield Packaged Meats Corp.* (LASC
Case Nos. 21STCV37148 and 21NWCV00809).

1 **Q.** This Agreement is intended to and does effectuate the full, final, and complete
2 resolution of all Class Released Claims of Plaintiffs and Participating Class Members, and all
3 PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California
4 and Aggrieved Employees.

5 **3. JURISDICTION**

6 The Court has jurisdiction over the Parties and the subject matter of the Action. The
7 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
8 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
9 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
10 pursuant to California Rule of Court, rule 3.769, subdivision (h).

11 **4. STIPULATION OF CLASS CERTIFICATION**

12 The Parties stipulate to the certification of the Settlement Class under this Agreement for
13 purposes of settlement only. If, for any reason, the settlement is not approved, the stipulation to
14 certification will be void. The Parties further agree that certification under this Agreement is not
15 an admission that class action certification is proper under the standards applied to contested
16 certification motions and that this Agreement will not be admissible in this or any other
17 proceeding as evidence that either: (a) a class action should be certified; (b) a PAGA case is
18 manageable, or (c) Defendants are liable to Plaintiffs or any Settlement Class Member, other than
19 according to the terms of this Agreement.

20 **5. AMENDMENT OF PLEADING AND MOTIONS FOR APPROVAL OF**
21 **SETTLEMENT**

22 The Parties hereby stipulate to the filing of a Second Amended Complaint in the *Sarabia*
23 Class Action that includes all of the allegations from the *Helaire* PAGA Action, the *Smith* Class
24 Action, and the *Smith* PAGA Action, as well as adding Plaintiff Smith as a named plaintiff and
25 class representative. Plaintiffs will also send an amended PAGA letter to address all theories
26 raised in the Second Amended Complaint is filed. Within five (5) court days of the filing of the
27 Second Amended Complaint, Plaintiffs will dismiss the *Helaire* PAGA Action, the *Smith* Class
28

1 Action, and the *Smith* PAGA Action, without prejudice, thereby effectively consolidating all
2 allegations from those actions into the Class Action.

3 After full execution of this Agreement, Plaintiffs will move for an order granting
4 preliminary approval of the Settlement, approving and directing the mailing of the proposed
5 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “B,”** conditionally
6 certifying the Settlement Class for settlement purposes only, and approving the deadlines
7 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
8 Objections. If and when the Court preliminarily approves the Settlement, and after
9 administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval
10 Order, Plaintiffs will move for an order finally approving the Settlement and seek entry of a
11 Judgment in line with this Settlement. The Parties may both respond to any Objections lodged
12 to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

13 The Parties hereby expressly agree that whether or not the Court finally approves the
14 Settlement, Plaintiffs’ allegations from the *Helaire* PAGA Action, *Smith* Class Action, and *Smith*
15 PAGA Action will be effectively consolidated into the Class Action, will relate back to the date
16 on which each of the *Helaire* PAGA Action, *Smith* Class Action, and *Smith* PAGA Action was
17 filed, and Defendants will be estopped from making any argument that there is any adverse effect
18 on the statute of limitations caused by Plaintiffs’ dismissal of the *Helaire* PAGA Action, *Smith*
19 Class Action, and *Smith* PAGA Action, without prejudice to effectuate this consolidation.

20 **6. STATEMENT OF NO ADMISSION**

21 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiffs
22 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
23 PAGA Notices. This Agreement shall not be deemed an admission by Defendants of any claims
24 or allegations asserted in the Action or the PAGA Notices. Except as set forth elsewhere herein,
25 in the event that this Agreement is not approved by the Court or any appellate court, is terminated,
26 or otherwise fails to be enforceable, Plaintiffs will not be deemed to have waived, limited or
27 affected in any way any claims, rights or remedies, or defenses in the Action or the PAGA
28 Notices, and Defendants will not be deemed to have waived, limited, or affected in any way any

of their objections or defenses in the Action and the PAGA Notices. The Parties shall be restored to their respective positions in the Action prior to the signing of the Term Sheet that was the result of the Parties' September 23, 2022 mediation.

7. RELEASE OF CLAIMS

A. Release by All Participating Class Members.

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross Settlement Amount to effectuate the Settlement, Plaintiff and all Participating Class Members release any and all claims, actions, or causes of action alleged in the Operative Complaint, or that could have been alleged or raised in the Operative Complaint based upon or arising out of the facts alleged therein, as well as any claims for attorneys' fees and costs thereon, as it pertains to the Released Parties. This includes, but is not limited to, the following: For the duration of the Class Period, the release includes, for Participating Class Members: (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu thereof, including but not limited to claims that meal periods were late, short, interrupted, not provided, or provided under the incorrect IWC Wage Order; (4) all claims for failure to provide rest periods or compensation in lieu thereof, including but not limited to claims that rest periods were late, short, interrupted, or not provided; (5) all claims for failure to pay sick pay; (6) all claims related to bonuses and the calculation of the same in relation to the regular rate; (7) all claims related to failure to reimburse expenses; (8) all claims for failure to pay for all hours worked or suffered or permitted to work; (9) all claims for failure to pay wages and/or meal or rest period premiums due to rounding of time entries; (10) all claims for failure to pay all wages due upon separation from employment; (11) all claims for failure to issue accurate and compliant wage statements; (12) all claims for failure to timely pay wages; (13) all claims for failure to indemnify; and (14) all claims asserted through California Business & Professions Code section 17200, *et seq.* arising out of the Labor Code violations referenced in the Complaint (the "Class Released Claims").

1 **B. Release by All Aggrieved Employees**

2 For Aggrieved Employees, and, to the extent permitted by law, the State of California,
3 the release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notices
4 and thereafter alleged in the Operative Complaint for PAGA civil penalties, or that could have
5 been based on the facts asserted in the PAGA Notices and thereafter alleged in the Operative
6 Complaint, including but not limited to civil penalties pursuant to Labor Code sections 96(k),
7 98.6, 200, 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 232, 232.5,
8 246, 256, 351, 404, 432, 510, 512, 558, 558.1, 1021.5, 1032, 1102.5, 1174, 1174.5, 1182.12,
9 1185, 1193.6, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2698, 2699, 2802, and
10 2810.5, California Code of Regulations, Title 8, Sections 11000, 11010, 11040, subdivision 5(A)-
11 (B), 11070(14), 11080, and 11130, Civil Code section 3287, and Business and Professions Code
12 sections 17200, 16600, and 16700 (the “PAGA Released Claims”). Upon entry of judgment, to
13 the extent permitted by law, all Aggrieved Employees will be bound by the judgment as to all
14 PAGA claims asserted in the Operative Complaint for the PAGA Period, and all PAGA claims
15 that could have arisen out of the allegations made in the Operative Complaint or in the PAGA
16 Notices for the PAGA Period. The Class Released Claims and PAGA Released Claims shall be
17 referred to herein as the “Released Claims”.

18 **C. General Release.**

19 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
20 of Judgment, and payment by Defendants to the Settlement Administrator selected of the full
21 Gross Settlement Amount to effectuate the Settlement, in addition to the Released Claims,
22 Plaintiffs make the additional following General Release: Plaintiffs release the Released Parties
23 from all claims, demands, rights, liabilities and causes of action of every nature and description
24 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort,
25 contract, or for violation of any state or federal statute, rule, law or regulation arising out of,
26 relating to, or in connection with any act or omission of the Released Parties through the date of
27 full execution of this Agreement, except for any and all other claims that may not be released as
28 a matter of law through this Agreement. To the extent of the General Release provided herein,

1 Plaintiffs stipulate and agree that, upon entry of an Order granting Final Approval of the
2 Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator
3 selected of the full Gross Settlement Amount and Employers' Taxes necessary to effectuate the
4 Settlement, they shall have expressly waived and relinquished, to the fullest extent permitted by
5 law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
6 similar provision under federal or state law, which provides:

7 A general release does not extend to claims that the creditor or
8 releasing party does not know or suspect to exist in his or her
9 favor at the time of executing the release and that, if known by
him or her, would have materially affected his or her settlement
with the debtor or released party.

10 **8. SETTLEMENT ADMINISTRATOR**

11 A. Plaintiffs and Defendants, through their respective counsel, have selected Apex
12 Class Action Settlement Administration to administer the Settlement, which administration
13 includes but is not limited to overseeing and conducting all of the settlement-related activities,
14 tasks and payments referred to above in Sections I (BB) and (CC). Charges and expenses of the
15 Settlement Administrator, currently estimated to be \$37,500.00 will be paid from the Gross
16 Settlement Amount. If the actual amount of the Settlement Administration Costs is less than
17 \$37,500.00 the difference between \$37,500.00 and the actual Settlement Administration Costs
18 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
19 \$37,500.00 then such excess will be paid solely from the Gross Settlement Amount and
20 Defendants will not be responsible for paying any additional funds in order to pay these
21 additional costs.

22 **9. SETTLEMENT ADMINISTRATOR NOTICE, WORKWEEK**
23 **DISPUTE, OBJECTION, AND EXCLUSION PROCEDURE**

24 **A. Notice to the Settlement Class Members**

25 (1) Within fourteen (14) calendar days after the Preliminary Approval Date,
26 Defendants' Counsel shall provide the Settlement Administrator with information with respect
27 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
28 currently in Defendants' possession, custody, or control; (3) last known telephone number(s)

1 currently in Defendants' possession, custody, or control; (4) last known Social Security
2 Number(s) in Defendants' possession, custody, or control; and (5) the dates of employment (*i.e.*,
3 hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
4 Member ("Class List"). The Settlement Class Member data will be provided to the Settlement
5 Administrator only and will be subject to an administrator confidentiality agreement. The
6 Settlement Administrator shall perform an address search using the United States Postal Service
7 National Change of Address ("NCOA") database and update the addresses contained on the Class
8 List with the newly-found addresses, if any. Within fourteen (14) calendar days, or soon
9 thereafter, of receiving the Class List from Defendants, the Settlement Administrator shall mail
10 the Class Notice in English and Spanish to the Settlement Class Members via first-class regular
11 U.S. Mail using the most current mailing address information available. The Settlement
12 Administrator shall maintain the Class List and digital copies of all the Settlement
13 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at
14 least four (4) years from the Final Approval Date.

15 (2) The Class Notice will set forth:

- 16 (a) the Settlement Class Member's Individual Settlement Share (to be
17 calculated by the Settlement Administrator as follows: Individual
18 Settlement Share = Settlement Class Member's Workweeks ÷
19 Settlement Class Workweeks) and Individual PAGA Payment, and
20 the basis for each;
- 21 (b) the information required by California Rule of Court, rule 3.766,
22 subdivision (d);
- 23 (c) the material terms of the Settlement;
- 24 (d) the proposed Settlement Administration Costs;
- 25 (e) the definition of the Settlement Class;
- 26 (f) a statement that the Court has preliminarily approved the
27 Settlement;
- 28

- 1 (g) how the Settlement Class Member can obtain additional
2 information, including contact information for Class Counsel;
3 (h) information regarding opt-out and objection procedures;
4 (i) the date and location of the Final Approval Hearing; and
5 (j) that the Settlement Class Member must notify the Settlement
6 Administrator no later than the Response Deadline if the
7 Settlement Class Member disputes the accuracy of the number of
8 Workweeks as set forth on his or her Class Notice (“Workweek
9 Dispute”). If a Settlement Class Member fails to timely dispute
10 the number of Workweeks attributed to him or her in conformity
11 with the instructions in the Class Notice, then he or she shall be
12 deemed to have waived any objection to its accuracy and any claim
13 to any additional settlement payment based on different data.

14 (3) If a Class Notice from the initial notice mailing is returned as
15 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
16 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
17 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
18 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
19 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
20 Member within three (3) business days. Further, any Class Notices that are returned to the
21 Settlement Administrator with a forwarding address before the Response Deadline shall be
22 promptly re-mailed to the forwarding address affixed thereto.

23 (4) No later than seven (7) calendar days from the Response Deadline, the
24 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
25 completion of the notice process, including the number of attempts to obtain valid mailing
26 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
27 and copies of all Requests for Exclusion and Objections received by the Settlement
28 Administrator.

1 **B. Objections.**

2 Only Participating Class Members may object to the Settlement. In order for any
3 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
4 do so by mailing a written objection to the Settlement Administrator at the address or phone
5 number provided on the Class Notice no later than the Response Deadline. The Settlement
6 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants'
7 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
8 Class Counsel shall file in support of Plaintiffs' Motion for Final Approval. The Objection
9 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
10 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
11 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
12 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
13 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
14 will remain a member of the Settlement Class and if the Court approves this Agreement, the
15 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
16 the same extent as a Settlement Class Member who does not object. The date of mailing of the
17 Class Notice to the objecting Settlement Class Member shall be conclusively determined
18 according to the records of the Settlement Administrator. Settlement Class Members need not
19 object in writing to be heard at the Final Approval Hearing; they may object or comment in
20 person at the hearing at their own expense. Class Counsel and Defendants' Counsel may respond
21 to any objection lodged with the Court up to five (5) court days before the Final Approval
22 Hearing.

23 **C. Requesting Exclusion.**

24 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
25 Settlement by mailing a written request to be excluded from the Settlement ("Request for
26 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
27 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
28 Member's Social Security Number; (3) the Class Member's signature; and (4) the following

statement: “Please exclude me from the Settlement Class in the *Sarabia v. Smithfield Packaged Meats Corp, et al.* matter” or any statement standing for the proposition that the Class Member does not wish to participate in the Settlement. The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel and Defendants’ Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class Member who requests exclusion using this procedure will not be entitled to receive any payment from the Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement Class Members who worked during the PAGA Period as Aggrieved Employees who submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members’ Workweek Data.

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Class Members will be asked to provide documentation in his or her possession to substantiate the dispute; however, supporting documentation is not mandatory for the dispute. The Settlement Administrator shall promptly notify Defendants and Settlement Class Counsel of all such disputes and provide any information the Settlement Class Member has furnished regarding their dispute. Defendants shall investigate the dispute. In all such disputes, Defendants’ records will carry a presumption of correctness. The Settlement

1 Administrator shall review Defendants' response to the dispute as well any additional
2 information provided by the Settlement Class Member or Settlement Class Counsel and make a
3 determination on the dispute. The Settlement Administrator's determination shall be presumed
4 final. However, if either Party objects to the Settlement Administrator's determination, the
5 dissatisfied Party may ask the Court to resolve the issue, no later than the Final Approval Hearing.

6 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
7 **PAGA PAYMENTS**

8 A. Individual Settlement Payments will be calculated and distributed
9 to Participating Class Members from the Net Settlement Amount on a *pro rata*
10 basis, based on the Participating Class Members' respective number of
11 Workweeks during the Class Period. Individual PAGA Payments to Aggrieved
12 Employees will be calculated and distributed to Aggrieved Employees from the
13 PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
14 number of Workweeks during the PAGA Period. Specific calculations of the
15 Individual Settlement Payments and Individual PAGA Payments to Aggrieved
16 Employees will be made as follows:

17 B. The Settlement Administrator will determine the total number of Workweeks
18 worked by each Settlement Class Member during the Class Period ("Class Member's
19 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
20 Members during the Class Period ("Settlement Class Workweeks"). Additionally, the
21 Settlement Administrator will determine the total number of Workweeks worked by each
22 Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well
23 as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA
24 Period ("PAGA Workweeks").

25 C. To determine each Participating Class Member's Participating Individual
26 Settlement Share, the Settlement Administrator will determine the aggregate number of
27 Workweeks worked by all Participating Class Members during the Class Period ("Participating
28

Class Workweeks”) and use the following formula: Participating Individual Settlement Share = (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

D. The net amount of the Participating Individual Settlement Share is to be paid out to Participating Class Members, less applicable taxes and withholdings, by way of check and is referred to as “Individual Settlement Payment(s)”.

E. To determine each Aggrieved Employee’s Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee’s Individual PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$125,000.00 (the PAGA Payment).

F. Individual Settlement Payments and Individual PAGA Payments shall be paid to Participating Class Members and/or Aggrieved Employees by way of check. When a Participating Class Member is also an Aggrieved Employee, one check may be issued that aggregates both the Individual Settlement Payment, less applicable taxes and withholdings, and the Individual PAGA Payment.

11. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments.

