

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
Civil Division
Central District, Spring Street Courthouse, Department 7



BC623041
SALVADOR OCHOA VS CKE RESTAURANTS HOLDINGS
INC ET AL

March 22, 2022
1:56 PM

Judge: Honorable Amy D. Hogue
Judicial Assistant: A. Morales
Courtroom Assistant: T. Bivins

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order Re: Motion for Preliminary Approval of Class Action Settlement

The parties having submitted on the Court's tentative ruling, the Court issues the following order:

On the Court's own motion, the Hearing on Motion for Preliminary Approval of Settlement of Class Action and PAGA Settlement scheduled for 03/23/2022 is advanced to this date and heard

The Motion for Preliminary Approval of Settlement filed by Salvador Ochoa, HERMELINDA AGUILAR on 09/13/2021 is Granted.

The Order Granting Motion for Preliminary Approval of Class Action Settlement is signed and filed this date.

Fairness Hearing (Final) is scheduled for 10/04/2022 at 11:00 AM in Department 7 at Spring Street Courthouse.

The clerk is to give notice.

Clerk's Certificate of Service By Electronic Service is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		<small>Reserved for Clerk's File Stamp</small>
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 03/22/2022 <small>Sherri R. Carter, Executive Officer / Clerk of Court</small>
PLAINTIFF: HERMELINDA AGUILAR et al		By: <u> A. Morales </u> Deputy
DEFENDANT: CKE Restaurants Holdings, Inc. et al		
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6		CASE NUMBER: BC623041

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Minute Order and Order

entered herein, on 03/22/2022, upon each party or counsel of record in the above entitled action, by electronically serving the document(s) on File & ServeXpress at secure.fileandservexpress.com on 03/22/2022 from my place of business, Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012

in accordance with standard court practices.

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 03/22/2022

By: A. Morales

Deputy Clerk

MAR 22 2022

Therri R. Carr...
Alfredo Morales dem...
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

SALVADOR OCHOA, individually, and on behalf of all other similarly situated current and former employees of Defendants

Plaintiff,

vs.

CKE RESTAURANTS HOLDINGS, INC., a Delaware Corporation; CARL'S JR. RESTAURANTS LLC, a Delaware Corporation; CARL'S JR. FUNDING LLC, a Delaware Corporation; and DOES 1 through 50, inclusive,

Defendants.

HERMELINDA AGUILAR, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

CKE RESTAURANTS HOLDINGS, INC., a Delaware Corporation; CARL'S JR. RESTAURANTS LLC, a Delaware Corporation; CARL'S JR. FUNDING LLC, a Delaware Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: BC623041
Consolidated with: BC686601

**ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: March 23, 2022
Dept.: SSC-7
Time: 11:00 a.m.

1 **I. BACKGROUND**

2 This is a wage and hour class action. Named Plaintiff Ochoa originally filed a
3 Class Action Complaint against Defendants on June 8, 2016 (BC623041). Named
4 Plaintiff Aguilar filed her Class Action Complaint on December 12, 2017 (BC686601).
5 Plaintiffs jointly filed the currently operative Consolidated Class Action Complaint on
6 June 27, 2019 (“CCAC”).

7 The operative CCAC alleges the following causes of action: 1) Failure to
8 provide meal periods; 2) Failure to provide rest periods; 3) Failure to pay minimum and
9 straight time wages; 4) Failure to pay overtime wages; 5) Failure to provide and
10 maintain accurate statements, accrued sick leave notices, and payroll records; 6) Failure
11 to permit employees to inspect of copy payroll records; 7) Unfair business Practices 8)
12 Violation of Labor Code §204; 9) Violation of labor Code §2802; and 9) Private
13 Attorneys’ General Act.

14 Counsel represents that prior to mediation the parties engaged in informal pre-
15 class certification discovery, including the exchange of written discovery, the
16 production of a representative sample of time punch and payroll data, and the
17 production of class member contact data. It is further represented that the Parties
18 completed the deposition of Plaintiffs and two depositions of Defendants’ Person Most
19 Qualified (“PMQ”) witness, Defendants took the depositions of declarants who
20 submitted declarations in support of Plaintiffs’ Cert. Motion, and Plaintiff deposed 11
21 of Defendant’s 200+ declarants who submitted statements in support of Defendants’
22 Opposition.

