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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

BRIA WARE, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

SHAKE SHACK ENTERPRISES LLC, a
New York Limited Liability Company; and
DOES 1-50, Inclusive,

Defendants.

Case No. 21CV002063

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: October 17, 2023

Time: 3:00 p.m.

Judge: Hon. Brad Seligman

Dept.: 23

1 Plaintiff's motion for an order finally approving the Stipulation of Class and PAGA Action
2 Claims and Release of Claims ("Agreement") and Motion for Class Counsel Fees and Litigation
3 Expenses Payment and Class Representative Service Payment duly came on for hearing on October
4 17, 2023, before the above-entitled Court. Zakay Law Group, APLC, and the JCL Law Firm, APC,
5 appeared on behalf of Plaintiff BRIA WARE ("Plaintiff"). Fox Rothschild, LLP appeared on behalf
6 of Defendant SHAKE SHACK ENTERPRISES LLC, a New York Limited Liability Company
7 (hereinafter "Defendant").

8 **I.**

9 **FINDINGS**

10 Based on the oral and written argument and evidence presented in connection with the
11 motion, the Court makes the following findings:

12 1. All capitalized terms used herein shall have the same meaning as defined in
13 the Agreement.

14 2. This Court has jurisdiction over the subject matter of this litigation pending
15 in the California Superior Court for the County of Alameda ("Court"), Case No. 21CV002063,
16 entitled *Ware v. Shake Shack Enterprises LLC* and over all Parties to this litigation, including the
17 Class.

18 **Preliminary Approval of the Settlement**

19 3. On May 26, 2023, the Court granted preliminary approval of a class-wide
20 settlement. At this same time the court approved certification of a provisional settlement class for
21 settlement purposes only. The Court confirms this Order and finally approves the settlement and
22 the certification of the Class.

23 **Notice to the Class**

24 4. In compliance with the Preliminary Approval Order, the Class Notice was
25 mailed by first class mail to the Class Members at their last known addresses on July 6, 2023.

26 5. Mailing of the Class Notice to their last known addresses was the best notice
27 practicable under the circumstances and was reasonably calculated to communicate actual notice of
28 the litigation and the proposed settlement to the members of the Class Members. The Court finds

1 that the Class Notice provided fully satisfies the requirements of California Rules of Court, rule
2 3.769.

3 6. The Response Deadline for opting out or objecting was August 21, 2023.
4 There was an adequate interval between notice and deadline to permit Class Members to choose
5 what to do and act on their decision. No Class Members objected. One Class Member requested
6 exclusion.

7 **Fairness Of The Settlement**

8 7. The Agreement provides for a Gross Settlement Amount of \$1,330,000.00.
9 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
10 Cal.App.4th 1794, 1801.)

11 a. The settlement was reached through arms-length bargaining between
12 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
13 settlement.

14 b. The Parties' investigation and discovery have been sufficient to allow
15 the Court and counsel to act intelligently.

16 c. Counsel for all parties are experienced in similar employment class
17 action litigation and have previously settled similar class claims on behalf of employees claiming
18 compensation. All counsel recommended approval of the Settlement.

19 d. No objections were received. One request for exclusion was received.

20 e. The participation rate is high. 99.99% of Class Members will be
21 participating in the Settlement and will be sent settlement payments.

22 8. The consideration to be given to the Class Members under the terms of the
23 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
24 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
25 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
26 litigation and the delays which would ensue from continued prosecution of the Action.

27 9. The Agreement is finally approved as fair, adequate, and reasonable and in
28 the best interests of the Participating Class Members.

1 **PAGA Civil Penalty Payment**

2 10. The Agreement provides for a payment of PAGA Civil Penalty Payment in
3 the amount of \$50,000.00. The Court has reviewed the PAGA Civil Penalty Payment and finds and
4 determines that the PAGA Civil Penalty Payment and the allocation of \$37,500.00 to LWDA and
5 \$12,500.00 of the PAGA Civil Penalty Payment to Aggrieved Employees is fair and reasonable and
6 complies with the requirements set forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

7 **Class Counsel Fees and Litigation Expenses**

8 11. The Agreement provides for a Class Counsel Attorneys' Fees and Litigation
9 Expenses Payment in the amount of up to Four Hundred Seventy-Three Thousand, Three Hundred
10 Thirty-Three Dollars and Thirty-Three Cents (\$473,333.33). Subject to Court approval, the Class
11 Counsel Attorneys' Fees and Litigation Expenses consists of attorneys' fees equal to one-third (1/3)
12 of the Gross Fund Value, or Four Hundred Forty-Three Thousand, Three Hundred Thirty-Three
13 Dollars and Thirty-Three Cents (\$443,333.33) and reimbursement of costs and expenses in the
14 amount of Thirty Thousand Dollars and Zero Cents (\$30,000.00).

15 12. A Class Counsel Fees and Litigation Expenses of Four Hundred Seventy-
16 Three Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$473,333.33)
17 comprised of attorneys' fees in the amount of Four Hundred Forty-Three Thousand, Three Hundred
18 Thirty-Three Dollars and Thirty-Three Cents (\$443,333.33) and reimbursement of costs and
19 expenses in the amount of Thirty Thousand Dollars and Zero Cents (\$30,000.00) is reasonable in
20 light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the
21 results achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the
22 common fund, which is reasonable, and is supported by Class Counsel's lodestar.

23 **Enhancement Award**

24 13. The Agreement provides for an Enhancement Award of up to Ten Thousand
25 Dollars and Zero Cents (\$10,000.00) for Plaintiff, Bria Ware, subject to the Court's approval. The
26 Court finds that the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) is reasonable in
27 light of the risks and burdens undertaken by the Plaintiff in this class action litigation.