Participating Class Members will receive an Individual Settlement Payment and Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be transmitted to the State of California Controller’s Unclaimed Property Division on behalf of the Class Member and/or Aggrieved Employee, thereby leaving no “unpaid residue” subject to the requirements of Code of Civil Procedure section 384.

B. Funding of Settlement.

Defendants shall, within thirty (30) calendar days of the Final Approval Date, make

1 payment of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph
2 17 of this Agreement) to a qualified settlement fund (“QSA”) established by the Settlement
3 Administrator, for distribution in accordance with this Agreement and the Court’s Orders and
4 subject to the conditions described herein.

5 **C. Time for Distribution.**

6 Within fourteen (14) calendar days after payment of the full Gross Settlement Amount
7 by Defendants, or as soon thereafter as practicable, the Settlement Administrator shall distribute
8 all payments due from the QSA for: (1) the Service Award to Plaintiffs as specified in this
9 Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid to
10 Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
11 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
12 Payment, as specified in this Agreement and approved by the Court; (5) Individual PAGA
13 Payments as specified in this Agreement and approved by the Court; and (6) Individual
14 Settlement Payments to Participating Class Members, less applicable taxes and withholdings, as
15 specified in this Agreement and approved by the Court. Any interest accrued shall be for the
16 benefit of the Participating Class Members and distributed on a *pro rata* basis to Participating
17 Class Members based on the number of Workweeks worked by them in the Class Period.

18 **12. ATTORNEYS’ FEES AND LITIGATION COSTS**

19 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys’
20 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
21 17 of this Agreement, amounts to Two Million Eight Hundred Thousand Dollars and Zero Cents
22 (\$2,800,000.00). Class Counsel shall further apply for, and Defendants shall not oppose, an
23 application or motion by Class Counsel for reimbursement of actual costs associated with Class
24 Counsel’s prosecution of this matter as set forth by declaration testimony in an amount up to
25 Eighty Thousand Dollars and Zero Cents (\$80,000.00). Awards of attorneys’ fees and costs shall
26 be paid out of the Gross Settlement Amount, for all past and future attorneys’ fees and costs
27 necessary to prosecute, settle, and obtain Final Approval of the settlement in Action. The
28 “future” aspect of the amounts stated herein includes, without limitation, all time and expenses

expended by Class Counsel (including any appeals therein). There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendants for such work unless Defendants unreasonably fail to fully fund the Gross Settlement Amount as outlined in this Agreement, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. In the event that such a breach is alleged, however, Defendants will be provided at least 10 business days to cure the alleged breach after receiving written notification from the Settlement Administrator or from Class Counsel before any such further efforts are taken to remedy the alleged breach. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

13. SERVICE AWARD TO NAMED PLAINTIFFS

Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Helaire, and Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) each to Plaintiffs Sarabia and Smith for participation in and assistance with the Action. Any Service Award awarded to Plaintiffs shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves the Service Award to Plaintiffs in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

14. TAXATION AND ALLOCATION

a. Each Individual Settlement Share shall be allocated as follows: 10% as wages (to be reported on an IRS Form W2); and 90% as interest, penalties, and other non-wages (to be reported on an IRS Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties agree that the employees' share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share will be withheld from the Individual Settlement Payments by the Settlement Administrator, as set forth in Paragraph 14.d. below.

b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator at times and in the manner required by law.

1 c. Each Participating Class Member will be responsible for paying all applicable
2 local, state, and federal taxes on their Individual Settlement Payments. Each Participating Class
3 Member shall cooperate with Defendants and the Settlement Administrator and provide
4 documentation as requested to demonstrate such payment should any taxing authority challenged
5 the allocation of the Individual Settlement Payments.

6 d. It is the responsibility of the Settlement Administrator or its designee to timely
7 calculate and withhold from the Individual Settlement Payments all Participating Class Member
8 tax obligations and payroll deductions on the portion allocated as wages; and, to cause the
9 appropriate deposits of withholding taxes and informational and other tax return filing to occur.
10 All Employer Taxes shall be paid by Defendants as part of the Gross Settlement Amount. The
11 Settlement Administrator shall pay the Employer Taxes and withholding to the appropriate taxing
12 authorities within thirty (30) days of distribution.

13 e. Neither Counsel for Plaintiffs nor Defendants intend anything contained in this
14 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
15 be relied upon as such within the meaning of United States Treasury Department Circular 230
16 (31 C.F.R. Part 10, as amended) or otherwise.

17 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

18 The Parties agree to allocate Five Hundred Thousand Dollars and Zero Cents
19 (\$500,000.00) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA,
20 seventy-five percent (75%) of the amount allocated toward PAGA (\$375,000.00) will be paid to
21 the LWDA and twenty-five percent (25%) (\$125,000.00) will be distributed to Aggrieved
22 Employees on a *pro rata* basis based upon their respective Workweeks worked as Aggrieved
23 Employees during the PAGA Period.

24 **16. COURT APPROVAL**

25 This Agreement is contingent upon an order by the Court granting Final Approval of the
26 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
27 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
28 shall be restored to their respective positions in the Action prior to signing of the Term Sheet that

1 was the result of the Parties' September 23, 2022 mediation. If this Settlement Agreement is
2 voided, not approved by the Court or approval is reversed on appeal, it shall have no force or
3 effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any
4 authority to issue any appropriate orders when denying approval; and/or (b) there are any terms
5 and conditions in this Settlement Agreement specifically stated to survive the Settlement
6 Agreement being voided or not approved, and which control in such an event.

7 **17. INCREASE IN WORKWEEKS**

8 Defendants SPMC and Smithfield Distribution represent that there are no more than
9 475,000 Workweeks worked between January 2, 2017 through September 23, 2022. In the
10 event that it is determined that the number of Workweeks worked by Settlement Class Members
11 during the Class Period increases by more than 10%, or 47,500 Workweeks, then: (1) the Gross
12 Settlement Amount shall be increased proportionally by the Workweeks in excess of 522,500
13 Workweeks (47,500 Workweeks + 475,000 Workweeks) multiplied by the Workweek Value;
14 or (2) at Defendants' election, the Class Period shall end on the date the number of Workweeks
15 reaches 522,500. The Workweek Value shall be calculated by dividing the originally agreed-
16 upon Gross Settlement Amount (\$8,000,000.00) by 475,000, which amounts to a Workweek
17 Value of \$16.84. Thus, for example, should there be 523,000 Workweeks in the Class Period,
18 and Defendants elect to increase the Gross Settlement Amount, then the Gross Settlement
19 Amount shall be increased by \$8,420.00. $((523,000 \text{ Workweeks} - 522,500 \text{ Workweeks}) \times$
20 $\$16.84 \text{ per Workweek.})$. Should Defendants elect to end the Class Period on the date the
21 number of Workweeks reaches 522,500, Defendants shall notify Class Counsel of its election
22 no later than 7 calendar days after being informed by the Settlement Administrator the number
23 of Workweeks has exceeded 522,500 during the Class Period.

24 **18. WITHDRAWAL FROM SETTLEMENT BASED ON REQUESTS FOR**
25 **EXCLUSION**

26 Defendants shall retain the right to nullify the Agreement in the event that 5% or more
27 of the Settlement Class Members submit timely and valid Requests for Exclusion. Defendant
28 must provide written notice to Class Counsel of their withdrawal within fourteen (14) calendar

1 days of the Response Deadline. If Defendants exercise this right, they shall be solely
2 responsible for the costs incurred for settlement administration up to the date of nullification.

3 **19. NOTICE OF JUDGMENT**

4 In addition to any duties set out herein, the Settlement Administrator shall provide
5 notice of the Final Judgment entered in the Action by posting the same on its website within 2
6 business days of entry of judgment. The notice of Final Judgment shall remain on the
7 Settlement Administrator's website for a period of no less than four (4) years.

8 **20. PRIVACY OF DOCUMENTS AND INFORMATION**

9 Settlement Class Counsel agrees none of the documents and information provided to
10 them by Defendants shall be used for any purpose other than prosecution and resolution of the
11 Action. Settlement Class Counsel shall not share any such documents with anyone other than
12 with the Settlement Administrator, as necessary to effectuate this Agreement.

13 **21. MISCELLANEOUS PROVISIONS**

14 **A. Interpretation of the Agreement.**

15 This Agreement constitutes the entire agreement between the Parties with respect to its
16 subject matter. Except as expressly provided herein, this Agreement has not been executed in
17 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
18 written representations or terms shall modify, vary or contradict its terms. In entering into this
19 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
20 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
21 enforced under the laws of the State of California, both in its procedural and substantive aspects,
22 without regard to its conflict of law provisions. Any claim arising out of or relating to the
23 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
24 Court of the State of California for the County of San Bernardino, and Plaintiffs and Defendants
25 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
26 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
27 and each of them, participated in the negotiation and drafting of this Agreement and had available
28 to them the advice and assistance of independent counsel. As such, neither Plaintiffs nor

Defendants may claim that any ambiguity in this Agreement should be construed against the other. The Agreement may be modified only by a writing signed by counsel for the Parties and approved by the Court.

B. Further Cooperation.

The Parties and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they will not take any action inconsistent with this Agreement, including, without limitation, encouraging Settlement Class Members to opt out of the Settlement. In the event the Court finds that any Party has taken actions inconsistent with the Settlement, including, without limitation, encouraging Class Members to opt out of the Settlement, the Court may take any corrective actions, including enjoining any Party from communicating regarding the Settlement, issuing (a) corrective notice(s), awarding sanctions against that Party, and/or enforcing this Agreement.

C. Counterparts.

The Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate original

D. Authority.

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual sign

E. No Third-Party Beneficiaries.

Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California, Class Counsel, and Defendants are direct beneficiaries of this Agreement. The only third-party beneficiaries of this Agreement are: (1) Kevin Hobbs; (2) Aerotek; and (3) Citistaff. The Parties intend those third-party beneficiaries to benefit as Released Parties with respect to the releases set forth in Paragraph 7 above.

F. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,

1 or legal holiday, that deadline shall be continued until the following business day.

2 **G. Jurisdiction of the Court**

3 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
4 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
5 of this Settlement Agreement and all orders and judgments entered in connection therewith,
6 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
7 interpreting, implementing, and enforcing the settlement embodied in this Settlement
8 Agreement and all orders and judgments entered in connection therewith

9 **H. Applicable Law.**

10 All of the terms of this Agreement shall be governed by and interpreted according to the
11 laws of the State of California.

12 **I. Confidentiality.**

13 Plaintiff's, Plaintiff's Counsel, Class Counsel, Defendants and their counsel agree that
14 they will not issue any press releases, initiate any contact with the press, respond to any press
15 inquiry or have any communication with the press about the fact, amount or terms of this
16 Agreement. Plaintiffs shall instruct their attorneys not to use Defendants' names in marketing
17 materials. Plaintiffs will not make, and Plaintiffs shall instruct their attorneys not to make, any
18 posting on any website, instant messaging site, blog, or social networking site that uses
19 Defendants' names in any mailings, publicity, or other similar forums or materials. Nothing in
20 this Agreement shall limit Defendants' abilities to fulfill disclosure obligations reasonably
21 required by law or in furtherance of business purposes, including the fulfillment of obligations
22 stated in this Agreement. Furthermore, nothing in this provision shall limit Class Counsel's
23 obligations to communicate with Class Members regarding the Settlement, the terms thereof, or
24 any other aspect of this Settlement once preliminary approval has been granted.

25 **J. Severability.**

26 In the event that one or more of the provisions contained in this Agreement shall for any
27 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
28 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class

Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

K. Plaintiffs' Waivers of Rights to be Excluded and Object.

Plaintiffs agree to sign this Agreement and by signing this Agreement are bound by the terms stated and further agree not to request exclusion from the Participating Class and agree not to object to any of the terms of this Agreement. Any such request for exclusion or objection shall be void and of no force or effect.

L. Notice.

All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail addressed as follows:

Counsel for Plaintiffs Michelle Helaire and Robert Sarabia:

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan, Esq.
Diego Aviles, Esq.
Vedang J. Patel, Esq.
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211

Counsel for Plaintiff Hugh Smith:

LAVI & EBRAHIMIAN, LLP
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Pooja V. Patel, Esq.
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211

Counsel for Defendants:

HUNTON ANDREWS KURTH LLP
Roland M. Juarez, Esq.
Steven A. Morphy, Esq.
550 South Hope Street, Suite 2000
Los Angeles, CA 90071-2627

///


///

IT IS SO AGREED:

Dated: _____, 2023

Robert Sarabia
Plaintiff and Class Representative

Dated: Sep 29, 2023, 2023

 (Sep 29, 2023 15:13 PDT)

Michelle Helaire
Plaintiff and Class Representative

Dated: _____, 2023

Hugh Smith
Plaintiff and Class Representative

Dated: _____, 2023

Smithfield Packaged Meats Corp
Defendant

By: _____

Its: _____

Dated: _____, 2023

Smithfield Fresh Meats Corp
Defendant

By: _____

Its: _____

Dated: _____, 2023

Smithfield Foods, Inc.
Defendant

By: _____

Its: _____

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Dated: _____, 2023

Smithfield Distribution, LLC
Defendant

By: _____

Its: _____

AGREED AS TO FORM:

Dated: October 6, 2023

Vedang J. Patel

DAVID D. BIBIYAN
VEDANG J. PATEL
**Counsel for Attorneys for Plaintiffs,
MICHELLE HELAIRE, ROBERT
SARABIA, and HUGH SMITH on behalf of
themselves and all others similarly situated
and aggrieved**

Dated: _____, 2023

JOSEPH LAVI
VINCENT C. GRANBERRY
POOJA V. PATEL
WILLIAM TRAN
**Counsel for Attorneys for Plaintiffs,
MICHELLE HELAIRE, ROBERT
SARABIA, and HUGH SMITH on behalf of
themselves and all others similarly situated
and aggrieved**

///

///


///

1 Dated: _____, 2023

2 ROLAND JUAREZ
3 KAREN EVANS
4 STEVEN A. MORPHY
5 **Counsel for Defendants SMITHFIELD**
6 **PACKAGED MEATS CORP.,**
7 **SMITHFIELD FRESH MEATS, CORP.,**
8 **SMITHFIELD FOODS, INC., and**
9 **SMITHFIELD DISTRIBUTION, LLC**

1 **IT IS SO AGREED:**

2 Dated: Oct 4, 2023, 2023


Robert Sarabia (Oct 4, 2023 10:02 PDT)

Robert Sarabia
Plaintiff and Class Representative

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6 Dated: _____, 2023

Michelle Helaire
Plaintiff and Class Representative

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9 Dated: _____, 2023

Hugh Smith
Plaintiff and Class Representative

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12 Dated: _____, 2023

Smithfield Packaged Meats Corp
Defendant

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15 By: _____

16 Its: _____

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18 Dated: _____, 2023

Smithfield Fresh Meats Corp
Defendant

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21 By: _____

22 Its: _____

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24 Dated: _____, 2023

Smithfield Foods, Inc.
Defendant


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27 By: _____

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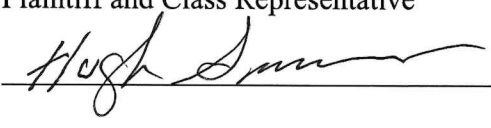
Dated: Oct 4, 2023, 2023


Robert Sarabia (Oct 4, 2023 10:02 PDT)
Robert Sarabia
Plaintiff and Class Representative

Dated: _____, 2023

Michelle Helaire
Plaintiff and Class Representative

Dated: 10-4-2023, 2023


Hugh Smith
Plaintiff and Class Representative

Dated: _____, 2023

Smithfield Packaged Meats Corp
Defendant

By: _____

Its: _____

Dated: _____, 2023

Smithfield Fresh Meats Corp
Defendant

By: _____

Its: _____

Dated: _____, 2023

Smithfield Foods, Inc.
Defendant

By: _____

Its: _____

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Dated: _____, 2023

Smithfield Distribution, LLC
Defendant

By: _____

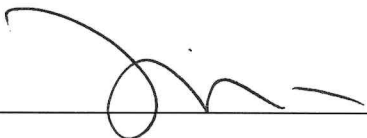
Its: _____

AGREED AS TO FORM:

Dated: _____, 2023

DAVID D. BIBIYAN
VEDANG J. PATEL
**Counsel for Attorneys for Plaintiffs,
MICHELLE HELAIRE, ROBERT
SARABIA, and HUGH SMITH on behalf of
themselves and all others similarly situated
and aggrieved**

Dated: 10/4/_____, 2023



JOSEPH LAVI
VINCENT C. GRANBERRY
POOJA V. PATEL
WILLIAM TRAN
**Counsel for Attorneys for Plaintiffs,
MICHELLE HELAIRE, ROBERT
SARABIA, and HUGH SMITH on behalf of
themselves and all others similarly situated
and aggrieved**

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Dated: _____, 2023

ROLAND JUAREZ
KAREN EVANS
STEVEN A. MORPHY
**Counsel for Defendants SMITHFIELD
PACKAGED MEATS CORP.,
SMITHFIELD FRESH MEATS, CORP.,
SMITHFIELD FOODS, INC., and
SMITHFIELD DISTRIBUTION, LLC**

1 **IT IS SO AGREED:**

2 Dated: _____, 2023

Robert Sarabia
Plaintiff and Class Representative

3
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5 Dated: _____, 2023

Michelle Helaire
Plaintiff and Class Representative

6
7
8 Dated: _____, 2023

Hugh Smith
Plaintiff and Class Representative

9
10
11 Dated: October 3, 2023

Douglas Sutton
Smithfield Packaged Meats Corp
Defendant

12
13 By: Douglas Sutton
14 Its: CMO

15
16
17 Dated: October 3, 2023

Douglas Sutton
Smithfield Fresh Meats Corp
Defendant

18
19 By: Douglas Sutton
20 Its: CMO

21
22
23 Dated: October 3, 2023

Douglas Sutton
Smithfield Foods, Inc.
Defendant

24
25 By: Douglas Sutton
26 Its: CMO
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Dated: October 3, 2023

Douglas Sutton
Smithfield Distribution, LLC
Defendant

By: Doug Sutton
Its: CMO

AGREED AS TO FORM:

Dated: _____, 2023

**DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Attorneys for Plaintiffs,
MICHELLE HELAIRE, ROBERT
SARABIA, and HUGH SMITH on behalf of
themselves and all others similarly situated
and aggrieved**

Dated: _____, 2023

**JOSEPH LAVI
VINCENT C. GRANBERRY
POOJA V. PATEL
WILLIAM TRAN
Counsel for Attorneys for Plaintiffs,
MICHELLE HELAIRE, ROBERT
SARABIA, and HUGH SMITH on behalf of
themselves and all others similarly situated
and aggrieved**

///
///
///

1 Dated: October 4, 2023



2 ROLAND JUAREZ
3 KAREN EVANS
4 STEVEN A. MORPHY
5 **Counsel for Defendants SMITHFIELD**
6 **PACKAGED MEATS CORP.,**
7 **SMITHFIELD FRESH MEATS, CORP.,**
8 **SMITHFIELD FOODS, INC., and**
9 **SMITHFIELD DISTRIBUTION, LLC**

EXHIBIT A

BIBIYAN LAW GROUP, P.C.

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Attorneys for Plaintiffs ROBERT SARABIA, MICHELLE HELAIRE, and HUGH SMITH, on behalf of themselves and all others similarly situated and aggrieved

[Additional counsel listed on next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ROBERT SARABIA and HUGH SMITH, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

SMITHFIELD PACKAGED MEATS
CORP., dba SARATOGA FOOD
SPECIALTIES, a Delaware corporation;
SMITHFIELD DISTRIBUTION, LLC, a
Delaware limited liability company; KEVIN
HOBBS, an individual; SMITHFIELD
FRESH MEATS CORP., a Delaware
corporation; SMITHFIELD FOODS, INC.;
AEROTEK, INC., doing business as ASTON
CARTER, a Maryland corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: CIVDS2011485

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. FAILURE TO PROVIDE SICK PAY;
6. WAITING TIME PENALTIES;
7. WAGE STATEMENT VIOLATIONS;
8. FAILURE TO TIMELY PAY WAGES;
9. FAILURE TO INDEMNIFY;
10. UNFAIR COMPETITION; and
11. CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF (2004), LABOR CODE SECTION 2698, *et seq.*

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
2 Pooja V. Patel, Esq. (SBN 317891)
LAVI & EBRAHIMIAN, LLP
3 8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
4 Telephone: (310) 432-0000
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vgranberry@lelawfirm.com
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7 Attorneys for Plaintiffs ROBERT SARABIA, MICHELLE HELAIRE, and HUGH
8 SMITH, on behalf of themselves and all others similarly situated and aggrieved

1 COME NOW plaintiffs ROBERT SARABIA (“Plaintiff Sarabia”), HUGH SMITH
2 (“Plaintiff Smith”), and MICHELLE HELAIRE (“Plaintiff Helaire” and collectively, “Plaintiffs”)
3 on behalf of themselves and all others similarly situated and aggrieved, and allege as follows:

4 **GENERAL ALLEGATIONS**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
7 SMITHFIELD PACKAGED MEATS CORP., a Delaware corporation doing business as
8 SARATOGA FOOD SPECIALTIES, and any of its respective parents, subsidiaries or affiliated
9 companies within the State of California, including but not limited to SMITHFIELD FRESH MEATS
10 CORP. and SMITHFIELD FOODS, INC. (collectively “SMITHFIELD MEATS”), and against
11 SMITHFIELD DISTRIBUTION, LLC, A Delaware limited liability company, and any of its
12 respective subsidiaries or affiliated companies within the State of California (“SMITHFIELD
13 DISTRIBUTION” and, with SMITHFIELD MEATS and DOES 1 through 100, as further defined
14 below, are collectively referred to as the “Smithfield Defendants”) on behalf of Plaintiff Sarabia and
15 Plaintiff Smith and all other current and former non-exempt California employees employed by or
16 formerly employed by the Smithfield Defendants, or by Hormel Foods Corporation or by any
17 staffing agency including Aerotek, Inc. and Citistaff Solutions Inc. and assigned to work for the
18 Smithfield Defendants, in the State of California (“Class Members”) during the relevant class
19 period.

20 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
21 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against the Smithfield
22 Defendants, as a proxy of the Labor and Workforce Development Agency of the State of California
23 (“LWDA”), on behalf of Plaintiff Sarabia and Plaintiff Smith and all other current and former non-
24 exempt employees of the Smithfield Defendants, or by any staffing agency including Aerotek, Inc.
25 and Citistaff Solutions Inc. and assigned to work for the Smithfield Defendants, working in the State
26 of California within the Civil Penalty Period (collectively, the “Smithfield Aggrieved Employees”).
27 This representative action brought pursuant to PAGA is also brought against AEROTEK, INC., a
28 Maryland Corporation doing business as ASTON CARTER, and any of its respective subsidiaries

1 or affiliated companies within the State of California (“AEROTEK” and together with the
2 Smithfield Defendants, “Defendants”), on behalf of Plaintiff Helaire and all other current and former
3 non-exempt employees of Defendants working within the Civil Penalty Period (collectively, the
4 “Aerotek Aggrieved Employees”).

5 **PARTIES**

6 **A. Plaintiffs**

7 3. Plaintiff Sarabia is a resident of the State of California. At all relevant times herein,
8 the Smithfield Defendants employed Plaintiff Sarabia as a non-exempt employee, with duties that
9 included, but were not limited to, non-exempt work duties including, without limitation, packaging
10 meat into boxes and loading boxes onto a conveyor belt from December of 2019 through March of
11 2020.

12 4. Plaintiff Smith is a resident of the State of California. At all relevant times herein,
13 the Smithfield Defendants employed Plaintiff Smith as a non-exempt employee, with duties that
14 included, but were not limited to, non-exempt work duties including, without limitation, operating
15 machines designed to wrap boxes onto pallets, taking boxes off conveyer belts and placing them
16 onto pallets, and boxing pork products for distribution from November 2, 2020 through April 9,
17 2021.

18 5. Plaintiff Helaire is a resident of the State of California. At all relevant times herein,
19 Plaintiff Helaire is informed and believes, and based thereon alleges, that Defendants employed
20 Plaintiff Helaire as a non-exempt employee, with duties that included, but were not limited to,
21 cleaning the kitchen, bathroom and common areas. Plaintiff Helaire began working for the
22 Defendants in approximately March of 2019 and worked through approximately September of 2019.

23 **B. Defendants**

24 6. Plaintiffs are informed and believe, and based thereon allege, that defendant
25 SMITHFIELD PACKAGED MEATS CORP. is, and at all times relevant hereto was, a corporation
26 organized and existing under and by virtue of the laws of the State of Delaware, and doing business
27 in the County of San Bernardino, State of California.

28 7. Plaintiffs are informed and believe, and based thereon allege, that defendant

1 SMITHFIELD DISTRIBUTION is, and at all times relevant hereto was, a corporation organized
2 and existing under and by virtue of the laws of the State of Delaware, and doing business in the
3 County of San Bernardino, State of California.

4 8. Plaintiffs are informed and believe, and based thereon allege, that defendant
5 AEROTEK is, and at all times relevant hereto was, a corporation organized and existing under and
6 by virtue of the laws of the State of Maryland, and doing business in the County of San Bernardino,
7 State of California. Plaintiffs are additionally informed and believe that Aerotek operated as a
8 staffing company that provided employees to the Smithfield Defendants.

9 9. The true names and capacities, whether individual, corporate, associate, or otherwise,
10 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
11 who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474.
12 Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated
13 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
14 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
15 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
16 are informed and believe, and based thereon allege, that each defendant acted in all respects pertinent
17 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
18 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
19 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
20 include the Smithfield Defendants, Aerotek, and any of their parent, subsidiary, or affiliated
21 companies within the State of California, as well as DOES 1 through 100 identified herein.

22 **JOINT LIABILITY ALLEGATIONS**

23 10. Plaintiffs are informed and believe and based thereon allege that all the times
24 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
25 representative, joint venture or co-conspirator of each of the other defendants, either actually or
26 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
27 employment, joint venture, and conspiracy.

28 11. All of the acts and conduct described herein of each and every corporate defendant

1 was duly authorized, ordered, and directed by the respective and collective defendant corporate
2 employers, and the officers and management-level employees of said corporate employers. In
3 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
4 their said employees, agents, and representatives, and each of them; and upon completion of the
5 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
6 corporations respectively and collectively ratified, accepted the benefits of, condoned, lauded,
7 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
8 aforementioned corporate employees, agents and representatives.

9 12. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
10 thereon allege that Defendants, and each of them, are joint employers.

11 **JURISDICTION**

12 13. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
13 of Civil Procedure section 410.10.

14 14. Venue is proper in San Bernardino County in California pursuant to Code of Civil
15 Procedure section 392, *et seq.* because, among other things, San Bernardino County is where
16 defendant AEROTEK purports to reside and/or have its principal place of business.

17 15. Plaintiffs are “aggrieved employees” under PAGA, as Plaintiffs were employed by
18 Defendants during the applicable statutory period and suffered one or more of the Labor Code
19 violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil
20 penalty” is defined in *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private
21 Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
22 reasonable attorneys’ fees and costs, for Plaintiffs and all other aggrieved current and former
23 employees of Defendants during the Civil Penalty Period.

24 16. Specifically, Plaintiffs seek to recover PAGA civil penalties through a representative
25 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
26 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
27 PAGA allegations described herein is not required.

28 17. During the period beginning one (1) year preceding the provision of notice to the

1 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
2 Defendants violated, *inter alia*, Labor Code sections 96(k), 98.6, 200, 201, 202, 203, 204, 210, 218,
3 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, 256, 351, 404, 432, 510, 512, 558,
4 558.1, 1021.5, 1032, 1102.5, 1174, 1174.5, 1182.12, 1185, 1193.6, 1194, 1194.2, 1197, 1197.1,
5 1197.5, 1198, 1198.5, 1199, 2698, 2699, 2802, and 2810.5, California Code of Regulations, Title 8,
6 Sections 11000, 11010, 11040, subdivision 5(A)-(B), 11070(14), 11080, and 11130, Civil Code
7 section 3287, and Business and Professions Code sections 17200, 16600, and 16700, among others.

8 18. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
9 such as Plaintiffs, on behalf of Plaintiffs and all other aggrieved current and former employees
10 within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
11 specified in Labor Code section 2699.3.

12 19. On or around February 14, 2020 and May 11, 2020, Ms. Helaire provided written
13 notice under Labor Code section 2699.3 online and by certified mail, with return receipt requested,
14 of Smithfield and Aerotek’s violation of various, including the herein-described, provisions of the
15 Labor Code, to the Labor and Workforce Development Agency (“LWDA”), as well as by certified
16 mail, with return receipt requested to Smithfield and Aerotek, and each of them.

17 20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
18 provide notice of its intention to investigate Smithfield and Aerotek’s alleged violations within
19 sixty-five (65) calendar days of the February 14, 2020 or May 11, 2020 postmarked date of the
20 herein-described notices sent by Ms. Helaire to the LWDA and Smithfield and Aerotek.

21 21. On or around November 18, 2020, Mr. Sarabia provided written notice under Labor
22 Code section 2699.3 online and by certified mail, with return receipt requested, of Smithfield’s
23 violation of various, including the herein-described, provisions of the Labor Code, to the Labor and
24 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
25 requested to SMITHFIELD.

26 22. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
27 provide notice of its intention to investigate Smithfield’s alleged violations within sixty-five (65)
28 calendar days of the November 18, 2021 postmarked date of the herein-described notice sent by

1 Plaintiff Sarabia to the LWDA and Defendants.

2 23. On or around June 22, 2021, Plaintiff Smith provided written notice under Labor
3 Code section 2699.3 online and by certified mail, with return receipt requested, of Smithfield
4 Distribution's violation of various, including the herein-described, provisions of the Labor Code, to
5 the Labor and Workforce Development Agency ("LWDA"), as well as by certified mail, with return
6 receipt requested to Smithfield Distribution.

7 24. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
8 provide notice of its intention to investigate Smithfield's alleged violations within sixty-five (65)
9 calendar days of the November 18, 2021 postmarked date of the herein-described notice sent by
10 Plaintiff Sarabia to the LWDA and Defendants

11 25. Thereafter, Plaintiffs Helaire, Sarabia, and Smith provided written notice under
12 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of the
13 Smithfield Defendants' violation of various, including the herein-described, provisions of the Labor
14 Code, to the Labor and Workforce Development Agency ("LWDA"), as well as by certified mail,
15 with return receipt requested to Smithfield Distribution.

16 26. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
17 provide notice of its intention to investigate the Smithfield Defendants' alleged violations within
18 sixty-five (65) calendar days of the postmarked date of the herein-described notice sent by Plaintiffs
19 Helaire, Sarabia, and Smith to the LWDA and Defendants.

20 **FACTUAL BACKGROUND**

21 27. For at least four (4) years prior to the filing of this Action and continuing to the
22 present, Defendants have, at times, failed to pay overtime and minimum wages to Plaintiffs and
23 Class Members in violation of California state wage and hour laws as a result of, without limitation,
24 Smithfield Defendants, at times, failing to accurately track and/or pay for all hours actually worked,
25 resulting in Plaintiffs and Class Members, on occasion, not being paid for every minute worked.
26 This practice has resulted, for the occasional pay periods where employees did work over eight (8)
27 hours per day, over forty (40) hours per week, or over eight (8) hours on the seventh consecutive
28 day, a failure to pay Class Members due overtime wages for all minutes during which overtime was

1 actually worked and/or failing to pay overtime hours at the proper overtime rate of pay.

2 28. For at least four (4) years prior to the filing of this Action and continuing to the
3 present, Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them,
4 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
5 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
6 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
7 for such unprovided meal periods as required by California wage and hour laws.

8 29. For at least four (4) years prior to the filing of this action and continuing to the
9 present, Defendants have, at times, failed to authorize and permit Plaintiffs and Class Members, or
10 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
11 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
12 California wage and hour laws.

13 30. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendants have, at times, failed to provide Plaintiffs and Class Members the amount of
15 paid sick leave required by law and underpaid sick pay wages to Plaintiffs and Class Members by
16 failing to pay sick pay wages at the regular rate of pay as required by California wage and hour laws.