23 The Parties participated in three separate mediation sessions with two mediators.
24 The first mediation was held on December 13, 2019 with mediator Hon. Peter D.
25 Lichtman (Ret.), a second mediation with Judge Lichtman was held on January 12,

1 2021, and a third mediation was held with mediator Mark Rudy on May 18, 2021.
2 During the mediation process, Plaintiffs also learned there was a settlement between
3 Defendants and plaintiffs in a CKE manager class action pending in the Santa Barbara
4 Superior Court which had an impact on the potential value of this case. Ultimately, the
5 Parties reached this settlement at the final mediation session with mediator Mark Rudy.
6 A fully executed copy of the settlement was filed with the Court on September 13, 2021
7 attached to the Declaration of Katherine J. Odenbreit (“Odenbreit Decl.”) as Exhibit A.

8 On December 13, 2021, the Court issued a “checklist” of items for the parties to
9 address and continued preliminary approval. In response, on March 1, 2022, the
10 parties filed a fully executed Amended Settlement Agreement attached to the
11 Supplemental Declaration of Katherine J. Odenbreit (“Odenbreit Supp. Decl.”) as
12 Exhibit B.

13 Now before the Court is Plaintiff’s motion for preliminary approval of the
14 settlement. For the reasons set forth below, the Court preliminarily grants approval for
15 the settlement.

16
17 **II. THE TERMS OF THE SETTLEMENT**

18 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

19 “Class” means all hourly paid non-exempt persons (regardless of job title or
20 role) employed by CKE Entities at a Carl’s Jr. corporate owned restaurant location in
21 California at any time beginning June 8, 2012 through and including July 17, 2021. The
22 Class excludes those persons who have previously entered into a settlement with, and
23 previously released, CKE Entities with regard to the Released Claims. (Settlement
24 Agreement, ¶6)
25

1 “Class Period” means the time beginning June 8, 2012 through and including the
2 date Preliminary Approval of the Settlement is granted or July 17, 2021, whichever is
3 first. (¶11)

4 “PAGA Settlement Group Members” means all Class Members who worked for
5 CKE Entities during the PAGA Period. (¶30)

6 “PAGA Period” means the time period between June 8, 2015 through and
7 including July 17, 2021. (¶29)

8 The Gross Settlement Amount is based on the assumption that there are
9 approximately 31,822 class members who worked approximately one million four
10 hundred eighty-six thousand seventy-nine (1,486,079) workweeks. The Gross
11 Settlement Amount will not be increased if it is determined that there are more than
12 31,822 Class Members unless the total Settlement Class is ultimately determined to
13 include 33,143 or more individuals, or the number of workweeks worked by Class
14 members exceed one million five hundred sixty thousand three hundred twenty-eight
15 (1,560,328). In that event, the Gross Settlement Amount will increase by the percentage
16 increase in Class size above thirty-one thousand eight hundred twenty-two (31,822), or
17 by the percentage increase in workweeks above one million four hundred eighty-six
18 seventy-nine (1,486,079), whichever is greater. (¶48)

19 There are an estimated 14,800 PAGA Settlement Group Members. (¶30)

20 **B. THE MONETARY TERMS OF SETTLEMENT**

21 The essential monetary terms are as follows:

22 The Gross Settlement Amount (“GSA”) is **\$9,872,000** (¶49). This includes
23 payment of a PAGA penalty of \$100,000 to be paid 75% to the LWDA (\$75,000) and
24 25% to the Aggrieved Employees (\$25,000) (¶58).

25

1 The Net Settlement Amount (“NSA”) (\$6,036,800) is the GSA less:

- 2 ○ Up to \$3,455,200 (35%) for attorney fees (¶67);
 - 3 ■ Fee Split: 50/50 (Perlman Supp. Decl., ¶5.)
- 4 ○ Up to \$150,000 for attorney costs (¶69.);
- 5 ○ Up to \$20,000 for service awards to the class representatives (\$10,000
- 6 each) (¶62);
- 7 ○ \$100,000 as the PAGA Penalty (¶58); and
- 8 ○ Estimated \$110,000 for settlement administration costs (¶76).

- 9 ● “Employer Taxes” will be paid separately from and in addition to the Gross
- 10 Settlement Amount. (¶15)
- 11 ● Assuming the Court approves all maximum requested deductions, approximately
- 12 \$6,036,800 will be available for automatic distribution to participating class
- 13 members. Assuming full participation, the average settlement share will be
- 14 approximately \$189.71. ($\$6,036,800 \text{ Net} \div 31,822 \text{ class members} = \189.71).
- 15 In addition, each class member will receive a portion of the PAGA penalty,
- 16 estimated to be \$1.69 per class member. ($\$25,000 \text{ (25\% of } \$100,000 \text{ PAGA}$
- 17 $\text{penalty}) \div 14,800 \text{ employees} = \1.69)
- 18 ● There is no Claim Requirement (¶52).
- 19 ● The settlement is not reversionary (¶51).

