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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO

MAY 18 2017

BY Nadya Avakian
NADYA AVAKIAN, DEPUTY

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

GREGORY OVERTON, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

ARMOUR-ECKRICH MEATS, LLC;
JOHN MORRELL & CO.; SMITHFIELD
FOODS, INC.; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CIVDS 1501325

CLASS ACTION

*Assigned for all purposes to:
Hon. Thomas S. Garza
Dept. S27*

**~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
PROVISIONAL CERTIFICATION**

Date: May 1, 2017
Time: 8:30 a.m.
Dept. S27
Judge: Hon. Thomas S. Garza

3X FAX

1 **[PROPOSED] ORDER**

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court,
3 on May 1, 2017 at 8:30 a.m. The Court, having considered the proposed Joint Stipulation of Class
4 Action Settlement and Release of Class Action Claims (hereafter collectively, the "Settlement
5 Agreement"); having considered the Motion for Preliminary Approval of Class Action
6 Settlement; having considered the respective points and authorities and declarations submitted by
7 Plaintiff in support thereof; and good cause appearing, HEREBY ORDERS THE FOLLOWING:

8 1. This Preliminary Order incorporates by reference the definitions in the Settlement
9 attached as Exhibit 1 to the Declaration of Jessica L. Campbell in Support of Preliminary Approval
10 and all terms defined therein shall have the same meaning in this Preliminary Order.

11 2. It appears to the Court on a preliminary basis that (a) the Settlement is fair,
12 adequate and reasonable; (b) the Gross Settlement Amount and Net Settlement Amount are fair,
13 adequate and reasonable when balanced against the probable outcome of further litigation relating
14 to liability and damages issues; (c) sufficient investigation and research have been conducted such
15 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
16 (d) settlement at this time will avoid additional costs by all Parties, as well as avoid the delay and
17 risks that would be presented by the further prosecution of the Action; and (e) the Settlement has
18 been reached as the result of non-collusive, arms-length negotiations.

19 3. With respect to the Class and for purposes of proceeding pursuant to California
20 Code of Civil Procedure § 382 for approval of the settlement only, the Court finds on a
21 preliminary basis that (a) Class is ascertainable and so numerous that joinder of all Class Members
22 is impracticable; (b) there are questions of law and fact common to the Class that predominate
23 over any questions affecting only individual Class Members; (c) Plaintiff's claims are typical of
24 the Class' claims; (d) class certification is a superior method for implementing the Settlement and
25 adjudicating this Action in a fair and efficient manner; (e) the Class Representatives can fairly
26 and adequately protect the Class' interests; and (f) Class Counsel are qualified to serve as counsel
27 for the Class.

1 4. Accordingly, solely for purposes of effectuating this Settlement, this Court hereby
2 conditionally certifies the class for settlement purposes only. The class is defined as “[a]ny
3 individual employed in California by Defendants as a relief sales representative or direct store
4 delivery during the Class Period [January 30, 2011 through December 9, 2016], who has not
5 previously released claims which could have been brought in this Action, and who is not involved
6 in active litigation (other than the Action or a worker’s compensation claim) with Defendants as of
7 the date of execution of the instant Agreement” (“Class” or “Class Members”).

8 5. Plaintiff Gregory Overton (“Named Plaintiff”) is hereby preliminarily appointed and
9 designated, for all purposes, as the Class Representative and the following attorneys are hereby
10 preliminarily appointed and designated as counsel for the Class (“Class Counsel”): Kashif Haque,
11 Samuel A. Wong, and Jessica L. Campbell of the Aegis Law Firm, PC, and Scott B. Cooper and
12 Samantha Smith of the Cooper Law Firm, P.C. Class Counsel is authorized to act on behalf of the
13 Class Members with respect to all acts or consents required by, or which may be given pursuant to,
14 the Settlement, and such other acts reasonably necessary to consummate the Settlement. Any Class
15 Member may enter an appearance through counsel of such individual’s own choosing and at such
16 individual’s own expense. Any Class Member who does not enter an appearance or appear on his
17 or her own will be represented by Class Counsel.

18 6. Should, for whatever reason, the Settlement not become final, the fact that the
19 Parties were willing to stipulate to certification of the Class as part of the Settlement shall have no
20 bearing on, nor be admissible in connection with, the issue of whether a class should be certified in
21 a non-settlement context.

22 7. The Court hereby preliminarily approves the definition and disposition of the Gross
23 Settlement Amount and Net Settlement Amount and related matters provided for in the Settlement.

24 8. The Court hereby preliminarily approves Class Counsel attorneys’ fees of up to
25 \$70,000.00, Class Counsel litigation costs not to exceed \$10,000, Incentive Payment to the Named
26 Plaintiff of up to \$7,500, and costs of administration not to exceed \$5,500, subject to final approval.

27 9. The Court hereby approves, as to form and content, the Notice of Class Action
28 Settlement attached as Exhibit “A” to the Settlement, and Notice of Settlement Payment attached

1 as Exhibit "B" to the Settlement. The Court finds that distribution of these notices, substantially in
2 the manner and form set forth in the Settlement and this Order, meets the requirements of due
3 process, is the best notice practicable under the circumstances, and shall constitute due and
4 sufficient notice to all persons entitled thereto.