17 31. For at least three (3) years prior to the filing of this action and continuing to the
18 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
19 full amount of their wages owed to them upon termination and/or resignation as required by Labor
20 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
21 minimum wages, premium wages, sick pay, and vacation pay pursuant to Labor Code section 227.3.

22 32. For at least one (1) year prior to the filing of this Action and continuing to the present,
23 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with
24 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
25 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate, and other such information as required by Labor Code section
27 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
28 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

1 33. For at least one (1) year prior to the filing of this action and continuing to the present,
2 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the full
3 amount of their wages for labor performed in a timely fashion as required under Labor Code section
4 204.

5 34. For at least three (3) years prior to the filing of this action and continuing to the
6 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for, *inter*
7 *alia*, the costs incurred in purchasing required tools and safety equipment including steel toe boots,
8 purchasing uniforms and laundering uniforms separately from their other clothes, driving personal
9 vehicles, providing uniform and other deposits, and purchasing and using personal cell phone for
10 work-related purposes.

11 35. Plaintiff Sarabia and Plaintiff Smith, on their own behalf and on behalf of Class
12 Members, bring this action pursuant to, including but not limited to, Labor Code sections 96(k),
13 98.6, 200, 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 232, 232.5,
14 246, 256, 351, 404, 432, 510, 512, 558, 558.1, 1021.5, 1032, 1102.5, 1174, 1174.5, 1182.12, 1185,
15 1193.6, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2698, 2699, 2802, and 2810.5,
16 California Code of Regulations, Title 8, Sections 11000, 11010, 11040, subdivision 5(A)-(B),
17 11070(14), 11080, and 11130, Civil Code section 3287, and Business and Professions Code sections
18 17200, 16600, and 16700 seeking, *inter alia*, overtime wages, minimum wages, premium wages for
19 missed meal and rest periods, sick pay, reimbursements, penalties, and reasonable attorneys' fees
20 and costs.

21 36. Plaintiff Sarabia and Plaintiff Smith, on their own behalf and on behalf of Class
22 Members, pursuant to Business and Professions Code sections 17200 through 17208, also seeks (an)
23 injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the
24 establishment of appropriate and effective means to prevent further violations, as well as all monies
25 owed but withheld and retained by Defendants to which Plaintiffs and Class Members are entitled,
26 as well as restitution of amounts owed.

27 37. At all relevant times mentioned herein, Defendants have had a policy or practice of,
28 at times, failing to provide Plaintiffs and other aggrieved employees with, or permit them inspection

1 of, records pertaining to their employment, including wage statements and similar payroll
2 documents under Labor Code section 226, documents signed to obtain or hold employment under
3 Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under
4 Labor Code section 1174, to the detriment of Plaintiffs and all other aggrieved employees. As a
5 result of these violations, Defendants are liable for civil penalties pursuant to Labor Code sections
6 558 and 2699.

7 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
8 and have a policy or practice of, at times, failing to pay Plaintiffs and other aggrieved employees
9 their wages in accordance with Labor Code section 204, which requires that “[l]abor performed
10 between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th
11 and 26th day of the month during which the labor was performed, and labor performed between the
12 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th
13 day of the following month.” As such, Plaintiffs are informed and believe, and based thereon
14 alleges, that Defendants did not and do not pay their employees in accordance with Labor Code
15 section 204. Defendants would be liable for civil penalties pursuant to Labor Code sections 210,
16 558 and 2699.

17 39. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
18 and have a policy or practice of, at times, failing to comply with the notice requirements of Labor
19 Code section 2810.5 by, among other things, failing to provide Plaintiffs and other Aggrieved
20 Employees with the rates of pay and overtime rates of pay applicable to their employment;
21 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
22 name of the employer, including any "doing business as" names used, the name, address, and
23 telephone number of the workers' compensation insurance carrier; information regarding paid sick
24 leave; and other pertinent information required to be disclosed by Defendants under Labor Code
25 section 2810.5.

26 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
27 and have a policy or practice of, at times, failing to pay Plaintiffs and other aggrieved employees
28 reporting time pay and/or split shift premiums as required by California wage and hour laws.

1 **CLASS ACTION ALLEGATIONS**

2 41. Plaintiff Sarabia and Plaintiff Smith bring this action on behalf of themselves and
3 Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff Sarabia
4 and Plaintiff Smith seek to represent a class of all current and former non-exempt employees of the
5 Smithfield Defendants, or of Hormel Foods Corporation or of any staffing agency including
6 Aerotek, Inc. and Citistaff Solutions Inc. who were assigned to work for the Smithfield Defendants,
7 in the State of California at any time commencing four (4) years preceding the filing of Plaintiffs'
8 Complaints up until the time that notice of the class action is provided to the class (collectively
9 referred to as "Class Members").

10 42. Plaintiff Sarabia and Plaintiff Smith reserve the right under California Rule of Court
11 rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further
12 divide the defined class into subclasses, and to further specify or limit the issues for which
13 certification is sought.

14 43. This action has been brought and may properly be maintained as a class action under
15 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
16 of interest in the litigation and the proposed Class is easily ascertainable.

17 **A. Numerosity**

18 44. The potential Class Members as defined are so numerous that joinder of all the
19 members of the Class is impracticable. While the precise number of Class Members has not been
20 determined yet, Plaintiffs are informed and believe, and based thereon allege that there are over
21 1,000 Class Members employed by Defendants within the State of California.

22 45. Accounting for employee turnover during the relevant periods necessarily increases
23 this number. Plaintiffs allege Defendants' employment records would provide information as to the
24 number and location of all Class Members. Joinder of all members of the proposed Class is not
25 practicable.

26 **B. Commonality**

27 46. There are questions of law and fact common to Class Members. These common
28 questions include, but are not limited to:

- 1 A. Did the Defendants violate Labor Code sections 510 and 1194 by failing to pay all
2 overtime hours worked at a proper overtime rate of pay?
- 3 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
4 for all other time worked at the employee's regular rate of pay and a rate of pay that
5 is greater than the applicable minimum wage?
- 6 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
7 Class Members to take compliant meal periods?
- 8 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
9 with additional wages at the employee's regular rate of pay for missed or interrupted
10 meal periods?
- 11 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
12 Class Members to take compliant meal periods, in accordance with Wage Orders 3
13 or 8?
- 14 F. Did Defendants violate applicable Wage Orders by not authorizing or permitting
15 Class Members to take compliant rest periods?
- 16 G. Did Defendants violate Labor Code section 226.7 by not providing Class Members
17 with additional wages at the employee's regular rate of pay for missed or interrupted
18 rest periods ?
- 19 H. Did Defendants violate Labor Code section 246 by not providing Class Members
20 with sick pay wages at the regular rate of pay?
- 21 I. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
22 Members upon termination or resignation all wages earned?
- 23 J. Are Defendants liable to Class Members for waiting time penalties under Labor Code
24 section 203?
- 25 K. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
26 Class Members with accurate wage statements?
- 27 L. Did Defendants fail to pay Class Members in a timely fashion as required under
28 Labor Code section 204?

1 M. Did Defendants fail to indemnify Class Members for all necessary expenditures or
2 losses incurred in direct consequence of the discharge of their duties or by obedience
3 to the directions of Defendants as required under Labor Code section 2802?

4 N. Did Defendants violate the Unfair Competition Law, Business and Professions Code
5 section 17200, *et seq.*, by their unlawful practices as alleged herein?

6 O. Are Class Members entitled to restitution of wages under Business and Professions
7 Code section 17203?

8 P. Are Class Members entitled to costs and attorneys' fees?

9 Q. Are Class Members entitled to interest?

10 **C. Typicality**

11 47. The claims of Plaintiff Sarabia and Plaintiff Smith herein alleged are typical of those
12 claims which could be alleged by any Class Members, and the relief sought is typical of the relief
13 which would be sought by each Class Member in separate actions. Plaintiff Sarabia, Plaintiff Smith,
14 and Class Members sustained injuries and damages arising out of and caused by the Smithfield
15 Defendants' common course of conduct in violation of laws and regulations that have the force and
16 effect of law and statutes as alleged herein.

17 **D. Adequacy of Representation**

18 48. Plaintiffs will fairly and adequately represent and protect the interest of Class
19 Members. Counsel who represent Plaintiffs are competent and experienced in litigating wage and
20 hour class actions.

21 **E. Superiority of Class Action**

22 49. A class action is superior to other available means for the fair and efficient
23 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
24 questions of law and fact common to Class Members predominate over any questions affecting only
25 individual Class Members. Class Members, as further described therein, have been damaged and
26 are entitled to recovery by reason of the Smithfield Defendants' policies and/or practices that have
27 resulted in the violation of the Labor Code at times, as set out herein.

28 50. Class action treatment will allow Class Members to litigate their claims in a manner

1 that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware
2 of any difficulties that are likely to be encountered in the management of this action that would
3 preclude its maintenance as a class action.

4 **FIRST CAUSE OF ACTION**

5 **(Failure to Pay Overtime Wages – Against the Smithfield Defendants)**

6 51. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
7 preceding paragraphs as though fully set forth hereat.

8 52. At all relevant times, Plaintiff Sarabia, Plaintiff Smith, and Class Members were
9 employees or former employees of Defendants covered by Labor Code sections 510, 1194 and 1199,
10 as well as applicable Wage Orders.

11 53. At all times relevant to this Complaint, Labor Code section 510 was in effect and
12 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
13 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
14 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

15 54. At all times relevant to this Complaint, Labor Code section 510 further provided that
16 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
17 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
18 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
19 pay.”

20 55. On occasions during the relevant time period mentioned herein, Plaintiff Sarabia,
21 Plaintiff Smith and Class Members worked for Smithfield Defendants during shifts that consisted
22 of more than eight (8) hours in a workday, twelve (12) hours in a workday, more than forty (40)
23 hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid
24 overtime wages for all minutes worked as a result of, without limitation, the following:

25 A. Smithfield Defendants failing to accurately track and/or pay for all hours
26 actually worked.

27 B. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
28 Members to line up to wait to undergo and undergo off-the-clock identification checks every

1 workday prior to being permitted to clock in for the start of their shifts.

2 C. Since the outbreak of COVID-19, in addition to the aforementioned
3 identification checks, Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith, and
4 Class Members to line up to wait to undergo and undergo COVID-19 temperature checks
5 and symptom questionnaires every workday prior to being permitted to clock in for the start
6 of their shifts and after returning from breaks.

7 D. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
8 Members to line up and wait to clock in before the start of their shifts and after returning
9 from breaks.

10 E. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
11 Members to work off-the-clock when they were clocked out for meal breaks and to record
12 that they took a full 30-minute uninterrupted meal break, even if they did not.

13 F. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
14 Members to travel off-the-clock to and from their workstations to a designated area in order
15 to take meal breaks.

16 G. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
17 Members to travel off-the-clock to and from security booths/turnstiles at their work facilities
18 to their workstations.

19 H. Smithfield Defendants routinely and regularly contacting Plaintiff Sarabia,
20 Plaintiff Smith and Class Members via telephone and/or text messages, or requiring Plaintiff
21 Sarabia, Plaintiff Smith and Class Members to attend company meetings, while off-the-
22 clock.

23 I. Smithfield Defendants failing to pay Plaintiff Sarabia, Plaintiff Smith and
24 Class Members for mandatory drug testing or any other testing and/or examination required
25 as a condition of employment.

26 J. Smithfield Defendants failing to factor all non-discretionary bonuses,
27 commissions, and incentive pay into their regular rate of pay calculation and, thus, failing to
28 pay Plaintiff Sarabia, Plaintiff Smith and Class Members overtime at the correct overtime

1 rate of pay. By way of example only, Plaintiffs allege that the Smithfield Defendants failed
2 to include payments for responsibility bonus/pay, "Bonus-Accrd Other", "Special",
3 attendance bonuses, referral bonuses, and shift differentials into Plaintiff Sarabia's, Plaintiff
4 Smith's, and Class Members' regular rate of pay calculations.

5 K. Smithfield Defendants failing to pay 1.5 times the regular rate of pay for first
6 eight hours of seventh consecutive day of work and 2 times the regular rate of pay for hours
7 worked after eight hours of seventh consecutive day.

8 L. Smithfield Defendants rounding the actual time worked and recorded by
9 Plaintiff Sarabia, Plaintiff Smith and Class Members to the benefit of the Smithfield
10 Defendants, such that Plaintiff Sarabia, Plaintiff Smith and Class Members were not paid
11 overtime wages for all overtime hours worked.

12 M. Smithfield Defendants failing to make available a reasonable protocol for
13 correcting time records when Plaintiff Sarabia, Plaintiff Smith, and Class Members worked
14 overtime hours or to fix incorrect time entries.

15 N. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
16 Members to don and doff uniforms and/or personal protective equipment before clocking in
17 or after clocking out.

18 O. Smithfield Defendants failing to properly pay overtime wages for employees
19 working an alternative workweek schedule.

20 56. Accordingly, by requiring Plaintiff Sarabia, Plaintiff Smith, and Class Members to,
21 at times, work greater than eight (8) hours per workday, forty (40) hours per workweek, and/or seven
22 (7) straight workdays without properly compensating overtime wages at the proper overtime rate of
23 pay, the Smithfield Defendants, on occasion, willfully violated the provisions of the Labor Code,
24 among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

25 57. As a result of the unlawful acts of the Smithfield Defendants, Plaintiff Sarabia,
26 Plaintiff Smith, and Class Members have been deprived of overtime wages in amounts to be
27 determined at trial, and are entitled to recovery, plus interest and penalties thereon, attorneys' fees
28 and costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5

1 and 1032, and Civil Code section 3287.

2 **SECOND CAUSE OF ACTION**

3 **(Failure to Pay Minimum Wages – Against Smithfield Defendants)**

4 58. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
5 preceding paragraphs as though fully set forth hereat.

6 59. At all relevant times, Plaintiff Sarabia, Plaintiff Smith, and Class Members were
7 employees or former employees of the Smithfield Defendants covered by Labor Code sections 1197,
8 1199 and applicable Wage Orders.

9 60. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff Sarabia,
10 Plaintiff Smith, and Class Members were entitled to receive minimum wages for all hours worked
11 or otherwise under Smithfield Defendants' control.

12 61. The Smithfield Defendants failed to, on occasions, pay Plaintiff Sarabia, Plaintiff
13 Smith, and Class Members minimum wages for all minutes worked as a result of, without limitation,
14 the following:

15 A. Smithfield Defendants failing to accurately track and/or pay for all hours
16 actually worked.

17 B. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
18 Members to line up to wait to undergo and undergo off-the-clock identification checks every
19 workday prior to being permitted to clock in for the start of their shifts.

20 C. Since the outbreak of COVID-19, in addition to the aforementioned
21 identification checks, Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith, and
22 Class Members to line up to wait to undergo and undergo COVID-19 temperature checks
23 and symptom questionnaires every workday prior to being permitted to clock in for the start
24 of their shifts and after returning from breaks.

25 D. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
26 Members to line up and wait to clock in before the start of their shifts and after returning
27 from breaks.

28 E. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class

1 Members to work off-the-clock when they were clocked out for meal breaks and to record
2 that they took a full 30-minute uninterrupted meal break, even if they did not.

3 F. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
4 Members to travel off-the-clock to and from their workstations to a designated area in order
5 to take meal breaks.

6 G. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
7 Members to travel off-the-clock to and from security booths/turnstiles at their work facilities
8 to their workstations.

9 H. Smithfield Defendants routinely and regularly contacting Plaintiff Sarabia,
10 Plaintiff Smith and Class Members via telephone and/or text messages, or requiring Plaintiff
11 Sarabia, Plaintiff Smith and Class Members to attend company meetings, while off-the-
12 clock.

13 I. Smithfield Defendants failing to pay Plaintiff Sarabia, Plaintiff Smith and
14 Class Members for mandatory drug testing or any other texting and/or examination required
15 as a condition of employment.

16 J. Smithfield Defendants rounding the actual time worked and recorded by
17 Plaintiff Sarabia, Plaintiff Smith and Class Members to the benefit of the Smithfield
18 Defendants, such that Plaintiff Sarabia, Plaintiff Smith and Class Members were not paid
19 wages for all hours worked.