20 ● **Calculation of Individual Settlement Payments and PAGA Individual**

21 **Payments:**

- 22 ○ Each Class Member who has not submitted a valid request to be excluded
- 23 from the Class will receive an Individual Settlement Payment from the
- 24 Net Distribution Amount. There is no requirement to file or submit a
- 25 claim form to receive an Individual Settlement Payment. To determine the

1 amount each Settlement Class Member will receive, the Net Distribution
2 Amount will be divided by the total number of workweeks (“Individual
3 Settlement Workweek Amount”) for all Settlement Class Members during
4 the Class Period, excluding any workweeks worked by any member of the
5 settlement class and subclasses in the cases captioned *Cubias v. Carl*
6 *Karcher Enterprises, Inc.* (Judicial Council Coordination Proceeding
7 4537 pending in the Santa Barbara Superior Court); and *Duarte v. Carl*
8 *Karcher Enterprises, Inc. / Patel, et al., v. Carl Karcher Enterprises, Inc.*
9 (Judicial Coordination Proceeding 4949 pending in the Los Angeles
10 Superior Court) during the Class Period. Each Settlement Class Member
11 will be paid a benefit amount equal to the Individual Settlement
12 Workweek Amount multiplied by that Settlement Class Member’s total
13 number of workweeks actually worked during the Class Period and
14 excluding periods of employment when no work was performed, such as
15 absences due to vacation, illness, leaves of absence or jury duty. (§52)

- 16 ▪ Tax Withholdings: 20% as wages, 80% as interest and penalties.
17 (§56)

- 18 ○ Each PAGA Settlement Group Member will receive a PAGA Individual
19 Payment. To determine the amount of the PAGA Individual Payment
20 each PAGA Settlement Group Member will receive, 25% of the PAGA
21 Payment will be divided by the total number of workweeks (“PAGA
22 Settlement Workweek Amount”) for all PAGA Settlement Group
23 Members during the PAGA Period, excluding any workweeks worked by
24 any member of the PAGA Settlement Group Member in the cases
25 captioned *Cubias v. Carl Karcher Enterprises, Inc.* (Judicial Council

1 Coordination Proceeding 4537 pending in the Santa Barbara Superior
2 Court); *and Duarte v. Carl Karcher Enterprises, Inc. / Patel, et al., v.*
3 *Carl Karcher Enterprises, Inc.* (Judicial Coordination Proceeding 4949
4 pending in the Los Angeles Superior Court) during the PAGA Period.
5 Each PAGA Settlement Group Member will be paid a benefit amount
6 equal to the PAGA Settlement Workweek Amount multiplied by that
7 PAGA Settlement Group Member's total number of workweeks actually
8 worked during the PAGA Period and excluding periods of employment
9 when no work was performed, such as absences due to vacation, illness,
10 leaves of absence or jury duty. (§53)

11 ○ Tax Withholdings: 100% as 1099. (§59)

- 12 • **Uncashed Checks:** Individual Settlement Payments and PAGA Individual
13 Payments will go stale one hundred eighty (180) calendar days after issuance.
14 Any funds remaining after Individual Settlement Payments and PAGA
15 Individual Payments go stale will be used as a reserve fund to make payments,
16 and/or cover any additional necessary administration expenses, resulting from
17 any errors or disputes in the payments process ("Reserve Fund Payments").
18 Within fourteen (14) calendar days following the expiration of uncashed checks
19 representing Individual Settlement Payments and PAGA Individual Payments,
20 the Settlement Administrator shall prepare a report ("Report") to be filed with
21 the Court stating the total sum of uncashed Individual Settlement Payment and
22 PAGA Individual Payment checks (less any Reserve Fund Payments) (the
23 "Residual"). The Parties shall file the Report with the Court within three (3)
24 business days of receipt from the Settlement Administrator. Consistent with
25 California Code of Civil Procedure § 384, the Parties shall prepare an Amended

1 Judgment, directing that the Residual, together with interest thereon, be divided
2 evenly between, and paid to, the Legal Aid Foundation of Los Angeles and
3 Restaurants Care (California Restaurant Foundation). The Parties and their
4 counsel represent they do not have any interest in or connection to either of the
5 charities designated in this paragraph. The Parties shall lodge the Amended
6 Judgment with the Court within fourteen (14) calendar days of receipt of the
7 foregoing Report from the Settlement Administrator. The Settlement
8 Administrator shall pay the Residual to the two foregoing charities within seven
9 (7) calendar days of entry of the Amended Judgment. (¶55)

- 10 • Funding Settlement: CKE Entities will transfer to the Settlement Administrator
11 the Gross Settlement Amount and the amount of Employer Taxes via wire
12 transfer within thirty (30) calendar days of the Effective Date. (¶94)

