

FILED
 Superior Court of California
 County of Los Angeles
10/07/2022

Sherri R. Carter, Executive Officer / Clerk of Court
 By: A. Morales Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

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.

And Consolidated Case.

Case No.: BC623041
 Consolidated Case No. BC686601

*Assigned for all purposes to the
 Honorable Lawrence P. Riff, Dept. 7*

**~~[PROPOSED]~~ ORDER GRANTING
 FINAL APPROVAL OF CLASS
 ACTION SETTLEMENT AND
 JUDGMENT**

Complaint Filed: 6-8-2016
 Trial Date: None

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

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

7 Counsel represents that prior to mediation the parties engaged in informal pre-class
8 certification discovery, including the exchange of written discovery, the production of a
9 representative sample of time punch and payroll data, and the production of class member
10 contact data. It is further represented that the Parties completed the deposition of Plaintiffs and
11 two depositions of Defendants' Person Most Qualified ("PMQ") witness, Defendants took the
12 depositions of declarants who submitted declarations in support of Plaintiffs' Cert. Motion, and
13 Plaintiff deposed 11 of Defendant's 200+ declarants who submitted statements in support of
14 Defendants' Opposition.

15 The Parties participated in three separate mediation sessions with two mediators. The first
16 mediation was held on December 13, 2019, with mediator Hon. Peter D. Lichtman (Ret.), a
17 second mediation with Judge Lichtman was held on January 12, 2021, and a third mediation was
18 held with mediator Mark Rudy on May 18, 2021. During the mediation process, Plaintiffs also
19 learned there was a settlement between Defendants and plaintiffs in a CKE manager class action
20 pending in the Santa Barbara Superior Court which had an impact on the potential value of this
21 case. Ultimately, the Parties reached this settlement at the final mediation session with mediator
22 Mark Rudy. A fully executed copy of the settlement was filed with the Court on September 13,
23 2021, attached to the Declaration of Katherine J. Odenbreit ("Odenbreit Decl.") ISO Preliminary
24 as Exhibit A.

25 On December 13, 2021, the Court issued a "checklist" of items for the parties to address
26 and continued preliminary approval. In response, on March 1, 2022, the parties filed a fully
27 executed Amended Settlement Agreement (the "Agreement") attached to the Supplemental
28 Declaration of Katherine J. Odenbreit ("Odenbreit Supp. Decl.") ISO Preliminary as Exhibit B.

1 On March 22, 2022, this Court entered its Preliminary Approval Order preliminarily
2 approving the class action settlement set forth in the Settlement Agreement finding that the
3 settlement appeared fair, adequate, and reasonable, free of collusion or indicia of unfairness, and
4 within the range of possible judicial approval, thereby warranting notice to the Class. Pursuant
5 to California Code of Civil Procedure section 382, the Court also provisionally certified the
6 following Class:

7 **All hourly paid non-exempt persons (regardless of job title or**
8 **role) employed by CKE Entities at a Carl's Jr. corporate**
9 **owned restaurant location in California at any time beginning**
10 **June 8, 2012 through and including July 17, 2021. The Class**
11 **excludes those persons who have previously entered into a**
12 **settlement with, and previously released, CKE Entities with**
13 **regard to the Released Claims.**

14 The Class includes the "PAGA Settlement Group Members," which means all Class
15 Members who worked for CKE Entities during the PAGA Period. The "PAGA Period" means
16 the time period between June 8, 2015, through and including July 17, 2021.

17 Currently pending before the Court is the Motion for Final Approval of Class Action
18 Settlement filed by Plaintiffs Salvador Ochoa and Hermelinda Aguilar, individually and on
19 behalf of the State of California and all employees similarly situated (hereafter collectively
20 referred to as "Named Plaintiffs"). Named Plaintiffs and Defendants CKE Restaurants Holdings,
21 Inc. ("CKE"), Carl Karcher Restaurants LLC, and Carl's Jr. Funding, LLC (hereafter collectively
22 referred to as "CKE Entities"), are collectively referred to herein as the "Parties." Due and
23 adequate notice having been given of the Settlement, the Agreement, and of the Final Approval
24 Hearing as required by the Preliminary Approval Order, and the Court having considered all
25 papers, including all objections filed, having heard oral argument on October 4, 2022, and
26 otherwise being fully informed and good cause appearing:

27 **IT IS HEREBY ORDERED THAT:**

28 1. This Final Approval Order and Judgment incorporates the Agreement, as
submitted to the Court with the (revised) Motion for Preliminary Approval of Class Action
Settlement, filed on March 1, 2022. This Final Approval Order and Judgment incorporates by

1 reference the definitions in the Agreement, and terms used herein shall have the same meaning as
2 set forth in the Agreement.