20 K. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
21 Members to don and doff uniforms and/or personal protective equipment before clocking in
22 or after clocking out.

23 62. As a result of the Smithfield Defendants' unlawful conduct, Plaintiff Sarabia,
24 Plaintiff Smith, and Class Members have suffered damages in an amount, subject to proof, to the
25 extent they were not paid minimum wages for all hours worked or otherwise due.

26 63. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
27 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff Sarabia, Plaintiff Smith, and Class
28 Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties

1 thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

2 **THIRD CAUSE OF ACTION**

3 **(Failure to Provide Meal Periods – Against Smithfield Defendants)**

4 64. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
5 preceding paragraphs as though fully set forth hereat.

6 65. At all relevant times, Plaintiff Sarabia, Plaintiff Smith and Class Members were
7 employees or former employees of the Smithfield Defendants covered by Labor Code section 512
8 and applicable Wage Orders.

9 66. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
10 employ an employee for a work period of more than five (5) hours without a timely meal break of
11 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
12 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
13 per day without providing the employee with a second timely meal period of not less than thirty (30)
14 minutes in which the employee is relieved of all of his or her duties.

15 67. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
16 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
17 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
18 of compensation for each workday that the meal period is not provided.

19 68. For four (4) years prior to the filing of the Complaint in this Action through the
20 present, Plaintiff Sarabia, Plaintiff Smith, and Class Members were, at times, not provided complete,
21 timely 30-minute, duty-free uninterrupted meal periods every five hours of work without waiving
22 the right to take them, as permitted. Moreover, at times, the Smithfield Defendants failed to provide
23 one (1) additional hour of pay at the Class Member's regular rate of compensation on the occasions
24 that Class Members were not provided compliant meal periods. These alleged failures by the
25 Smithfield Defendants were the result of, without limitation, the following:

26 A. Smithfield Defendants failing to provide Plaintiff Sarabia, Plaintiff Smith and
27 Class Members with a 30-minute off-duty meal period prior to their fifth hour of work,
28 including systematically late meal breaks for union employees and for probationary

1 employees during the first 90 days of employment due to the Smithfield Defendants'
2 application of the incorrect IWC Wage Order.

3 B. Smithfield Defendants failing to provide Plaintiff Sarabia, Plaintiff Smith and
4 Class Members with a second 30-minute off-duty legally required meal period on work days
5 in which these employees worked more than ten hours.

6 C. Smithfield Defendants routinely providing meal periods after the end of the
7 employee's fifth hour of work and, for shifts over ten hours, after the end of the employee's
8 tenth hour of work.

9 D. Smithfield Defendants having no general "stop work" signal for meal breaks.

10 E. Smithfield Defendants requiring employees to wait in line to clock out for
11 meal periods and to clock back in after meal periods, resulting in meal periods that were less
12 than the required 30 minutes and/or taken late.

13 F. Smithfield Defendants requiring employees who left the worksite during
14 meal breaks to engage in a new set of temperature checks, essentially making it impossible
15 for employees to leave the premises for meal breaks without cutting their meal period short
16 and/or clocking back in from meal periods late and, thus, being subject to the Smithfield
17 Defendants' disciplinary system.

18 G. Smithfield Defendants failing to maintain a compliant meal period policy.

19 H. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
20 Members to record that they had taken meal periods, even if they had not.

21 I. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
22 Members to travel off-the-clock to and from designated areas away from their workstations
23 during their meal periods and failing to extend meal periods to account for the additional
24 time employees spent traveling back and forth to designated areas during their meal breaks
25 to ensure that they received a 30-minute meal period.

26 J. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
27 Members to work while clocked out for meal periods or interrupting employees with work
28 assignments during meal periods, including requiring employees to carry cell phones or

1 walkie-talkies during meal periods.

2 K. Smithfield Defendants rounding meal period times to avoid paying penalties
3 to Plaintiff Sarabia, Plaintiff Smith and Class Members when legally required to do so.

4 L. Smithfield Defendants failing to factor all non-discretionary bonuses,
5 commissions, and incentive pay into their regular rate of pay calculation and, thus, failing to
6 pay Plaintiff Sarabia, Plaintiff Smith and Class Members meal break premiums at the correct
7 regular rate of pay.

8 69. By their failure to provide Plaintiff Sarabia, Plaintiff Smith, and Class Members
9 compliant meal periods as contemplated by Labor Code section 512, among other California
10 authorities, and failing, at times, to provide compensation for such unprovided meal periods, as
11 alleged above, the Smithfield Defendants willfully violated the provisions of Labor Code section
12 512 and applicable Wage Orders.

13 70. As a result of Smithfield Defendants' unlawful conduct, Plaintiff Sarabia, Plaintiff
14 Smith, and Class Members have suffered damages in an amount, subject to proof, to the extent they
15 were not paid additional pay owed for missed, untimely, interrupted, incomplete and/or on-duty
16 meal periods.

17 71. Plaintiff Sarabia, Plaintiff Smith, and Class Members are entitled to recover the full
18 amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be
19 determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code
20 sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section
21 3287.

22 **FOURTH CAUSE OF ACTION**

23 **(Failure to Provide Rest Periods – Against Smithfield Defendants)**

24 72. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
25 preceding paragraphs as though fully set forth hereat.

26 73. At all relevant times, Plaintiff Sarabia, Plaintiff Smith, and Class Members were
27 employees or former employees of Defendants covered by applicable Wage Orders.

28 74. California law and applicable Wage Orders require that employers “authorize and

1 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
2 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
3 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
4 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
5 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
6 thirty (30) minutes of paid rest period.

7 75. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
8 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
9 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s
10 regular rate of compensation for each work day that the rest period is not provided.

11 76. For four (4) years prior to the filing of the Complaint in this Action through the
12 present, Plaintiff Sarabia, Plaintiff Smith, and Class Members were, at times, not authorized or
13 permitted to take complete, timely 10-minute, duty-free uninterrupted rest periods every four (4)
14 hours of work or major fraction thereof. Moreover, at times, Smithfield Defendants failed to
15 provide one (1) additional hour of pay at the Class Member’s regular rate of compensation on the
16 occasions that Class Members were not authorized or permitted to take compliant rest periods.
17 These alleged failures by the Smithfield Defendants were the result of, without limitation, the
18 following:

19 A. Smithfield Defendants denying or failing to provide rest breaks timely within
20 every 3.5 to 4.0 hours worked, including first rest breaks for shifts of at least two to four
21 hours, second rest breaks for shifts of six to eight hours, and third rest breaks for shifts of
22 ten or more hours.

23 B. Smithfield Defendants prohibiting Plaintiff Sarabia, Plaintiff Smith, and
24 Class Members from leaving the work premises during rest breaks, prohibiting Plaintiffs and
25 Aggrieved Employees from taking unconstrained walks, and subjecting employees to recall
26 during rest breaks without providing premium payments for unprovided or interrupted rest
27 periods.

28 C. As a result of rigorous work schedules, Smithfield Defendants failing to

1 relieve Plaintiff Sarabia, Plaintiff Smith, and Class Members from all duty during rest
2 breaks.

3 D. Smithfield Defendants requiring Plaintiff Sarabia, Plaintiff Smith and Class
4 Members to travel to and from designated areas away from their workstations in order to
5 take rest breaks and failing to extend rest breaks to account for the additional time employees
6 spent traveling back and forth to designated areas during their rest breaks to ensure that they
7 received net 10-minute rest breaks.

8 E. Smithfield Defendants failing to factor all non-discretionary bonuses,
9 commissions, and incentive pay into their regular rate of pay calculation and, thus, failing to
10 pay Plaintiff Sarabia, Plaintiff Smith and Class Members rest break premiums at the correct
11 regular rate of pay.

12 F. Smithfield Defendants failing to have a legally compliant rest break policy.

13 G. Smithfield Defendants prohibiting employees from leaving the work
14 premises during their rest periods.

15 H. Smithfield Defendants failing to separately compensate Plaintiff Sarabia,
16 Plaintiff Smith, and Class Members for rest periods if the employers' compensation plan
17 does not already include a minimum hourly wage. *See Vaquero v. Stoneledge Furniture*
18 *LLC*, 9 Cal.App.5th 98, 110 (2017).

19 77. By their failure, at times, to authorize and permit Plaintiff Sarabia, Plaintiff Smith,
20 and Class Members to take rest periods contemplated by California law, and one (1) additional hour
21 of pay at the employee's regular rate of compensation for such unprovided rest periods, as alleged
22 above, Smithfield Defendants willfully violated the provisions of Labor Code section 226.7 and
23 applicable Wage Orders.

24 78. As a result of Smithfield Defendants' unlawful conduct, Plaintiff Sarabia, Plaintiff
25 Smith, and Class Members have suffered damages in an amount, subject to proof, to the extent they
26 were not paid additional pay owed for rest periods that they were not authorized or permitted to
27 take.

28 79. Plaintiff Sarabia, Plaintiff Smith, and Class Members are entitled to recover the full

1 amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be
2 determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code
3 sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section
4 3287.

5 **FIFTH CAUSE OF ACTION**

6 **(Failure to Provide Sick Pay– Against Smithfield Defendants)**

7 80. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
8 preceding paragraphs as though fully set forth hereat.

9 81. At all relevant times, Plaintiff Sarabia, Plaintiff Smith, and Class Members were
10 employees or former employees of Defendants covered by Labor Code section 246, as well as
11 applicable Wage Orders.

12 82. At all times relevant to this Complaint, Labor Code section 246 was in effect and
13 requires that paid sick time for non-exempt employees be calculated by dividing the employee's
14 total wages, not including overtime premium pay, by the employee's total hours worked in the full
15 pay periods of the prior 90 days of employment.

16 83. At all times relevant to this Complaint, Labor Code section 246(i) further requires
17 that an employer provide employees written notice setting forth the amount of paid sick leave
18 available either on an employees' wage statement pursuant to Section 226 or in a separate writing
19 on the designated pay date.

20 84. On occasions during the relevant time period mentioned herein, the Smithfield
21 Defendants failed to provide Plaintiff Sarabia, Plaintiff Smith, and Class Members with the amount
22 of sick leave required by law and underpaid sick pay wages to Plaintiff Sarabia, Plaintiff Smith, and
23 Class Members by failing to pay sick pay wages at the regular rate of pay in violation of Cal. Lab.
24 Code Section 246. Specifically, Plaintiff Sarabia, Plaintiff Smith, and Class Members earn non-
25 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
26 bonuses. Rather than pay sick pay at the regular rate of pay, the Smithfield Defendants underpay
27 sick pay to Plaintiff Sarabia, Plaintiff Smith, and Class Members at their base rates of pay.

28 85. Accordingly, by failing to provide pay sick leave and failing to pay sick pay at the

1 regular rate of pay, the Smithfield Defendants, on occasion, willfully violated the provisions of the
2 Labor Code section 246, applicable IWC Wage Orders, and California law.

3 86. As a result of the unlawful acts of the Smithfield Defendants, Plaintiff Sarabia,
4 Plaintiff Smith, and Class Members have been deprived of sick pay in amounts to be determined at
5 trial, and are entitled to recovery, plus interest and penalties thereon, attorneys' fees and costs.

6 **SIXTH CAUSE OF ACTION**

7 **(Failure to Pay All Wages Due Upon Termination – Against Smithfield Defendants)**

8 87. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
9 preceding paragraphs as though fully set forth hereat.

10 88. At all relevant times, Sarabia, Plaintiff Smith, and Class Members were employees
11 or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as
12 applicable Wage Orders.

13 89. Pursuant to Labor Code sections 201 and 202, Plaintiff Sarabia, Plaintiff Smith, and
14 Class Members were entitled upon termination to timely payment of all wages earned and unpaid
15 prior to termination. Discharged Class Members were entitled to payment of all wages earned and
16 unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled
17 to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice
18 of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages
19 earned and unpaid at the time of resignation.

20 90. Plaintiff Sarabia, Plaintiff Smith, and Class Members are informed and believe, and
21 based thereon allege, that in the three (3) years before the filing of the Complaint in this Action
22 through the present, Smithfield Defendants, due to the failure, at times, to provide minimum wages,
23 overtime wages, meal and rest break premiums, sick pay, and/or vacation time and paid time off,
24 mentioned above, and due to making unlawful deductions from compensation payable to Plaintiff
25 Sarabia, Plaintiff Smith, and Class Members, failed to pay Plaintiffs and Class Members all wages
26 earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

27 91. Plaintiff Sarabia, Plaintiff Smith, and Class Members are informed and believe, and
28 based thereon allege Defendants' failure, at times, to pay Plaintiffs and Class Members all wages

1 earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was
2 willful. Smithfield Defendants had the ability to pay all wages earned by Plaintiffs and Class
3 Members at the time of termination in accordance with Labor Code sections 201 and 202, but
4 intentionally adopted policies or practices incompatible with the requirements of Labor Code
5 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
6 or resignation.

7 92. Pursuant to Labor Code section 203, Plaintiff Sarabia, Plaintiff Smith, and Class
8 Members are entitled to waiting time penalties from the date their earned and unpaid wages were
9 due, upon termination or resignation, until paid, up to a maximum of thirty (30) days.

10 93. As a result of Smithfield Defendants' unlawful conduct, Plaintiff Sarabia, Plaintiff
11 Smith, and Class Members have suffered damages in an amount subject to proof, to the extent they
12 were not paid for all wages earned prior to termination or resignation.

13 94. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
14 1021.5 and 1032, and Civil Code section 3287, Sarabia, Plaintiff Smith, and Class Members are
15 entitled to recover waiting time penalties, interest, and their costs of suit, as well.

16 **SEVENTH CAUSE OF ACTION**

17 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

18 95. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
19 preceding paragraphs as though fully set forth hereat.

20 96. At all relevant times, Plaintiff Sarabia, Plaintiff Smith, and Class Members were
21 employees or former employees of Defendants covered by Labor Code section 226, as well as
22 applicable Wage Orders.

23 97. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and Class Members
24 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
25 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
26 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
28 employer, among other things.

1 98. Plaintiff Sarabia, Plaintiff Smith, and Class Members are informed and believe, and
2 based thereon allege, that in the one (1) year before the filing of the Complaint in this Action through
3 the present, Defendants failed to comply with Labor Code section 226, subdivision (a) by adopting
4 policies and practices that resulted in their failure, at times, to furnish Plaintiff Sarabia, Plaintiff
5 Smith, and Class Members with accurate itemized statements that accurately reflect, among other
6 things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in
7 effect during the pay period and the corresponding number of hours worked at each hourly rate; and
8 the correct name and address of the legal entity that is the employer, among other things. By way
9 of example only:

10 A. Wage statements did not reflect the true hours worked by Plaintiff Sarabia,
11 Plaintiff Smith, and Class Members.

12 B. Some wage statements show a “RspnPy” code (undefined) at \$5.00/hour, but
13 total hours worked at that rate are not listed.

14 C. Some wage statements show overtime pay as only paid at half the rate of pay
15 and not the total calculation of overtime.

16 D. Some wage statements show an “SHF” code at \$0.15/hour, but there is no
17 understanding or delineation as to what hours or shifts wherein the “SHF” code applies.

18 E. The Smithfield Defendants did not explain how pay codes shown on the wage
19 statements relate to any pay provided to Plaintiff Sarabia, Plaintiff Smith, and Class
20 Members.

21 F. Accessibility to wage statements ceased after a period of time or after
22 separation from employment, rendering it impossible for an employee to try to figure out
23 the various pay codes.

24 99. Smithfield Defendants’ failure to, at times, provide Plaintiff Sarabia, Plaintiff Smith,
25 and Class Members with accurate wage statements was knowing, intentional, and willful.
26 Defendants had the ability to provide Plaintiffs and the other Class Members with accurate wage
27 statements, but, at times, willfully provided wage statements that Defendants knew were not
28 accurate.

100. As a result of Smithfield Defendants' unlawful conduct, Plaintiff Sarabia, Plaintiff Smith, and Class Members have suffered injury. The absence of accurate information on Class Members' wage statements at times has delayed timely challenge to Smithfield Defendants' unlawful pay practices; requires discovery and mathematical computations to determine the amount of wages owed; causes difficulty and expense in attempting to reconstruct time and pay records; and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies, among other things.