14 C. TERMS OF RELEASES

- 15 • As of the date of the mailing of Individual Settlement Payments, except with
16 respect to the obligations arising out of the Settlement Agreement and in
17 consideration of the payments and terms set forth herein, Named Plaintiffs and
18 the Settlement Class expressly, to the fullest extent permitted by law, fully and
19 forever compromise, release, resolve, relinquish, and discharge the Released
20 Parties, individually and on a class-wide basis, the Released Claims as defined in
21 Paragraph 34. (¶92)
 - 22 ○ “Released Claims” is defined as follows: all claims, injuries, demands,
23 losses, damages, liquidated damages, punitive damages, exemplary
24 damages, statutory damages, costs, expenses, restitution, compensation,
25 equitable relief, wages, interest, penalties, suits, causes of action,

1 attorneys' fees, obligations, rights, and liabilities of any nature, type, or
2 description, whether known or unknown, contingent or vested, in law or
3 in equity, in tort, contract, or for violation of any state or federal
4 constitution, statute, rule, or regulation, based on direct or vicarious
5 liability, and regardless of legal theory, that relate to, are based on,
6 concern, or arise out of any of the allegations that were asserted or could
7 have been asserted based on the facts alleged in the Lawsuit individually
8 and on a class- wide basis against the Released Parties. The Released
9 Claims include all causes of action that were delineated in the Lawsuit as
10 well as all causes of action arising out of or that could have been pled
11 based on the facts pleaded in the Lawsuit but which were not specifically
12 delineated as a cause of action in the Lawsuit. The Released Claims
13 include claims covered by: the California Labor Code, and in particular §
14 200 et seq., including §§ 201 through 204, 210, 212, 218, 218.5, 218.6,
15 223, 226, 226.7, and 227.3, §§ 245-250, § 300 et seq., § 400 et seq.,
16 including §452, § 500 et seq., including §§ 510 and 512, §§ 1174 and
17 1174.5, §§ 1194, 1194.1, 1197, 1198, and 1198.5, § 2802, and § 2810.3;
18 the California Unfair Practices Act, codified at California Business &
19 Professions Code §§ 17000 et seq.; California Business & Professions
20 Code §§ 17200 et seq.; California Code of Civil Procedure § 1021.5; and
21 any other applicable provision of the California Labor Code or any
22 applicable California Industrial Welfare Commission Wage Orders, in all
23 of their iterations to the fullest extent permitted by law. (¶34)

- 24 • As of the date of the mailing of PAGA Individual Payments, except with respect
25 to the obligations arising out of the Settlement, all PAGA Claims of Named

1 Plaintiffs and the PAGA Settlement Group Members against the Released
2 Parties are fully and forever compromised, released, resolved, relinquished, and
3 discharged through the PAGA Period. For the avoidance of doubt, as of the date
4 of mailing of PAGA Individual Payments, the PAGA Settlement Group
5 Members are bound by the settlement of the PAGA Claims, regardless of
6 whether they exclude themselves from the Class.(¶93)

7 ○ “PAGA Claims” means Named Plaintiffs’ representative claims seeking
8 penalties, attorneys’ fees and costs pursuant to Labor Code Private
9 Attorneys General Act of 2004, Labor Code section 2698, et seq.
10 (“PAGA”) as set forth in Plaintiff Ochoa’s notice to the LWDA dated
11 February 24, 2016 and in Plaintiff Aguilar’s notice to the LWDA dated
12 October 4, 2017 and incorporated by reference into the Complaint,
13 including for alleged violations of Labor Code sections 201-203, 226,
14 226.7, 510, 512 1174, 1174.5, 1194, 1197, and 2802 alleged to have
15 occurred during the PAGA Period. (¶26)

16 ● “Released Parties” means CKE Entities and each of their respective current,
17 former, and future parent companies, subsidiaries, divisions, and current and
18 former affiliated individuals and entities, legal successors, predecessors
19 (including companies they have acquired, purchased, or absorbed), assigns, joint
20 ventures, and each and all of their respective officers, partners, directors, owners,
21 stockholders, servants, agents, shareholders, members, managers, principals,
22 investment advisors, consultants, employees, representatives, attorneys,
23 accountants, lenders, underwriters, benefits administrators, investors, funds, and
24 insurers, past, present and future, and all persons acting under, by, through, or in
25 concert with any of them (collectively, the “Released Parties”). However,

1 “Released Parties” does not include any Carl’s Jr. franchisee regarding claims
2 arising during such franchisee’s ownership of said franchise. Additionally, this
3 release will not apply to any claim arising as a result of employment with a
4 Hardee’s, either corporate owned or franchise. (§35)

- 5 • The named Plaintiffs will also provide a general release and a waiver of the
6 protections of Cal. Civ. Code §1542. (Exhibit 1 to Settlement Agreement)