3 2. This Court has jurisdiction over the subject matter of the Lawsuit and over all
4 Class Members and PAGA Settlement Group Members and over those persons and entities
5 undertaking affirmative obligations under the Agreement.

6 3. The Court preliminarily found in its Order on March 22, 2022, that the
7 presumption of fairness should be applied. No facts have come to the Court's attention that
8 would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption
9 of fairness as set forth in the Preliminary Approval Order.

10 4. The Court finds that the Agreement is reasonable and in the best interests of the
11 Class as it will provide Class Members with substantial and immediate relief and allows Class
12 Members to avoid the risk, expense, complexity, and likely duration of further litigation.

13 5. Pursuant to California Code of Civil Procedure section 382, the Court hereby
14 certifies for settlement purposes only the Class which it previously provisionally certified.

15 6. The Court finds on the record before it that the Settlement Class satisfies the
16 requirements for class certification under California Code of Civil Procedure section 382, for
17 settlement purposes only, because (a) there is an ascertainable and sufficiently numerous Class;
18 (b) there is a well-defined community of interest, including that there are predominant common
19 questions of law or fact, Named Plaintiffs' claims are typical of the claims of the Class Members,
20 and Class Counsel and Named Plaintiffs can adequately represent the Class; and (c) the class
21 proceeding is superior.

22 7. Notice was given to Class Members as ordered. Notice packets were mailed to the
23 32,867 Class Members. 125 Notices were undeliverable. The Court hereby finds that the
24 individual direct Notice given to Class Members (i) fairly and accurately described this lawsuit
25 and the proposed Settlement; (ii) provided sufficient information so that Class Members were
26 able to decide whether to exclude themselves from the Settlement or object to the Settlement;
27 (iii) adequately described the manner in which Class Members could appear at the Final
28 Approval Hearing; and (iv) provided the date, time, and place of the Final Approval Hearing.

1 The Court hereby finds that the Notice was the best notice practicable under the circumstances
2 and complied fully with California Code of Civil Procedure sections 382 and 581(k), California
3 Rules of Court 3.766(d), due process, and all other applicable laws.

4 8. The Court hereby finds there were zero (0) valid and timely written objections to
5 the Class Claims portion of the Settlement and six (6) valid and timely requests for exclusion
6 from the Class Claims portion of the Settlement (including one (1) late request for exclusion,
7 accepted by Defendants). The Requests for Exclusion were submitted by Jessica Hernandez,
8 Celia Zavala, Johana Agredano, Kevin Diaz Ramirez, Cole Taddei, and Christian Rugley.

9 9. The Court further finds that a full and fair opportunity has been afforded to the
10 Settlement Class to opt out of and to object to the Class Claims portion of the Settlement and to
11 participate in the Final Approval Hearing convened to determine whether the Settlement should
12 be given Final Approval. Accordingly, the Court hereby determines that all members of the
13 Settlement Class are bound by this Final Approval Order and Judgment. In addition, all PAGA
14 Settlement Group Members, regardless of whether they submitted a valid and timely written
15 request for exclusion consistent with the Agreement are bound by the settlement and release of
16 the PAGA Claims.

17 10. The Court hereby finds that the Settlement set forth in the Agreement is in all
18 respects fair, reasonable, and adequate and in the best interests of the Settlement Class. In
19 addition, the Court finds that there was no collusion in connection with the Settlement, that the
20 Settlement was the product of informed and arm's length negotiations among competent counsel,
21 and that the record is sufficiently developed to have enabled Named Plaintiffs and CKE Entities
22 to adequately evaluate and consider their respective positions. Accordingly, the Court hereby
23 finally and unconditionally approves the Agreement.

24 11. The Court hereby finds that Class Counsel provided notice of the Settlement to
25 the California Labor and Workforce Development Agency pursuant to Labor Code section
26 2699(1)(2).