101. Pursuant to Labor Code section 226, subdivision (e), Plaintiff Sarabia, Plaintiff Smith, and Class Members are entitled to recover \$50 for the initial pay period in which a violation of Labor Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

102. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil Procedure section 1032, Civil Code section 3287, Plaintiff Sarabia, Plaintiff Smith, and Class Members are entitled to recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable attorneys' fees, and costs of suit.

EIGHTH CAUSE OF ACTION

(Failure to Timely Pay Wages During Employment – Against Smithfield Defendants)

103. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and incorporate each by reference as though fully set forth hereat.

104. At all relevant times, Plaintiff Sarabia, Plaintiff Smith, and Class Members were employees or former employees of Smithfield Defendants covered by Labor Code section 204 and applicable Wage Orders.

105. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

106. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely

1 independent and apart from, any other penalty provided in this article, every person who fails to pay
2 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
3 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
4 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
5 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
6 percent of the amount unlawfully withheld.”

7 107. Plaintiff Sarabia, Plaintiff Smith, and Class Members are informed and believe, and
8 based thereon allege, that in the one (1) year before the filing of the Complaint in this Action through
9 the present, Smithfield Defendants employed policies and practices that resulted in, at times, not
10 paying Plaintiffs and Class Members in accordance with Labor Code section 204, including but not
11 limited to the “Retro Pay Flat” wage payment.

12 108. Pursuant to Labor Code section 210, Plaintiffs and Class Members are entitled to
13 recover penalties for Smithfield Defendants’ violations of Labor Code section 204, in the amount
14 of one hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars
15 (\$200) for each subsequent violation in connection with each payment that was made in violation
16 of Labor Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

17 109. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
18 1032, and Civil Code section 3287, Plaintiff Sarabia, Plaintiff Smith, and Class Members are entitled
19 to recovery of penalties, interest, and their costs of suit, as well.

20 **NINTH CAUSE OF ACTION**

21 **(Violation of Labor Code § 2802 – Against Smithfield Defendants)**

22 110. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
23 preceding paragraphs as though fully set forth hereat.

24 111. At all relevant times, Plaintiff Sarabia, Plaintiff Smith, and Class Members were
25 employees or former employees of Smithfield Defendants covered by Labor Code section 2802 and
26 applicable Wage Orders.

27 112. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
28 his or her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties . . .”

2 113. For three (3) years prior to the filing of the Complaint in this Action through the
3 present, Smithfield Defendants required Plaintiff Sarabia, Plaintiff Smith, and Class Members, or
4 some of them, to incur, at times, necessary expenditures or losses in direct consequence of the
5 discharge of their duties or at the obedience to the directions of Smithfield Defendants that included,
6 without limitation, the costs incurred in purchasing required tools and safety equipment including
7 steel toe boots, purchasing uniforms and laundering uniforms separately from their other clothes,
8 driving personal vehicles, providing uniform and other deposits, and purchasing and using personal
9 cell phone for work-related purposes.

10 114. During that time period, Plaintiff Sarabia, Plaintiff Smith, and Class Members are
11 informed and believe, and based thereon allege that Smithfield Defendants failed and refused, and
12 still fail and refuse, at times, to reimburse Plaintiff Sarabia, Plaintiff Smith, and Class Members for
13 those losses and/or expenditures.

14 115. As a result of Smithfield Defendants’ unlawful conduct, Plaintiffs and Class
15 Members have suffered damages in an amount subject to proof, to the extent they were not
16 reimbursed for the herein-described losses and/or expenditures.

17 116. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
18 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
19 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
20 costs of suit.

21 **TENTH CAUSE OF ACTION**

22 **(Unfair Competition – Against All Defendants)**

23 117. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
24 preceding paragraphs as though fully set forth hereat.

25 118. Plaintiff Sarabia and Plaintiff Smith are informed and believe, and based thereon
26 allege, that the unlawful conduct of Defendants alleged herein constitutes unfair competition within
27 the meaning of Business and Professions Code section 17200. Due to their unlawful business
28 practices in violation of the Labor Code, Defendants have gained a competitive advantage over other

1 comparable companies doing business in the State of California that comply with their obligations
2 to compensate employees in accordance with the Labor Code.

3 119. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class
4 Members have suffered injury in fact and lost money or property.

5 120. Pursuant to Business and Professions Code section 17203, Plaintiff Sarabia, Plaintiff
6 Smith, and Class Members are entitled to (an) injunction(s) prohibiting Defendants from further
7 violating the Labor Code and requiring the establishment of appropriate and effective means to
8 prevent further violations, as well as restitution of all wages and other monies owed to them under
9 the Labor Code, including interest thereon, in which they had a property interest and which
10 Defendants nevertheless failed to pay them and instead withheld and retained for themselves.
11 Restitution of the money owed to Plaintiff Sarabia, Plaintiff Smith, and Class Members is necessary
12 to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor
13 Code.

14 121. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil
15 Procedure section 1032 and interest under Civil Code section 3287.

16 **ELEVENTH CAUSE OF ACTION**

17 **(Civil Penalties under the PAGA – Against all Defendants)**

18 122. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
19 preceding paragraphs as though fully set forth hereat.

20 123. **Civil Penalties Under Labor Code § 210**

21 A. At all relevant times herein, Labor Code section 204, requires and required that:
22 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month
23 shall be paid for between the 16th and 26th day of the month during which the labor
24 was performed, and labor performed between the 16th and the last day, inclusive, of
25 any calendar month, shall be paid for between the 1st and 10th day of the following
26 month.”

27 B. As set forth below, at all relevant times herein Defendants have had a consistent
28 policy or practice of failing to pay Plaintiffs and/or Aggrieved Employees during

1 their employment on a timely basis as per Labor Code section 204. Thus, pursuant
2 to Labor Code section 210, Plaintiffs and other Aggrieved Employees are entitled to
3 recover civil penalties for Defendants' violations of Labor Code section 204, in the
4 amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial
5 violation per employee, and two hundred dollars (\$200) for each Aggrieved
6 Employee for each subsequent violation in connection with each payment that was
7 made in violation of Labor Code section 204.

8 124. **Civil Penalties Under Labor Code § 226.3**

- 9 A. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
10 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
11 dollars (\$250) per employee per violation in an initial citation and one thousand
12 dollars (\$1,000) per employee for each violation in a subsequent citation, for which
13 the employer fails to provide the employee a wage deduction statement or fails to
14 keep the records required in subdivision (a) of Section 226.”
- 15 B. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
16 this section are in addition to any other penalty provided by law.”
- 17 C. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
18 and have a policy or practice of failing to furnish non-exempt employees, including,
19 without limitation, Plaintiffs, itemized wage statements that accurately reflect: gross
20 wages earned; total hours worked by the employee; net wages earned; all deductions;
21 all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee; the legal name and
23 address of the other; and other such information as required by Labor Code section
24 226, subdivision (a). By way of example only:
- 25 i. Wage statements did not reflect the true hours worked by Plaintiffs and
26 Aggrieved Employees.
- 27 ii. Some wage statements show a “RspnPy” code (undefined) at \$5.00/hour, but
28 total hours worked at that rate are not listed.

- 1 iii. Some wage statements show overtime pay as only paid at half the rate of pay
2 and not the total calculation of overtime.
- 3 iv. Some wage statements show an “SHF” code at \$0.15/hour, but there is no
4 understanding or delineation as to what hours or shifts wherein the “SHF”
5 code applies.
- 6 v. Defendants did not explain how pay codes shown on the wage statements
7 relate to any pay provided to Plaintiffs and Aggrieved Employees.
- 8 vi. Accessibility to wage statements ceased after a period of time or after
9 separation from employment, rendering it impossible for an employee to try
10 to figure out the various pay codes.
- 11 D. Pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are
12 entitled to recover civil penalties for Defendants’ violation of Labor Code section
13 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each
14 Aggrieved Employee per pay period for the initial violation, and one thousand dollars
15 (\$1,000) for each Aggrieved Employee per pay period for each subsequent violation.
- 16 125. **Violation of Labor Code § 558**
- 17 A. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
18 acting on behalf of an employer who violates, or causes to be violated . . . any
19 provision regulating hours and days of work in any of the Industrial Welfare
20 Commission” shall be subject to a civil penalty as follows:
- 21 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
22 and for each pay period for which the employee was underpaid in addition
23 to an amount sufficient to recover underpaid wages;
- 24 (2) For each subsequent violation, one hundred dollars (\$100) for each
25 underpaid employee for each pay period for which the employee was
26 underpaid in addition to an amount sufficient to recover underpaid wages;
- 27 (3) Wages recovered pursuant to this section shall be paid to the affected
28 employee.”

1 B. As set forth below, Plaintiffs are informed and believe, and based thereon allege that
2 Defendants, and each of them, violated, or caused to be violated, the Labor Code
3 sections described herein, including causing Plaintiffs and other Aggrieved
4 Employees not to: be paid with the rates of pay and overtime rates of pay applicable
5 to their employment, allowances claimed as part of the minimum wage, the regular
6 payday designated by Employer, the name of the employer, including any “doing
7 business as” names used, the name, address and telephone number of the workers’
8 compensation insurance carrier, information regarding paid sick leave, and other
9 pertinent information.

10 C. As a direct and proximate result of the herein-described Labor Code violations,
11 pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are
12 entitled to recover civil penalties for Defendants’ herein-described Labor Code
13 violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay
14 period for the initial violation, and one hundred dollars (\$100) for each Aggrieved
15 Employee per pay period for each subsequent violation.

16 126. **Violation of Labor Code § 1197.1**

17 A. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
18 person acting either individually or as an officer, agent, or employee of another
19 person, who pays or causes to be paid to any employee a wage less than the minimum
20 fixed by an applicable state or local law, or by an order of the commission shall be
21 subject to a civil penalty, restitution of wages, liquidated damages payable to the
22 employee, and any applicable penalties imposed pursuant to Section 203 as follows:

23 (1) For any initial violation that is intentionally committed, one hundred dollars
24 (\$100) for each underpaid employee for each pay period for which the
25 employee is underpaid. This amount shall be in addition to an amount
26 sufficient to recover underpaid wages, liquidated damages pursuant to
27 Section 1194.2, and any applicable penalties imposed pursuant to Section
28 203.

1 (2) For each subsequent violation for the same specific offense, two hundred
2 fifty dollars (\$250) for each underpaid employee for each pay period for
3 which the employee is underpaid regardless of whether the initial violation
4 is intentionally committed. This amount shall be in addition to an amount
5 sufficient to recover underpaid wages, liquidated damages pursuant to
6 Section 1194.2, and any applicable penalties imposed pursuant to Section
7 203.

8 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant
9 to Section 203, recovered pursuant to this section shall be paid to the
10 affected employee.”

11 B. As set forth below, Plaintiffs are informed and believe, and based thereon allege, that
12 Defendants caused Plaintiffs and Aggrieved Employees not to be paid minimum
13 wages for all hours worked, entitling Plaintiffs and other Aggrieved Employees to
14 actual and liquidated damages.

15 C. As a direct and proximate result of the herein-described Labor Code violations,
16 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees
17 are entitled to recover civil penalties for Defendants’ herein-described Labor Code
18 violations in the amount one hundred dollars (\$100) for each Aggrieved Employee
19 per pay period for the initial violation, and two hundred and fifty dollars (\$250) for
20 each Aggrieved Employee per pay period for each subsequent violation.

21 127. **Civil Penalties Under Labor Code § 2699**

22 A. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
23 provision of law, any provision of the Labor Code that provides for a civil penalty to
24 be assessed and collected by the LWDA or any of its departments, divisions,
25 commissions, boards, agencies or employees for a violation of the Labor Code may,
26 as an alternative, be recovered through a civil action brought by an aggrieved
27 employee on behalf of himself or herself and other current or former employees
28 pursuant to the procedures specified in Labor Code section 2699.3.

1 B. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
2 Code except those for which a civil penalty is specifically provided, the established
3 civil penalty for a violation of those provisions is as follows: if, at the time of the
4 alleged violation, the person employs one or more employees, the civil penalty is one
5 hundred dollars (\$100) for each aggrieved employee per pay period for the initial
6 violation and two hundred dollars (\$200) for each aggrieved employee per pay period
7 for each subsequent violation.

8 C. As set forth below, Plaintiffs are informed and believe, and based thereon allege that
9 Defendants, and each of them, violated the Labor Code sections described herein,
10 including, without limitation, for the failure to: pay the rates of pay and overtime
11 rates of pay applicable to their employment, allowances claimed as part of the
12 minimum wage, the regular payday designated by Defendants, the name of the
13 employer, including any “doing business as” names used, the name, address and
14 telephone number of the workers’ compensation insurance carrier, information
15 regarding paid sick leave, and other pertinent information required to be disclosed
16 by Employer under Labor Code section 2810.5, failing to provide Employee and
17 other aggrieved employees with the amount of paid sick leave required to be provided
18 pursuant to California and local laws.

19 128. Plaintiffs are informed and believe and based thereon allege that Defendants violated
20 the Labor Code, including but not limited to, Labor Code sections 96(k), 98.6, 200, 201, 202, 203,
21 204, 210, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, 256, 351, 404, 432, 510,
22 512, 558, 558.1, 1021.5, 1032, 1102.5, 1174, 1174.5, 1182.12, 1185, 1193.6, 1194, 1194.2, 1197,
23 1197.1, 1197.5, 1198, 1198.5, 1199, 2698, 2699, 2802, and 2810.5, California Code of Regulations,
24 Title 8, Sections 11000, 11010, 11040, subdivision 5(A)-(B), 11070(14), 11080, and 11130, Civil
25 Code section 3287, and Business and Professions Code sections 17200, 16600, and 16700, among
26 others, and the applicable Wage Orders and, thus, are entitled to penalties as set forth herein.
27 Specifically, Plaintiffs allege Defendants violated the Labor Code as a result of, without limitation,
28 the following:

1 A. **Failure to pay overtime wages:** On occasions during the relevant time period
2 mentioned herein, Plaintiffs and Aggrieved Employees worked for Defendants
3 during shifts that consisted of more than eight (8) hours in a workday, twelve (12)
4 hours in a workday, more than forty (40) hours in a workweek, and/or seven (7)
5 consecutive workdays in a workweek, without being paid overtime wages for all
6 minutes worked as a result of, without limitation, the following:

- 7 i. Defendants failing to accurately track and/or pay for all hours actually
8 worked.
- 9 ii. Defendants requiring Plaintiffs and Aggrieved Employees to remain on-call.
- 10 iii. Defendants failing to factor all non-discretionary bonuses, commissions, and
11 incentive pay into their regular rate of pay calculation and, thus, failing to pay
12 Plaintiffs and Aggrieved Employees overtime at the correct overtime rate of
13 pay. By way of example only, Plaintiffs allege that the Defendants failed to
14 include payments for responsibility bonus/pay, “Bonus-Accrd Other”,
15 “Special”, attendance bonuses, referral bonuses, and shift differentials into
16 Plaintiffs’ and Aggrieved Employees’ regular rate of pay calculations.
- 17 iv. Defendants failing to pay 1.5 times the regular rate of pay for first eight hours
18 of seventh consecutive day of work and 2 times the regular rate of pay for
19 hours worked after eight hours of seventh consecutive day.
- 20 v. Defendants manipulating, editing, auto-deducting or rounding time worked
21 by Plaintiffs and Aggrieved Employees.
- 22 vi. Defendants failing to make available a reasonable protocol for correcting
23 time records when Plaintiffs and Aggrieved Employees worked overtime
24 hours or to fix incorrect time entries.
- 25 vii. Defendants engaging, suffering, or permitting employees to work off the
26 clock, including time spent putting on equipment in the locker room, donning
27 and doffing uniforms and personal protective equipment, and preparing their
28 equipment, such as sharpening knives, before clocking in or after clocking

- 1 out.
- 2 viii. Defendants requiring Plaintiffs and Aggrieved Employees to line up to wait
- 3 to undergo and undergo off-the-clock identification checks every workday
- 4 prior to being permitted to clock in for the start of their shifts.
- 5 ix. Since the outbreak of COVID-19, in addition to the aforementioned
- 6 identification checks, Defendants requiring Plaintiffs and Aggrieved
- 7 employees to line up to wait to undergo and undergo COVID-19 temperature
- 8 checks and symptom questionnaires every workday prior to being permitted
- 9 to clock in for the start of their shifts and after returning from breaks.
- 10 x. Defendants requiring Plaintiffs and Aggrieved Employees to line up and wait
- 11 to clock in before the start of their shifts and after returning from breaks.
- 12 xi. Defendants requiring Plaintiffs and Aggrieved Employees to work off-the-
- 13 clock when they were clocked out for meal breaks and to record that they
- 14 took a full 30-minute uninterrupted meal break, even if they did not.
- 15 xii. Defendants requiring Plaintiffs and Aggrieved Employees to travel off-the-
- 16 clock to and from their workstations to a designated area in order to take meal
- 17 breaks.
- 18 xiii. Defendants requiring Plaintiffs and Aggrieved Employees to travel off-the-
- 19 clock to and from security booths/turnstiles at their work facilities to their
- 20 workstations.
- 21 xiv. Defendants routinely and regularly contacting Plaintiffs and Aggrieved
- 22 Employees via telephone and/or text messages, or requiring Plaintiffs and
- 23 Aggrieved Employees to attend company meetings, while off-the-clock.
- 24 xv. Defendants failing to pay Plaintiffs and Aggrieved Employees for mandatory
- 25 drug testing or any other texting and/or examination required as a condition
- 26 of employment.
- 27 xvi. Defendants rounding the actual time worked and recorded by Plaintiffs and
- 28 Aggrieved Employees to the benefit of Defendants, such that Plaintiffs and

1 Aggrieved Employees were not paid overtime wages for all overtime hours
2 worked.

3 xvii. Defendants failing to properly pay overtime wages for Plaintiffs and
4 Aggrieved Employees who worked an alternative workweek schedule.