7 8 **D. SETTLEMENT ADMINISTRATION**

- 9 • The proposed Settlement Administrator is Phoenix Class Action Administration
10 Solutions. (§37)
- 11 • Settlement administration costs are estimated to be \$110,000 (§76).
- 12 • Notice: The manner of giving notice is described below.
- 13 • “Response Deadline” means the date no later than 60 calendar days after the date
14 the Notice Packets are mailed to Class Members by the Settlement Administrator,
15 on or before which a Class Member may: (1) validly submit a notice of objection
16 to the Settlement; (2) validly submit a request for exclusion from the Class
17 Claims; or (3) challenge with documentary evidence his or her Individual
18 Settlement Amount. (§36) Any Class Member whose Notice is re-mailed will
19 have until the Response Deadline or an additional 15 calendar days, whichever is
20 later to submit a written objection or opt-out request. (§84)
 - 21 ○ If two percent (2%) or more of the total number of the Class Members to
22 whom a Class Notice is sent, or if Class Members to whom a Class Notice
23 is sent who represent more than three percent (3%) of workweeks
24 attributable to Class Members request to exclude themselves from the
25

1 settlement, CKE Entities will have the option of canceling the settlement in
2 its entirety. (§91)

3
4 **III. SETTLEMENT STANDARDS AND PROCEDURE**

5 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
6 of an entire class action, or of a cause of action in a class action, or as to a party,
7 requires the approval of the court after hearing.” “Any party to a settlement agreement
8 may serve and file a written notice of motion for preliminary approval of the settlement.
9 The settlement agreement and proposed notice to class members must be filed with the
10 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
11 Court, rule 3.769(c).

12 “In a class action lawsuit, the court undertakes the responsibility to assess
13 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
14 dismissal of a class action. The purpose of the requirement [of court review] is the
15 protection of those class members, including the named plaintiffs, whose rights may not
16 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
17 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
18 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
19 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
20 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
21 agreement to the extent necessary to reach a reasoned judgment that the agreement is
22 not the product of fraud or overreaching by, or collusion between, the negotiating
23 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
24 concerned.”] [internal quotation marks omitted].
25

1 “The burden is on the proponent of the settlement to show that it is fair and
2 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
3 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
4 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
5 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
6 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

7 Notwithstanding an initial presumption of fairness, “the court should not give
8 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
9 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
10 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
11 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
12 members, the court must independently and objectively analyze the evidence and
13 circumstances before it in order to determine whether the settlement is in the best
14 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
15 In that determination, the court should consider factors such as “the strength of
16 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
17 the risk of maintaining class action status through trial, the amount offered in
18 settlement, the extent of discovery completed and stage of the proceedings, the
19 experience and views of counsel, the presence of a governmental participant, and the
20 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
21 factors is not exclusive, and the court is free to engage in a balancing and weighing of
22 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
23 245.

24 At the same time, “[a] settlement need not obtain 100 percent of the damages
25 sought in order to be fair and reasonable. Compromise is inherent and necessary in the

1 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
2 substantially narrower than it would be if the suits were to be successfully litigated,’
3 this is no bar to a class settlement because ‘the public interest may indeed be served by
4 a voluntary settlement in which each side gives ground in the interest of avoiding
5 litigation.’” *Id.* at 250.

6 7 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

8 9 **A. THERE IS A PRESUMPTION OF FAIRNESS**

10 The settlement is entitled to a presumption of fairness for the following reasons:

11 **1. The settlement was reached through arm’s-length bargaining**

12 The Parties participated in three separate mediation sessions with two mediators.
13 (Odenbreit Dec., ¶6.) The first mediation was held on December 13, 2019 with
14 mediator Hon. Peter D. Lichtman (Ret.), a second mediation with Judge Lichtman was
15 held on January 12, 2021, and a third mediation was held with mediator Mark Rudy on
16 May 18, 2021. (*Ibid.*) During the mediation process, Plaintiffs also learned there was a
17 settlement between Defendants and plaintiffs in a CKE manager class action pending in
18 the Santa Barbara Superior Court which had an impact on the potential value of this
19 case. (*Id.* at ¶18.) Ultimately, the Parties reached this settlement at the final mediation
20 session with mediator Mark Rudy. (*Id.* at ¶6.)

21 22 **2. The investigation and discovery were sufficient**

23 Counsel represents that prior to mediation the parties engaged in informal pre-
24 class certification discovery, including the exchange of voluminous written discovery,
25 the production of a representative sample of time punch and payroll data, and the

1 production of class member contact data. (*Id.* at ¶5.) It is further represented that the
2 Parties completed the deposition of Plaintiffs and two depositions of Defendants’
3 Person Most Qualified (“PMQ”) witness, Defendants took the depositions of declarants
4 who submitted declarations in support of Plaintiffs’ Cert. Motion, and Plaintiff deposed
5 11 of Defendant’s 200+ declarants who submitted statements in support of Defendants’
6 Opposition. (*Id.* at ¶16.)