5 10. The Court hereby appoints Simpluris, Inc. as Settlement Administrator and hereby
6 directs the Settlement Administrator to mail or cause to be mailed to Class Members the Notice of
7 Settlement Payment, by first class mail within ten (10) calendar days of receipt of the Class
8 Members' Data using the procedures set forth in the Settlement. Class Members who wish to
9 participate in the settlement provided for by the Settlement do not need to respond to the Class
10 Notice.

11 11. All costs of mailing of the Notice of Settlement shall be paid from the Gross
12 Settlement Amount, including the cost of searching for Class Members' addresses as provided in
13 the Settlement, and all other reasonable costs of the Settlement Administrator up to \$5,500.00 as
14 provided in the Settlement.

15 12. Any Class Member may choose to opt-out of and be excluded from the Class as
16 provided in the Class Notice by following the instructions for requesting exclusion from the Class
17 that are set forth in the Notice of Settlement within the time period described therein. Any such
18 person who chooses to opt-out of and be excluded from the Class will not be entitled to any recovery
19 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
20 comment thereon. Class Members who have not requested exclusion/opted-out shall be
21 Participating Class Members and bound by all determinations of the Court, the Settlement, and the
22 Final Judgment.

23 13. **A Final Fairness and Approval Hearing" shall be held before this Court on**
24 **September 6, 2017, at 8:30 a.m.** All papers in support of final approval and related awards for
25 fees, costs, and Plaintiff's enhancement must be filed and served at least 16 court days before the
26 final approval hearing.

27 14. Any Participating Class Member may object to the Settlement by following the
28 instructions for submitting objections that are set forth in the Settlement and Notice of Proposed

1 Class Action Settlement and within the required time period described therein. Any Participating
2 Class Member who fails to file and serve a timely, written objection in the manner specified in the
3 Settlement shall be deemed to have waived any objections and shall be foreclosed from making any
4 objection (whether by appeal or otherwise) to the Settlement, unless otherwise ordered by the Court.
5 The Court shall retain final authority with respect to the consideration and admissibility of any
6 objections. Any Participating Class Member who objects to the Settlement shall be bound by the
7 order of the Court.

8 15. Plaintiff and Defendant may file a written response to any objection no later than
9 five (5) days prior to the Final Fairness and Approval Hearing.

10 16. The Settlement is not a concession or admission, and shall not be used against
11 Defendants, as an admission or indication with respect to any claim of any fault or omission by the
12 Defendants. Whether or not the Settlement is finally approved, neither the Settlement, nor any
13 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
14 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or deemed
15 to be evidence of a presumption, concession, indication or admission by the Defendants of any
16 liability, fault, wrongdoing, omission, concession or damage in the Action, or in any other action or
17 proceeding, except for purposes of enforcing the Settlement once it receives final approval.

18 17. Pending the Final Approval and Fairness Hearing, all proceedings in this Action,
19 other than proceedings necessary to carry out or enforce the terms of the Settlement and this Order,
20 are hereby stayed.

21 18. Jurisdiction is hereby retained over this Action, the Parties to the Action, and each
22 of the Class Members for all matters relating to this Action, and this Settlement, including
23 (without limitation) all matters relating to the administration, interpretation, effectuation, and/or
24 enforcement of this Settlement and this Order.

25 19. The Court reserves the right to adjourn or continue the date of the Settlement
26 Hearing and all dates provided for in the Settlement without further notice to Class Members, and

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1 retains jurisdiction to consider all further applications arising out of or connected with the proposed
2 Settlement.

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4 DATED: MAY 18 2017, 2017

THOMAS GARZA
Honorable Thomas S. Garza
JUDGE OF THE SUPERIOR COURT

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1 CERTIFICATE OF SERVICE

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my
4 business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

5 On April 5, 2017, I served the foregoing document entitled:

6 • **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF**
7 **CLASS ACTION SETTLEMENT AND PROVISIONAL CERTIFICATION**
on all the appearing and/or interested parties in this action by placing the original a true
copy thereof enclosed in sealed envelope(s) addressed as follows:

8 Michael A. Hood
9 Jina Lee
10 Jackson Lewis, LLP
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618

Scott B. Cooper, Esq.
Samantha A. Smith
The Cooper Law Firm, P.C.
4000 Barranca Parkway, Suite 250
Irvine, CA 92604

11 *Attorneys for Defendants:*
12 *Armour-Eckrich Meats*

Co-Counsel for Plaintiff

13 **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
14 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
15 Service on that same day with postage thereon fully prepaid at Irvine, California in the
16 ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postage cancellation date or postage meter date is more than one day
after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed. R.*
Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).)


17 **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
18 practice of Aegis Law Firm PC for collection and processing correspondence for overnight
19 delivery, and I caused such document(s) described herein to be deposited for delivery to
a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ.*
Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).)

20 **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
21 electronic transmission to the addressee(s) listed above on the date below. (*Cal. Code Civ.*
Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).)

22 **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
23 the addressed named above. (*Cal Code Civ. Proc. § 1011; Fed. R. Civ. Proc. 5(b)(2)(A).*)

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on April 5, 2017, at Irvine, California.

27 
28 Kathyan Alvarez