5 **B. Failure to pay wages for all hours worked at the legal minimum wage:**

6 Defendants failed to, on occasions, pay Plaintiffs and Aggrieved Employees
7 minimum wages for all minutes worked as a result of, without limitation, the
8 following:

- 9 i. Defendants failing to accurately track and/or pay for all hours actually
10 worked.
- 11 ii. Defendants requiring Plaintiffs and Aggrieved Employees to remain on-call.
- 12 iii. Defendants manipulating, editing, auto-deducting or rounding time worked
13 by Plaintiffs and Aggrieved Employees.
- 14 iv. Defendants failing to make available a reasonable protocol for correcting
15 time records when Plaintiffs and Aggrieved Employees worked off-the-clock
16 hours or to fix incorrect time entries.
- 17 v. Defendants engaging, suffering, or permitting employees to work off the
18 clock, including time spent putting on equipment in the locker room, donning
19 and doffing uniforms and personal protective equipment, and preparing their
20 equipment, such as sharpening knives, before clocking in or after clocking
21 out.
- 22 vi. Defendants requiring Plaintiffs and Aggrieved Employees to line up to wait
23 to undergo and undergo off-the-clock identification checks every workday
24 prior to being permitted to clock in for the start of their shifts.
- 25 vii. Since the outbreak of COVID-19, in addition to the aforementioned
26 identification checks, Defendants requiring Plaintiffs and Aggrieved
27 employees to line up to wait to undergo and undergo COVID-19 temperature
28 checks and symptom questionnaires every workday prior to being permitted

- 1 to clock in for the start of their shifts and after returning from breaks.
- 2 viii. Defendants requiring Plaintiffs and Aggrieved Employees to line up and wait
- 3 to clock in before the start of their shifts and after returning from breaks.
- 4 ix. Defendants requiring Plaintiffs and Aggrieved Employees to work off-the-
- 5 clock when they were clocked out for meal breaks and to record that they
- 6 took a full 30-minute uninterrupted meal break, even if they did not.
- 7 x. Defendants requiring Plaintiffs and Aggrieved Employees to travel off-the-
- 8 clock to and from their workstations to a designated area in order to take meal
- 9 breaks.
- 10 xi. Defendants requiring Plaintiffs and Aggrieved Employees to travel off-the-
- 11 clock to and from security booths/turnstiles at their work facilities to their
- 12 workstations.
- 13 xii. Defendants routinely and regularly contacting Plaintiffs and Aggrieved
- 14 Employees via telephone and/or text messages, or requiring Plaintiffs and
- 15 Aggrieved Employees to attend company meetings, while off-the-clock.
- 16 xiii. Defendants failing to pay Plaintiffs and Aggrieved Employees for mandatory
- 17 drug testing or any other testing and/or examination required as a condition
- 18 of employment.
- 19 xiv. Defendants rounding the actual time worked and recorded by Plaintiffs and
- 20 Aggrieved Employees to the benefit of Defendants, such that Plaintiffs and
- 21 Aggrieved Employees were not paid overtime wages for all overtime hours
- 22 worked.

23 C. **Failure to pay wages to hourly non-exempt employees for workdays that**

24 **Defendants failed to provide legally required and compliant meal periods:**

25 Plaintiffs and Aggrieved Employees were, at times, not provided complete, timely

26 30-minute, duty-free uninterrupted meal periods every five hours of work without

27 waiving the right to take them, as permitted. Moreover, at times, the Smithfield

28 Defendants failed to provide one (1) additional hour of pay at the Class Member's

1 regular rate of compensation on the occasions that Class Members were not provided
2 compliant meal periods. These alleged failures by the Smithfield Defendants were
3 the result of, without limitation, the following:

- 4 i. Defendants failing to provide Plaintiffs and Aggrieved Employees with a 30-
5 minute off-duty meal period prior to their fifth hour of work, including
6 systematically late meal breaks for union employees and for probationary
7 employees during the first 90 days of employment due to Defendants'
8 application of the incorrect IWC Wage Order.
- 9 ii. Defendants failing to provide Plaintiffs and Aggrieved Employees with a
10 second 30-minute off-duty legally required meal period on work days in
11 which these employees worked more than ten hours.
- 12 iii. Defendants routinely providing meal periods after the end of the employee's
13 fifth hour of work and, for shifts over ten hours, after the end of the
14 employee's tenth hour of work.
- 15 iv. Defendants having no general "stop work" signal for meal breaks.
- 16 v. Defendants requiring Plaintiffs and Aggrieved Employees to wait in line to
17 clock out for meal periods and to clock back in after meal periods, resulting
18 in meal periods that were less than the required 30 minutes and/or taken late.
- 19 vi. Defendants requiring Plaintiffs and Aggrieved Employees who left the
20 worksite during meal breaks to engage in a new set of temperature checks,
21 essentially making it impossible for employees to leave the premises for meal
22 breaks without cutting their meal period short and/or clocking back in from
23 meal periods late and, thus, being subject to Defendants' disciplinary system.
- 24 vii. Defendants failing to maintain a compliant meal period policy.
- 25 viii. Defendants requiring Plaintiffs and Aggrieved Employees to record that they
26 had taken meal periods, even if they had not.
- 27 ix. Defendants requiring Plaintiffs and Aggrieved Employees to travel off-the-
28 clock to and from designated areas away from their workstations during their

1 meal periods and failing to extend meal periods to account for the additional
2 time employees spent traveling back and forth to designated areas during
3 their meal breaks to ensure that they received a 30-minute meal period.

4 x. Defendants requiring Plaintiffs and Aggrieved Employees to work while
5 clocked out for meal periods or interrupting employees with work
6 assignments during meal periods.

7 xi. Defendants requiring Plaintiffs and Aggrieved Employees to carry cell
8 phones or walkie-talkies during meal periods.

9 xii. Defendants rounding meal period times to avoid paying penalties to
10 Defendants requiring Plaintiffs and Aggrieved Employees when legally
11 required to do so.

12 xiii. Defendants failing to factor all non-discretionary bonuses, commissions, and
13 incentive pay into their regular rate of pay calculation and, thus, failing to pay
14 Defendants requiring Plaintiffs and Aggrieved Employees meal break
15 premiums at the correct regular rate of pay.

16 **D. Failure to pay wages to hourly non-exempt employees for workdays that**

17 **Defendants failed to provide legally required and compliant rest periods:**

18 Plaintiffs and Aggrieved Employees were, at times, not authorized or permitted to
19 take complete, timely 10-minute, duty-free uninterrupted rest periods every four (4)
20 hours of work or major fraction thereof. Moreover, at times, Defendants failed to
21 provide one (1) additional hour of pay at the Aggrieved Employees' regular rate of
22 compensation on the occasions that Aggrieved Employees were not authorized or
23 permitted to take compliant rest periods. These alleged failures by Defendants were
24 the result of, without limitation, the following:

25 i. Defendants denying or failing to provide rest breaks timely within every 3.5
26 to 4.0 hours worked, including first rest breaks for shifts of at least two to
27 four hours, second rest breaks for shifts of six to eight hours, and third rest
28 breaks for shifts of ten or more hours.

- 1 ii. Defendants prohibiting Plaintiffs and Aggrieved Employees from leaving the
- 2 work premises during rest breaks, prohibiting Plaintiffs and Aggrieved
- 3 Employees from taking unconstrained walks, and subjecting employees to
- 4 recall during rest breaks without providing premium payments for
- 5 unprovided or interrupted rest periods.
- 6 iii. As a result of rigorous work schedules, Defendants failing to relieve Plaintiffs
- 7 and Aggrieved Employees from all duty during rest breaks.
- 8 iv. Defendants requiring Plaintiffs and Aggrieved Employees to travel to and
- 9 from designated areas away from their workstations in order to take rest
- 10 breaks and failing to extend rest breaks to account for the additional time
- 11 employees spent traveling back and forth to designated areas during their rest
- 12 breaks to ensure that they received net 10-minute rest breaks.
- 13 v. Defendants failing to factor all non-discretionary bonuses, commissions, and
- 14 incentive pay into their regular rate of pay calculation and, thus, failing to pay
- 15 Plaintiffs and Aggrieved Employees rest break premiums at the correct
- 16 regular rate of pay.
- 17 vi. Defendants failing to have a legally compliant rest break policy.
- 18 vii. Defendants failing to separately compensate Plaintiffs and Aggrieved
- 19 Employees for rest periods if the employers' compensation plan does not
- 20 already include a minimum hourly wage. *See Vaquero v. Stoneledge*
- 21 *Furniture LLC*, 9 Cal.App.5th 98, 110 (2017).

22 E. : **Failure to timely pay earned wages during employment:** As a derivative of
23 Plaintiffs' claims above, Plaintiffs allege that Defendants failed to timely pay
24 Plaintiffs' and other Aggrieved Employees' earned wages (including minimum
25 wages, overtime wages, meal period premium wages, rest period premium wages,
26 reporting time wages, sick pay, and/or vacation time and paid time off), in violation
27 of Labor Code section 204. Defendants aforementioned policies, practices, and/or
28 procedures resulted in their failure to pay Plaintiffs and other Aggrieved Employees

1 their earned wages within the applicable time frames outlined in Labor Code section
2 204, including but not limited to the “Retro Pay Flat” wage payment.

3 **F. : Failure to provide complete and accurate wage statements:** As a derivative of
4 Plaintiffs’ allegations above, Defendants’ failure to pay Plaintiffs and other
5 Aggrieved Employees all wages earned (including minimum wages, overtime wages,
6 meal period premium wages, rest period premium wages, reporting time wages, sick
7 pay, and/or vacation time and paid time off) rendered Plaintiffs’ and other current
8 and former aggrieved California-based hourly non-exempt employees’ wage
9 statements inaccurate, in violation of Labor Code section 226.

10 **G. Failure to pay employees all wages due at time of termination/resignation:**

11 As a derivative of Plaintiffs’ allegations above, because Defendants failed to pay Plaintiffs
12 and other Aggrieved Employees all their earned wages (including minimum wages, overtime wages,
13 meal period premium wages, rest period premium wages, reporting time wages, sick pay, and/or
14 vacation time and paid time off), Defendants failed to pay those employees timely after each
15 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

16 **H. Failure to permit inspection of records:** At all relevant times mentioned herein,
17 Defendants have had a policy or practice of, at times, failing to provide Plaintiffs and
18 other Aggrieved Employees with, or permit them inspection of, records pertaining to
19 their employment, including wage statements and similar payroll documents under
20 Labor Code section 226, documents signed to obtain or hold employment under
21 Labor Code section 432, personnel records under Labor Code section 1198.5, and
22 time records under Labor Code section 1174, to the detriment of Plaintiffs and all
23 other Aggrieved Employees.

24 **I. Failure to keep adequate or accurate time records:** At all relevant times
25 mentioned herein, Defendants have and had a policy or practice of, at times, failing
26 to keep adequate or accurate time records required under Labor Code sections 226
27 and 1174, making it difficult for Plaintiffs and other Aggrieved Employees to
28 determine whether Plaintiffs and other Aggrieved Employees were appropriately

1 paid.

2 J. **Failure to reimburse necessary business expenses.** Defendants have and had a
3 policy or practice of, at times, failing to reimburse Plaintiffs and other Aggrieved
4 Employees with the costs they incurred, including without limitation, the costs
5 incurred in purchasing required tools and safety equipment including steel toe boots,
6 purchasing uniforms and laundering uniforms separately from their other clothes,
7 driving personal vehicles, providing uniform and other deposits, and purchasing and
8 using personal cell phone for work-related purposes and in furtherance of their work
9 duties, as required by Labor Code 7 section 2802.

10 K. **Failure to provide Labor Code section 2810.5 notice.** Defendants have had a
11 policy or practice of at times, failing to comply with the notice requirements of Labor
12 Code section 2810.5 (i.e., the Wage Theft Protection Act of 2011) by, among other
13 things, failing to provide Plaintiffs and other Aggrieved Employees with the rates of
14 pay and overtime rates of pay applicable to their employment; allowances claimed
15 as part of the minimum wage; the regular payday designated by Defendants; the name
16 of the employer, including any "doing business as" names used, the name, address,
17 and telephone number of the workers' compensation insurance carrier; information
18 regarding paid sick leave; and other pertinent information required to be disclosed
19 by Defendants under Labor Code section 2810.5.

20 L. **Failure to provide sick leave.** Defendants have had a policy or practice of failing
21 to provide Plaintiffs and other Aggrieved Employees with the amount of paid sick
22 leave required to be provided pursuant to California law (including, without
23 limitation Labor Code section 246, *et seq.*), and also did not permit its use upon
24 request as contemplated under California laws, to the detriment of Plaintiffs and all
25 other Aggrieved Employees. Further Defendants have had a policy or practice of
26 failing to pay sick pay at the employees' regular rate of pay.

27 M. **Failure to pay reporting time pay.** Defendants have had a policy or practice of at
28 times failing to pay Plaintiffs and Aggrieved Employees for at least two hours of

1 work at their regular rate of pay on days that Plaintiffs and Aggrieved Employees
2 were required to report for work, but furnished less than half their usual or scheduled
3 day's work. In addition, Defendants have had a policy or practice of at times failing
4 to pay reporting time pay on days that Defendants required Plaintiffs and Aggrieved
5 Employees to respond to and engage in additional work, which resulted in a second
6 reporting for work in a single workday.

7 N. **Failure to pay split shift premiums.** Defendants have had a policy or practice of at
8 times failing to pay Plaintiffs and Aggrieved Employees split shift premiums when
9 required by law.

10 O. **Failure to provide suitable seating.** Defendants have had a policy or practice of
11 failing at times to provide Plaintiffs and Aggrieved Employees with suitable seats
12 when performing tasks that reasonably permit seating, even though a seat would not
13 interfere with their performance of any of their tasks that may require them to stand.

14 P. **Prohibition on using or disclosing skills, knowledge, and experience.** Defendants
15 have had a policy or practice of at times prohibiting Plaintiffs and Aggrieved
16 Employees from disclosing the skills, knowledge and experience they obtained at
17 Defendants for purposes of competing with Defendants, including, without
18 limitation, preventing employees from disclosing their wages in negotiating a new
19 job with a prospective employer, and from disclosing who else works at Defendants
20 and under what circumstances that they might be receptive to an offer from a rival
21 employer.