7 It is further represented that Plaintiffs also received time and pay records for 778
8 putative class members. Plaintiffs retained renowned experts Dr. Brian Kriegler and
9 Aaron Woolfson to assist with data analysis and presentation of the proposed trial plan
10 in support of the Certification Motion. (Odenbreit Supp. Decl., ¶6.) Plaintiff’s counsel
11 has provided a declaration from its expert in support of the statistical significance of the
12 data sample used prior to mediation. (Declaration of Brian Kriegler, PH.D, *passim.*)

13 This is sufficient to value the case for settlement purposes.

14 **3. Counsel is experienced in similar litigation**

15
16 Class Counsel represent that are experienced in class action litigation, including
17 wage and hour class actions. (Odenbreit Decl., ¶¶40-49; Declaration of Kevin Mahoney
18 (“Mahoney Dec.”), ¶¶4-10; Declaration of Douglas Perlman (“Perlman Dec.”), ¶¶38-46.)

19 **4. Percentage of the class objecting**

20 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
21 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
22 the court receive objections to the proposed settlement, it will consider and either sustain
23 or overrule them at the fairness hearing.”].

1 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
2 **FAIR, ADEQUATE, AND REASONABLE**

3
4 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
5 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
6 does when it approves a settlement as in good faith under Code of Civil Procedure
7 section 877.6, the court must at least satisfy itself that the class settlement is within the
8 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
9 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
10 consider and weigh the nature of the claim, the possible defenses, the situation of the
11 parties, and *the exercise of business judgment* in determining whether the proposed
12 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
13 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

14
15 **1. Amount Offered in Settlement**

16 The most important factor is the strength of the case for plaintiffs on the merits,
17 balanced against the amount offered in settlement.” (*Id.* at 130.)

18 Counsel has provided the following exposure analysis:

19

Violation	Max Exposure	Reduced Exposure
Rest Break Premiums	\$52,666,639.80	\$26,333,319.90
Meal Break Shifts over 6 hours	\$7,833,122.41	\$4,699,873.45
Meal Break Waivers	\$1,985,401.54	\$595,550.46
Pay Card Claims: Forfeiture of Wages	\$557,279.62	\$445,823.69

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1	Clothing Maintenance-		\$1,486,079
2	Reimbursement	\$2,972,158.00	
3	Uniforms-Time Spent Maintaining	\$10,360,942.80	\$4,144,377.12
4	PAGA	\$134,356,473.00	\$100,000
5	Total	\$210,732,017.17	\$37,805,023.62

6 (Perlman Decl., ¶¶22-32.)

7 Class Counsel obtained a gross settlement valued at \$9,872,000. This is 5% of
8 Defendant's maximum exposure and 26% of Defendants realistic exposure.

9 **2. The Risks of Future Litigation**

11 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
12 motion practice and appeals) are also likely to prolong the litigation as well as any
13 recovery by the class members. Even if a class is certified, there is always a risk of
14 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
15 ["Our Supreme Court has recognized that trial courts should retain some flexibility in
16 conducting class actions, which means, under suitable circumstances, entertaining
17 successive motions on certification if the court subsequently discovers that the propriety
18 of a class action is not appropriate."] Further, the settlement was negotiated and
19 endorsed by Class Counsel who, as indicated above, are experienced in class action
20 litigation. Based upon their investigation and analysis, the attorneys representing
21 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
22 adequate.

23 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
24 which has been served with a copy of the Settlement Agreement and has not yet objected.
25

1 Any objection by it will be considered at the final fairness hearing. (Exhibit G to
2 Odenbreit Supp. Decl.)

3 4 **3. The Releases Are Limited**

5 The Court has reviewed the Releases to be given by the absent class members and
6 the named Plaintiffs. The releases, described above, are tailored to the pleadings and
7 release only those claims in the pleadings. There is no general release by the absent
8 class. The named Plaintiffs' general releases are appropriate given that each was
9 represented by counsel in its negotiation.

10 **4. Conclusion**

11 Class Counsel estimated Defendant's maximum exposure at \$210,732,017.17 and
12 reduced exposure at \$37,805,023.62. Class Counsel obtained a gross settlement valued at
13 \$9,872,000. This is 5% of Defendant's maximum exposure and 26% of Defendants
14 reduced exposure, which, given the uncertain outcomes, including the potential that the
15 class might not be certified, that liability is a contested issue, and that the full amount of
16 penalties would not necessarily be assessed even if the class is certified and liability
17 found, the settlement is within the "ballpark of reasonableness."