27 12. As of the date of the mailing of Settlement Payments, except with respect to the
28 obligations arising out of the Settlement Agreement and in consideration of the payments and

1 terms set forth herein, Named Plaintiffs and the Settlement Class will expressly, to the fullest
2 extent permitted by law, fully and forever compromise, release, resolve, relinquish, and
3 discharge the Released Parties (as defined in Paragraph 35 of the Agreement), individually and
4 on a class-wide basis, the Released Claims (as defined in Paragraph 34 of the Agreement).
5 “Released Claims” is defined as follows: all claims, injuries, demands, losses, damages,
6 liquidated damages, punitive damages, exemplary damages, statutory damages, costs, expenses,
7 restitution, compensation, equitable relief, wages, interest, penalties, suits, causes of action,
8 attorneys’ fees, obligations, rights, and liabilities of any nature, type, or description, whether
9 known or unknown, contingent or vested, in law or in equity, in tort, contract, or for violation of
10 any state or federal constitution, statute, rule, or regulation, based on direct or vicarious liability,
11 and regardless of legal theory, that relate to, are based on, concern, or arise out of any of the
12 allegations that were asserted or could have been asserted based on the facts alleged in the
13 Lawsuit individually and on a class-wide basis against the Released Parties. The Released
14 Claims include all causes of action that were delineated in the Lawsuit as well as all causes of
15 action arising out of or that could have been pled based on the facts pleaded in the Lawsuit but
16 which were not specifically delineated as a cause of action in the Lawsuit. The Released Claims
17 include claims covered by: the California Labor Code, and in particular § 200 *et seq.*, including
18 §§ 201 through 204, 210, 212, 218, 218.5, 218.6, 223, 226, 226.7, and 227.3, §§ 245-250, § 300
19 *et seq.*, § 400 *et seq.*, including §452, § 500 *et seq.*, including §§ 510 and 512, §§ 1174 and
20 1174.5, §§ 1194, 1194.1, 1197, 1198, and 1198.5, § 2802, and § 2810.3; the California Unfair
21 Practices Act, codified at California Business & Professions Code §§ 17000 *et seq.*; California
22 Business & Professions Code §§ 17200 *et seq.*; California Code of Civil Procedure § 1021.5; and
23 any other applicable provision of the California Labor Code or any applicable California
24 Industrial Welfare Commission Wage Orders, in all of their iterations to the fullest extent
25 permitted by law.

26 13. As of the date of the mailing of Settlement Payments, except with respect to the
27 obligations arising out of the Settlement, all PAGA Claims of Named Plaintiffs and the PAGA
28 Settlement Group Members against the Released Parties will thereby be fully and forever

1 compromised, released, resolved, relinquished, and discharged through the PAGA Period. For
2 the avoidance of doubt, as of the date of mailing of PAGA Individual Payments, the PAGA
3 Settlement Group Members will be bound by the settlement of the PAGA Claims, regardless of
4 whether they exclude themselves from the class. “PAGA Claims” means Named Plaintiffs’
5 representative claims seeking penalties, attorneys’ fees and costs pursuant to Labor Code Private
6 Attorneys General Act of 2004, Labor Code § 2698, et seq. (“PAGA”) as set forth in Plaintiff
7 Ochoa’s notice to the LWDA dated February 24, 2016, and Plaintiff Aguilar’s notice to the
8 LWDA dated October 4, 2017 and incorporated by reference into the Complaint, including for
9 alleged violations of Labor Code §§ 201-203, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197,
10 and 2802 alleged to have occurred during the PAGA Period.

11 14. “Released Parties” means CKE Entities and each of their respective current,
12 former, and future parent companies, subsidiaries, divisions, and current and former affiliated
13 individuals and entities, legal successors, predecessors (including companies they have acquired,
14 purchased, or absorbed), assigns, joint ventures, and each and all of their respective officers,
15 partners, directors, owners, stockholders, servants, agents, shareholders, members, managers,
16 principals, investment advisors, consultants, employees, representatives, attorneys, accountants,
17 lenders, underwriters, benefits administrators, investors, funds, and insurers, past, present and
18 future, and all persons acting under, by, through, or in concert with any of them (collectively, the
19 “Released Parties”). However, “Released Parties” does not include any Carl’s Jr. franchisee
20 regarding claims arising during such franchisee’s ownership of said franchise. Additionally, this
21 release will not apply to any claim arising as a result of employment with a Hardee’s, either
22 corporate owned or franchise.