22 Q. **Prohibition on disclosing violations of state and federal law.** Defendants have
23 had a policy or practice of at times prohibiting Plaintiffs and Aggrieved Employees
24 from disclosing violations of state and federal law, either within Defendants to their
25 managers or outside Defendants to private attorneys or government officials. In
26 addition, Plaintiffs are informed and believe that these policies and/or practices
27 prevent Plaintiffs and Aggrieved Employees from disclosing information about
28 unsafe or discriminatory working conditions, or about wage and hour violations that

1 would expose Defendants to liability for civil penalties.

2 R. **Prohibition on engaging in lawful conduct during non-work hours.** Defendants
3 have had a policy or practice of at times prohibiting Plaintiffs and Aggrieved
4 Employees from engaging in lawful conduct during non-work hours, thus violating
5 state statutes entitling employees to disclose wages, working conditions, and illegal
6 conduct, including, without limitation, Labor Code sections 96(k), 98.6, 232, 232.5,
7 and 1197.5(k). Plaintiffs are informed and believe that this lawful conduct includes
8 the exercise of Plaintiffs' and Aggrieved Employees' constitutional rights of freed of
9 speech and economic liberty and would thus expose Defendants to liability for civil
10 penalties.

11 129. Plaintiffs have complied with the procedures for bringing suit specified in Labor
12 Code section 2699.3. As set forth above, Plaintiffs provided written notice under Labor Code
13 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
14 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
15 by certified mail, with return receipt requested to Defendants.

16 130. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
17 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
18 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
19 parties notice within 60 days of the date of Plaintiffs' letter that the LWDA intends to investigate
20 Plaintiff's claims.

21 131. Pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and
22 (f), Plaintiffs are entitled to recover civil penalties for Defendants' Labor Code violations as
23 described herein.

24 132. Moreover, pursuant to Labor Code section 2699(g), Plaintiffs and other Aggrieved
25 Employees within the State of California whom Plaintiffs seek to represent are entitled to an award
26 of reasonable attorneys' fees and costs in connection with their herein-described claims for civil
27 penalties.

28 ///

1 **DEMAND FOR JURY TRIAL**

2 133. Plaintiffs demand a trial by jury on all causes of action contained herein.

3 **PRAYER**

4 WHEREFORE, on behalf of Plaintiffs and Class Members, Plaintiffs pray for judgment
5 against Defendants as follows:

- 6 A. An order certifying this case as a Class Action;
- 7 B. An Order appointing Plaintiffs as Class representatives and appointing Plaintiffs’
8 counsel as class counsel;
- 9 C. Damages for all wages earned and owed, including minimum, overtime wages,
10 reporting time wages, sick pay, and unpaid wages for vested vacation time, under
11 Labor Code sections 246, 510, 1194, 1197 and 1199 and 227.3;
- 12 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 13 E. Damages for unpaid premium wages from missed meal and rest periods under,
14 among other Labor Code sections, 512 and 226.7;
- 15 F. Penalties for inaccurate wage statements under Labor Code sections 226,
16 subdivision (e) and 558.1;
- 17 G. Waiting time penalties under Labor Code section 203;
- 18 H. Penalties to timely pay wages under Labor Code section 210;
- 19 I. Damages under Labor Code section 2802;
- 20 J. Preliminary and permanent injunctions prohibiting Defendants from further
21 violating the California Labor Code and requiring the establishment of appropriate
22 and effective means to prevent future violations;
- 23 K. Restitution of wages and benefits due which were acquired by means of any unfair
24 business practice, according to proof;
- 25 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 26 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
27 1174.5, 1197.1, and 2699;
- 28 N. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections

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- 210, 226.3, 558, 1197.1, and 2699;
- O. For attorneys’ fees in prosecuting this action;
- P. For costs of suit incurred herein; and
- Q. For such other and further relief as the Court deems just and proper.

Dated: _____ BIBIYAN LAW GROUP, P.C.

BY: _____
DIEGO AVILES
DAVID D. BIBIYAN
VEDANG J. PATEL
Attorneys for Plaintiffs, on behalf of
themselves and all others similarly
situated and aggrieved

Dated: _____

LAVI & EBRAHIMIAN, LLC

BY: _____
Joseph Lavi, Esq.
Vincent Granberry, Esq.
Pooja V Patel, Esq.
William Tran, Esq

Attorneys for Plaintiffs on behalf of themselves and
all others similarly situated and aggrieved

EXHIBIT B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL HEARING

Helaire v Smithfield Packaged Meats Corp., et al.

(County of San Bernardino, California Superior Court Case No. CIVDS2011485)

As a current or former non-exempt California employee of Smithfield Packaged Meats Corp, Smithfield Fresh Meats, Corp, Smithfield Foods, Inc and Smithfield Distribution, LLC, you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of Smithfield Packaged Meats Corp., Smithfield Fresh Meats, Corp., Smithfield Foods, Inc., and Smithfield Distribution, LLC (collectively “Defendants”), show that you are a “Class Member” and, therefore, entitled to a payment from this class action settlement. Class Members are all current and former non-exempt employees who worked in California for Defendants, including those who were placed with Defendants by any staffing agency (including Aerotek Inc. or Citistaff, Solutions), at any time in California during the period from January 2, 2017 through November 22, 2022 (“Class Period”).

- The settlement is to resolve a class action lawsuit, *Helaire v Smithfield Packaged Meats Corp., et al* pending in the Superior Court of California for the County of San Bernardino, Case Number CIVDS2011485 (the “Lawsuit”), which alleges that Defendants: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to provide sick pay; (6) failed to pay all wages due upon separation from employment; (7) failed to issue accurate and compliant wage statements; (8) failed to timely pay wages; (9) failed to indemnify for necessary business expenses; and (10) engaged in unfair competition within the meaning of Business and Professions Code section 17200. Based on the alleged Labor Code violations above-mentioned and other alleged Labor Code violations, Plaintiff also seeks penalties under California Labor Code Private Attorneys’ General Act (“PAGA”).
- On [REDACTED], the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendants vigorously deny the claims in the Lawsuit and contend that they fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain all of your individual claims that will otherwise be released by the settlement of the Lawsuit, except for claims under PAGA. If you worked at any time from May 16, 2019

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

	through November 22, 2022, (“PAGA Period”) as a non-exempt, employee of Defendants, then you will be deemed an “Aggrieved Employee” and you will still receive your share of the proceeds available from the settlement of the PAGA Released Claims, defined below, (your “Individual PAGA Payment”) even if you opt out of the class settlement.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, [REDACTED] about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. You or your attorney may also address the Court during the Final Approval Hearing scheduled for [DATE AND TIME] in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415.

The Final Approval Hearing on the adequacy, reasonableness and fairness of the Settlement will be held at [REDACTED]: [REDACTED] m. on [REDACTED], in the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415, in Department S26. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendants’ records show that you currently work, or previously worked, for Defendants as a non-exempt, hourly-paid employee in the State of California at some point during the Class Period. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

What is This Case About?

Robert Sarabia, Michelle Helaire and Hugh Smith were non-exempt, hourly-paid employees of Defendants. They are the “Plaintiffs” in this case and are suing on behalf of themselves and Class Members for Defendants’ alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or compensation in lieu thereof, failure to provide rest periods or compensation in lieu thereof, failure to pay all wages due upon separation from employment, failure to issue accurate and compliant wage statements, failure to timely pay wages, failure to indemnify and engaging in unfair competition within the meaning of Business and Professions Code section 17200.

Based on the alleged Labor Code violations above-mentioned and other alleged Labor Code violations, Plaintiff also seeks penalties under California Labor Code Private Attorneys’ General Act (“PAGA”).

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Defendants deny all the allegations made by Plaintiffs and deny that it violated any law. The Court has made no ruling on the merits of Plaintiffs' claims. The Court has only preliminarily approved this class action settlement. The Court will decide whether to give final approval to this settlement at the Final Approval Hearing.

Summary of the Settlement Terms

Plaintiffs and Defendants have agreed to settle this case on behalf of themselves and Class Members and Aggrieved Employees for the Gross Settlement Amount of \$8,000,000.00, unless increased pursuant to the Settlement Agreement. The Gross Settlement includes: (1) Administration Costs up to \$37,500.00; (2) a service award of up to \$10,000 to Plaintiff Michelle Helaire and \$7,500.00 to each Plaintiff Robert Sarabia and Hugh Smith, for a total of \$25,000 for their time and effort in pursuing this case, and in exchange for a broader release of claims against Defendants; (3) up to 35% of the Gross Settlement Amount in attorneys' fees which, unless escalated pursuant to the Settlement Agreement, amounts to \$2,800,000.00; (4) up to \$80,000.00 in litigation costs to Class Counsel, according to proof; and (5) payment allocated to PAGA penalties in the amount of \$500,000.00 of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA, or \$375,000.00, will be paid to the LWDA and twenty-five percent (25%), or \$125,000.00, will be distributed to Aggrieved Employees. After deducting these sums, a total of approximately not less than \$4,557,500.00 will be available for distribution to Class Members ("Net Settlement Amount").

The Gross Settlement Amount is based on Defendants' representation that there are no more than 475,000 Workweeks worked between January 2, 2017 through September 23, 2022. In the event that it is determined that the number of Workweeks worked by Settlement Class Members during the Class Period increases by more than 10%, or 47,500 Workweeks, then: (1) the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 522,500 Workweeks (47,500 Workweeks + 475,000 Workweeks) multiplied by the Workweek Value; or (2) at Defendants' election, the Class Period shall end on the date the number of Workweeks reaches 522,500. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$8,000,000.00) by 475,000, which amounts to a Workweek Value of \$16.84. Thus, for example, should there be 523,000 Workweeks in the Class Period, and Defendants elect to increase the Gross Settlement Amount, then the Gross Settlement Amount shall be increased by \$8,420.00. ((523,000 Workweeks – 522,500 Workweeks) x \$16.84 per Workweek.). Should Defendants elect to end the Class Period on the date the number of Workweeks reaches 522,500, Defendants shall notify Class Counsel of its election no later than 7 calendar days after being informed by the Settlement Administrator the number of Workweeks has exceeded 522,500 during the Class Period.

Distribution to Class Members

Class Members who do not opt out will receive a *pro rata* payment of the Net Settlement Amount based on the number of weeks worked by Class Members in non-exempt, hourly-paid positions for Defendants (including those placed by a staffing agency with Defendants) in California during the Class Period ("Eligible Workweeks"). Specifically, Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (Individual's Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Class Members who worked during the PAGA Period (*i.e.*, Aggrieved Employees) will receive a *pro rata* share of the \$125,000 allocated for distribution to Aggrieved Employees, whether or not they opt out, based on the number of workweeks worked by each Aggrieved Employee during the PAGA Period.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Defendant's records indicate that you worked [Eligible Workweeks] Workweeks as a non-exempt, hourly-paid employee in California for Defendants during the Class Period and [Eligible Workweeks] Workweeks during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award] and your estimated payment as an Aggrieved Employee would be [\$Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

Tax Reporting

100% of the payments for PAGA penalties to Aggrieved Employees will be allocated as penalties reported on IRS Form 1099. 10% of each Settlement Payment to Class Members who do not opt out will be allocated as wages and reported on an IRS Form W-2, and 90% will be allocated as penalties and interest reported on IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

Your check will be valid for 180 days after issuance. After 180 days, uncashed checks will be cancelled and the funds associated will be transmitted to the State of California Controller's Unclaimed Property Division on your behalf.

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the entire release in the settlement and receive your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an Aggrieved Employee. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment(s) set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all "Released Claims" he or she may have or had upon final approval of this Settlement and payment by Defendants to the Settlement Administrator.

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross Settlement Amount to effectuate the Settlement, Plaintiff and all Participating Class Members release any and all claims, actions, or causes of action alleged in the Operative Complaint, or that could have been alleged or raised in the Operative Complaint based upon or arising out of the facts alleged therein, as well as any claims for attorneys' fees and costs thereon, as it pertains to the Released Parties. This includes, but is not limited to, the following: For the duration of the Class Period, the release includes, for Participating Class Members: (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu thereof, including but not limited to claims that meal periods were late, short, interrupted, not provided, or provided under the incorrect IWC Wage Order; (4) all claims for failure to provide rest periods or compensation in lieu thereof, including but not limited to claims that rest periods were late, short, interrupted, or not provided; (5) all claims for failure to pay sick pay; (6) all claims related to bonuses and the calculation of the same in relation to the regular rate; (7) all claims related to failure to reimburse expenses; (8) all claims for failure to pay for all

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

hours worked or suffered or permitted to work; (9) all claims for failure to pay wages and/or meal or rest period premiums due to rounding of time entries; (10) all claims for failure to pay all wages due upon separation from employment; (11) all claims for failure to issue accurate and compliant wage statements; (12) all claims for failure to timely pay wages; (13) all claims for failure to indemnify; and (14) all claims asserted through California Business & Professions Code section 17200, *et seq.* arising out of the Labor Code violations referenced in the Complaint (the “Class Released Claims”).

For Aggrieved Employees, and, to the extent permitted by law, the State of California, the release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notices and thereafter alleged in the Operative Complaint for PAGA civil penalties, or that could have been based on the facts asserted in the PAGA Notices and thereafter alleged in the Operative Complaint, including but not limited to civil penalties pursuant to Labor Code sections 96(k), 98.6, 200, 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, 256, 351, 404, 432, 510, 512, 558, 558.1, 1021.5, 1032, 1102.5, 1174, 1174.5, 1182.12, 1185, 1193.6, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2698, 2699, 2802, and 2810.5, California Code of Regulations, Title 8, Sections 11000, 11010, 11040, subdivision 5(A)-(B), 11070(14), 11080, and 11130, Civil Code section 3287, and Business and Professions Code sections 17200, 16600, and 16700 (the “PAGA Released Claims”). Upon entry of judgment, to the extent permitted by law, all Aggrieved Employees will be bound by the judgment as to all PAGA claims asserted in the Operative Complaint for the PAGA Period, and all PAGA claims that could have arisen out of the allegations made in the Operative Complaint or in the PAGA Notices for the PAGA Period. The Class Released Claims and PAGA Released Claims shall be referred to herein as the “Released Claims”.

“Released Parties” means Defendants, Aerotek, Inc (“Aerotek”), Citistaff Solutions (“Citistaff”), Kevin Hobbs, and each of their respective present and former parents, owners, subsidiaries, and any affiliated or related persons or entities, and each of their respective officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns, or legal representatives.

Option 2 – Opt Out of the Settlement

If you do not wish to receive your Individual Settlement Payment or release the Class Released Claims, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must reasonably communicate that you wish to be excluded from the Settlement and must include your name, address, and email address or telephone number. Sign, date and fax, email or mail your written request for exclusion to the address below.

Apex Class Action Settlement Administration

[Mailing Address]

Your written request for exclusion must be mailed to the Administrator not later than [RESPONSE DEADLINE].

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, if you are an Aggrieved Employee, you will still receive your Individual PAGA Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Option 3 – Submit an Objection to the Settlement

If you wish to object to the Settlement, you may submit an objection in writing by mail, stating why you object to the Settlement. Your written objection must provide your name, address, the last four digits of your Social Security Number, your signature, a statement of whether you plan to appear at the Final Approval Hearing, and a statement of the reason(s), along with whatever legal authority, if any, why you believe that the Court should not approve the Settlement. Your written objection must be mailed to the Administrator no later than [RESPONSE DEADLINE]. Please note that you cannot both object to the Settlement and opt out of the Settlement. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Even if you don't submit a written objection, you may appear at the Final Approval Hearing and provide a verbal objection before the Court.

Final Approval Hearing

You may, if you wish, appear at the Final Approval Hearing set for [REDACTED] at [REDACTED]:[REDACTED] a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415, and orally object to the Settlement, discuss your written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense. You may attend this hearing virtually by audio or video by CourtCall by registering at courtcall.com. You may also retain an attorney to represent you at the Hearing at your own expense.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may call the Settlement Administrator at [PHONE NUMBER] or Class Counsel, whose information appears below:

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Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

vgranberry@lclawfirm.com

You may also visit the Settlement Administrator's website at [WEBSITE] to gain access to key documents in this case, including the Settlement Agreement, the Order Granting Preliminary Approval of this Settlement, the Order Granting Final Approval of this Settlement, and the Final Judgment.

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415, during regular business hours of each court day. You may also obtain these documents through the Court's website at <https://cap.sb-court.org/>

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