18 19 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

20 A detailed analysis of the elements required for class certification is not required,
21 but it is advisable to review each element when a class is being conditionally certified.
22 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
23 advocating class treatment must demonstrate the existence of an ascertainable and
24 sufficiently numerous class, a well-defined community of interest, and substantial
25

1 benefits from certification that render proceeding as a class superior to the alternatives.”

2 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

3 **1. The Proposed Class is Numerous**

4 There are 31,822 putative Class Members. (Motion, 5:18-21.) Numerosity is
5 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
6 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
7 *class action is liberally construed,*” and citing examples wherein classes of as little as
8 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
9 (1972) 28 Cal.App.3d 1017, were upheld).

10 **2. The Proposed Class Is Ascertainable**

11 “A class is ascertainable, as would support certification under statute
12 governing class actions generally, when it is defined in terms of objective
13 characteristics and common transactional facts that make the ultimate identification
14 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
15 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

16 The class is defined above. Class Members are ascertainable through
17 Defendant’s records. (Motion, 5:18-21.)

18 **3. There Is A Community of Interest**

19 “The community of interest requirement involves three factors: ‘(1) predominant
20 common questions of law or fact; (2) class representatives with claims or defenses typical
21 of the class; and (3) class representatives who can adequately represent the class.’”
22 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

23 Plaintiffs assert that common issues of fact and law predominate as to the
24 following claims asserted in the operative complaint, issues which if resolved would
25 bring resolution to the class as a whole. (Motion, pgs. 6-9.)

1 As to typicality, counsel contends that both Plaintiffs Ochoa and Aguilar worked
2 as non-exempt employees in Carl's Jr. corporate-owned restaurants in California during
3 the relevant time period, and were subjected to the same policies as the class. (Motion,
4 10: 4-7.)

5 As to adequacy, it is represented that the Plaintiffs have no conflicts with the class
6 and are represented by competent counsel. (Motion, 10:16-20; Declaration of Plaintiff
7 Ochoa, *passim*, Declaration of Plaintiff Aguilar, *passim*.)

8 9 **4. Substantial Benefits Exist**

10 Given the relatively small size of the individual claims, a class action is superior to
11 separate actions by the class members.

12 13 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 14 OF DUE PROCESS**

15 The purpose of notice is to provide due process to absent class members. A practical
16 approach is required, in which the circumstances of the case determine what forms of
17 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
18 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
19 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
20 stake of the individual class members; (4) the cost of notifying class members; (5) the
21 resources of the parties; (6) the possible prejudice to class members who do not receive
22 notice; and (7) the res judicata effect on class members.

23 **1. Method of class notice**

24
25

1 Within forty-five (45) calendar days after Preliminary Approval, CKE Entities
2 shall use commercially reasonable efforts to provide the Settlement Administrator with
3 the Class Member List. This information shall be provided to Plaintiffs or Class Counsel
4 with personal identifiable information redacted. (§78) Within thirty (30) calendar days
5 after receiving the Class Member List, the Settlement Administrator will provide to each
6 Class Member, via First Class U.S. Mail, Notice of the Settlement. The Notice will be
7 mailed in English and in Spanish. (§79) The Settlement Administrator shall perform a
8 single skip trace using information identifying the Class Member, as necessary, to
9 conduct an address update on any Notices returned to the Settlement Administrator as
10 undeliverable. The Settlement Administrator shall re-mail all Notices to new addresses (if
11 applicable) within three (3) business days of obtaining such new addresses. (§80) The
12 Settlement Administrator shall also maintain a toll-free telephone line that shall be staffed
13 by live operators during business hours and provide automated Interactive Voice
14 Response with the ability for Class Members to leave messages during non-business
15 hours. The Settlement Administrator shall maintain the toll-free telephone line for sixty
16 (60) calendar days after the Individual Settlement Payments are distributed to the Class
17 Members. (§81) Within thirty (30) calendar days after receiving the Class Member List,
18 the Settlement Administrator shall establish and make public an internet website (the
19 “Settlement Website”), with a domain name approved by Named Plaintiffs and CKE
20 Entities. The Settlement Website will be in a form approved by the Parties. The
21 Settlement Administrator shall publish on the Settlement Website the Complaint, this
22 Agreement, the Preliminary Approval Motion, the Order Granting Preliminary Approval,
23 the Notice to Class Members, and instructions for Class Members to submit objections or
24 exclusion requests. (§82) The Settlement Administrator shall maintain, and not take
25 down, the Settlement Website until two hundred (200) calendar days after the Effective