23 15. The Released Parties may file this Final Approval Order and Judgment in any
24 other action that may be brought against them in order to support a defense or counterclaim
25 based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment
26 bar or reduction, or any other theory or claim preclusion or issue preclusion or similar defense or
27 counterclaim.
28

1 16. In its Preliminary Approval Order, the Court appointed and designated Phoenix
2 Settlement Administrators to act as the Settlement Administrator. Phoenix Settlement
3 Administrators has acted as the Settlement Administrator and shall continue to act as the
4 Settlement Administrator to perform those duties and responsibilities that remain under the
5 Agreement and this Final Approval Order and Judgment.

6 17. Consistent with Paragraphs 94, 15, and 18 of the Agreement, CKE Entities shall
7 transfer the Gross Settlement Amount and Employer Taxes (as defined in the Agreement) in the
8 amount of \$9,872,000.00 into the Settlement Fund. The Settlement Fund shall be established by
9 the Settlement Administrator as a Qualified Settlement Fund pursuant to Section 468B(g) of the
10 Internal Revenue Code, and all regulations promulgated thereunder for the purpose of
11 administering the Settlement.

12 18. Within fifteen (15) days after receipt of CKE Entities' payment of the Gross
13 Settlement Amount and Employer Taxes (as defined in the Agreement), the Settlement
14 Administrator shall mail a check to the last known address of each Settlement Class Member for
15 the amount of the Individual Settlement Payment.

16 19. Within fifteen (15) calendar days after receipt of CKE Entities' payment of the
17 Gross Settlement Amount and Employer Taxes, the Settlement Administrator shall make the
18 LWDA Payment in the amount of \$75,000 to the California Labor and Workforce Development
19 Agency.

20 20. Class Counsel has incurred costs of \$137,000.00. Mahoney Law Group, APC has
21 spent \$79,177.31 litigating this matter, and Rastegar Law Group, APC has spent \$56,766.33
22 litigating this matter. Collectively, Class Counsel have incurred \$135,943.31 costs. Class
23 Counsel further represent that they will continue to incur quarterly fees by File and Serve Xpress
24 for access to the Court message board as well as additional filing fees. Class Counsel is
25 requesting \$137,000.00 in costs, which is less than the settlement cap of \$150,000.00. The costs
26 in this case include, but are not limited to, expert fees, filing fees, and mediation fees. The costs
27 seem reasonable and necessary to litigation. Within fifteen (15) days after receipt of CKE
28 Entities' payment of the Gross Settlement Amount and Employer Taxes (as defined in the

1 Agreement), but not before checks are mailed to Settlement Class Members, the Settlement
2 Administrator shall pay the Attorney Cost Award from the Settlement Fund to Class Counsel in
3 the amount of One-Hundred, Thirty-Seven Thousand Dollars (\$137,000.00).

4 21. The Settlement Agreement provides for up to \$20,000.00 for an incentive award
5 to the class representatives. Plaintiffs represent that their contributions to this litigation include
6 giving deposition testimony, communicating with counsel, searching for documents, and
7 reviewing the settlement. Based on the above, the recommendation is to award an enhancement
8 award in the requested amount of \$20,000.00. Within fifteen (15) days after receipt of CKE
9 Entities' payment of the Gross Settlement Amount and Employer Taxes (as defined in the
10 Agreement), but not before checks are mailed to Settlement Class Members, the Settlement
11 Administrator shall pay the Incentive Award from the Settlement Fund to Plaintiffs in the
12 amount of Twenty-Thousand Dollars (\$20,000.00) total (\$10,000.00 to each of the two Class
13 Representatives).