1 Date, at which time the Settlement Administrator will deactivate the Settlement Website
2 so that it can no longer be accessed. (¶83)

3 **2. Content of class notice.**

4 A copy of the proposed class notice is attached to the Amended Settlement
5 Agreement as Exhibit 2. The notice includes information such as: a summary of the
6 litigation; the nature of the settlement; the terms of the settlement agreement; the
7 maximum deductions to be made from the gross settlement amount (i.e., attorney fees
8 and costs, the enhancement award, and claims administration costs); the procedures and
9 deadlines for participating in, opting out of, or objecting to, the settlement; the
10 consequences of participating in, opting out of, or objecting to, the settlement; and the
11 date, time, and place of the final approval hearing. See Cal Rules of Court, rule
12 3.766(d). It is to be given in both English and Spanish.

13 **3. Settlement Administration Costs**

14 Settlement administration costs are estimated at **\$110,000** including the cost of
15 notice. Prior to the time of the final fairness hearing, the settlement administrator must
16 submit a declaration attesting to the total costs incurred and anticipated to be incurred to
17 finalize the settlement for approval by the Court.

18
19 **E. ATTORNEY FEES AND COSTS**

20 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
21 implied, that has been entered into with respect to the payment of attorney fees or the
22 submission of an application for the approval of attorney fees must be set forth in full in
23 any application for approval of the dismissal or settlement of an action that has been
24 certified as a class action.”

1 Ultimately, the award of attorney fees is made by the court at the fairness
2 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
3 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
4 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
5 1132-1136. In common fund cases, the court may use the percentage method. If
6 sufficient information is provided a cross-check against the lodestar may be conducted.
7 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
8 agreement by the parties to the contrary, “the court ha[s] an independent right and
9 responsibility to review the attorney fee provision of the settlement agreement and
10 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
11 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

12 The question of class counsel’s entitlement to **\$3,455,200.00** (35%) in attorney
13 fees will be addressed at the final fairness hearing when class counsel brings a noticed
14 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
15 the court with current market tested hourly rate information and billing information so
16 that it can properly apply the lodestar method and must indicate what multiplier (if
17 applicable) is being sought.

18 Class counsel should also be prepared to justify the costs sought (capped at
19 **\$150,000**) by detailing how they were incurred.

20

21 **F. SERVICE AWARDS**

22 The Settlement Agreement provides for a service award of up to **\$20,000** to the
23 class representatives (\$10,000 each). Trial courts should not sanction enhancement
24 awards of thousands of dollars with “nothing more than *pro forma* claims as to
25 ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more

1 specificity, in the form of quantification of time and effort expended on the litigation,
2 and in the form of reasoned explanation of financial or other risks incurred by the
3 named plaintiffs, is required in order for the trial court to conclude that an enhancement
4 was ‘necessary to induce [the named plaintiff] to participate in the suit’” *Clark v.*
5 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and
6 ellipsis in original.

7 The Court will decide the issue of the enhancement award at the time of final
8 approval.

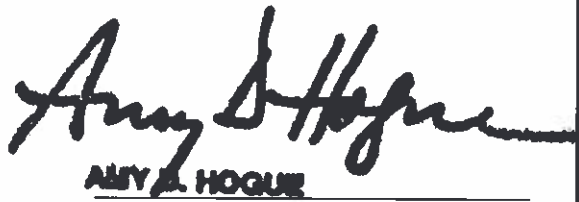
9
10 **V. CONCLUSION AND ORDER**

11 The Court hereby:

- 12 (1) Grants preliminary approval of the settlement as fair, adequate, and
13 reasonable;
- 14 (2) Grants conditional class certification;
- 15 (3) Appoints Salvador Ochoa and Hermelinda Aguilar as Class Representatives;
- 16 (4) Appoints Mahoney Law Group, APC and Rastegar Law Group, A.P.C. as
17 Class Counsel;
- 18 (5) Appoints Phoenix Class Action Administration Solutions. as Settlement
19 Administrator;
- 20 (6) Approves the proposed notice plan; and
- 21 (7) Approves the proposed schedule of settlement proceedings as follows:
- 22 • Preliminary approval hearing: March 23, 2022
 - 23 • Deadline for Defendant to provide class list to settlement administrator: May 9,
24 2022
 - 25 • Deadline for settlement administrator to mail notices: June 8, 2022

- Deadline for class members to opt out: August 8, 2022
- Deadline for class members to object: August 8, 2022
- Deadline for class counsel to file motion for final approval: 16 court days prior to final fairness hearing.
- Final fairness hearing: October 4, 2022, at 11:00 a.m.

Dated: 10/04/2022



AMY D. HOGUE

Amy D. Hogue

Judge of the Superior Court