14 22. Class Counsel represents that collectively Class Counsel has spent 1,269.15 hours
15 litigating this matter for a total lodestar of \$827,708.00. Mahoney Law Group, APC spent
16 630.90 hours investigating and litigating this matter. At hourly rates ranging from \$150 to \$750,
17 their total lodestar is \$367,220.50. Rastegar Law Group, APC has spent 631.25 hours litigating
18 this matter. At hourly rates ranging from \$925 to \$500, their total lodestar is \$460,487.50. Class
19 Counsel's combined lodestar of \$827,708.00 would require the application of a multiplier of at
20 least 4.1 to get to the requested fees. Because the fee request represents a reasonable percentage
21 of the settlement fund, the Court awards fees in the amount of \$3,455,200.00, which is well
22 supported by the lodestar. Within fifteen (15) days after receipt of CKE Entities' payment of the
23 Gross Settlement Amount and Employer Taxes (as defined in the Agreement), but not before
24 checks are mailed to Settlement Class Members, the Settlement Administrator shall pay the
25 Attorney Fee Award from the Settlement Fund to Class Counsel in the amount of Three-Million,
26 Four-Hundred, Fifty-Five Thousand, Two-Hundred Dollars (\$3,455,200.00).

23. Individual Settlement Payments will go stale one hundred eighty (180) calendar days after issuance. Any funds remaining after Individual Settlement Payments that go stale will be used as a Reserve Fund to make payments, and/or cover any additional necessary administration expenses, resulting from any errors or disputes in the payments process.

24. A final report from the Settlement Administrator shall be filed by June 26, 2023, stating the total sum of uncashed Individual Settlement Payments and PAGA Individual Payment checks (less any Reserve Fund Payments) (the “Residual”). Consistent with California Code of Civil Procedure § 384, by June 26, 2023, the Parties shall lodge an Amended Judgment with the Court, directing that the Residual, together with interest thereon, be divided evenly between, and paid to, the Legal Aid Foundation of Los Angeles and Restaurants Care (California Restaurant Foundation). The Parties and their counsel represent they do not have any interest in or connection to either of the charities designated in this paragraph.

25. A final accounting non-appearance case review will be held on July 3, 2023, at 9:00 a.m. in Department 7 at 312 North Spring Street, Los Angeles, CA 90012, at which the Court will review a final report on all payments made from the Settlement Fund.

26. At that time the Court will determine the amount of any remaining funds to be distributed to the entities selected by the parties, the Legal Aid Foundation of Los Angeles and Restaurants Care (California Restaurant Foundation), as set forth in Paragraphs 55 and 100 of the Agreement. The Settlement Administrator shall pay the Residual to the two foregoing charities within seven (7) calendar days of entry of the Amended Judgment.

27. In the event that the Settlement does not become effective in accordance with the terms of the Agreement, then this Final Approval Order and Judgment shall be rendered null and void and be vacated, the Agreement and all orders entered in connection therewith shall be rendered null and void *ab initio*, and this Lawsuit shall be reinstated as it existed immediately prior to the execution of the Agreement. In that case, all communications, documents, filings, negotiations, and other actions taken to negotiate and pursue settlement through the Agreement, including the Agreement itself, shall be considered confidential settlement communications that cannot be used as evidence for any purposes whatsoever in the Lawsuit or any proceedings

1 between the Parties or in any other action related to the Released Claims or otherwise involving
2 the Parties or any of the Released Parties.

3 28. Nothing in this Final Approval Order and Judgment or the Agreement shall be
4 construed as an admission or concession by any Party. The Agreement and this resulting Final
5 Approval Order and Judgment simply represent a compromise of disputed allegations.

6 29. All Parties to the Agreement, the Settlement Administrator, and Class Counsel are
7 directed to carry out their obligations under the Agreement.

8 30. The Court expressly determines that there is no just reason for delay of the
9 judgment in this matter and hereby enters final Judgment in the Lawsuit in accordance with the
10 terms of the Settlement, Preliminary Approval Order, and this Final Approval Order and
11 Judgment.

12 31. Without impacting the finality of this Final Approval Order and Judgment,
13 pursuant to California Rule of Court 3.769(h), the Court hereby retains continuing jurisdiction to
14 assure compliance with all terms of this Settlement in accordance with the Agreement and this
15 Final Approval Order and Judgment.

16 32. Class Counsel shall provide a copy of this Final Approval Order and Judgment to
17 the Settlement Administrator within seven (7) calendar days of receipt.

18 **IT IS SO ORDERED.**

19
20
21 Dated: 10/07/2022



A handwritten signature in black ink, appearing to read "Lawrence P. Riff".

Lawrence P. Riff / Judge

HON. LAWRENCE P. RIFF
Judge of the Superior Court