28 **Settlement Administration Costs**

14. The Agreement provides for Settlement Administration Costs to be paid in an amount not to exceed \$50,000.00. The Declaration of the Settlement Administrator provides that the actual claims administration expenses were \$50,000.00. The amount of this payment is reasonable in light of the work performed by the Settlement Administrator.

II.

ORDERS

Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

1. The Class is certified for the purposes of settlement only. The Settlement Class is hereby defined to include:

All of Defendant's current and former non-exempt California employees at any time during the period beginning July 1, 2019, and continuing until January 11, 2023.

2. There are 7,729 members of the Class. Every person in the Class who did not opt out is a Settlement Class Member. After providing Notice to the Class, there is one opt-out to the Settlement.

3. The Agreement is hereby approved as fair, reasonable, adequate, and in the best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with this Order and the terms of the Agreement.

4. Defendant shall fund the Gross Fund Value on the Funding Date. In exchange the Class Members shall release the “Released Parties” from the “Released Class Claims” and the “PAGA Members” shall release the “Released Parties” from the “Released PAGA Claims.”

a. The “Released Parties” means Defendant and each of their past, present and future agents, employees, servants, officers, directors, members, owners (whether direct or indirect), general partners, limited partners, trustees, representatives, shareholders, stockholders, mortgagees or ground lessors, attorneys, parents, subsidiaries, equity sponsors, related and/or affiliated companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, temporary staffing agencies, contractors, affiliates, service providers, alter-egos, vendors, affiliated organizations, and any person and/or entity alleged to have joint liability, including but not limited to Shake Shack Inc., SSE Holdings,

1 LLC and Shake Shack California LLC, and all of their respective past, present and future employees,
2 directors, officers, members, owners, agents, representatives, payroll agencies, attorneys,
3 stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns and any and all
4 persons acting under, by, through or in concert with any of them (hereinafter referred to collectively
5 as the “Released Parties”), and each and all of them.

6 b. The “Released Class Claims” are defined as any and all claims, debts,
7 liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or
8 causes of action contingent or and reasonably related to the allegations and claims asserted in the
9 Complaint, including without limitation to, any and all claims for alleged unpaid wages (including
10 but not limited to overtime, COVID-19 testing and screening, final pay upon termination, and
11 minimum wage), alleged unpaid meal and rest break premiums, itemized wage statement penalties,
12 waiting time penalties under the California Labor Code or Business & Professions Code (including
13 Section 17200 *et seq.*), reimbursement of business expenses (including but not limited to COVID-
14 19 testing), and claims for restitution and other equitable relief, liquidated damages, punitive
15 damages, or penalties; and any other benefit claimed on account of the allegations asserted in
16 Complaint. This release shall apply to all claims arising during the Class Period. The Released Class
17 Claims expressly excludes release of PAGA claims, which are separately released herein below as
18 “Released PAGA Claims.”

19 c. The “Aggrieved Employees” are defined as all of Defendant’s current
20 and former non-exempt California employees at any time during the PAGA Period. The PAGA
21 Period is defined as the period beginning August 19, 2020, and continuing until January 11, 2023.

22 d. The “Released PAGA Claims” are defined as all claims for civil
23 penalties arising under PAGA alleged in the Complaint and Plaintiff’s August 19, 2021 PAGA
24 notice to the LWDA and all accompanying attorneys’ fees and costs, which occurred during the
25 PAGA Period. This PAGA release continues through January 11, 2023.

26 5. Class Counsel are awarded attorneys’ fees in the amount of \$473,333.33
27 comprised of attorneys’ fees equal to one-third (1/3) of the Gross Fund Value, or Four Hundred
28 Forty-Three Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$443,333.33)

1 and reimbursement of costs and expenses in the amount of Thirty Thousand Dollars and Zero Cents
2 (\$30,000.00). Class Counsel shall not seek or obtain any other compensation or reimbursement from
3 Defendants, Plaintiff, or members of the Class.

4 6. The payment of the Enhancement Award to the Plaintiff in the amount of
5 \$10,000.00 is approved.

6 7. The payment of \$50,000.00 to the Settlement Administrator for Settlement
7 Administration Costs is approved.

8 8. The PAGA Civil Penalty Payment of \$50,000.00 is hereby approved as fair,
9 reasonable, adequate, and adequately protects the interests of the public and the LWDA. Further,
10 the Court finds that Plaintiff and Class Counsel negotiated the PAGA Civil Penalty Payment at
11 arms-length, absent of any fraud or collusion.

12 9. Final Judgment is hereby entered in this action. The Final Judgment shall
13 bind each Participating Class Member.

14 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
15 California and all PAGA Members, pursuant to the California Private Attorneys' General Act
16 ("PAGA").

17 11. The Court further finds and determines that Class Counsel satisfied California
18 Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims arising
19 under the Private Attorney General Act ("PAGA") on March 3, 2023, and again on September 21,
20 2023.

21 12. The Court orders Class Counsel to comply with California Labor Code §
22 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court's
23 entry of this Order.

24 13. The Agreement is not an admission by Defendant, nor is this Final Approval
25 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
26 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
27 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
28 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering

1 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
2 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
3 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
4 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose
5 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
6 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
7 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
8 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
9 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
10 or issue preclusion or similar defense as to the claims being released by the Settlement.

11 14. Notice of entry of this Final Approval Order and Judgment shall be given to
12 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
13 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
14 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
15 in the Class Notice.

16 15. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
17 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
18 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
19 connection with the distribution of settlement benefits.

20 16. The Court sets a Case Management Conference RE: Settlement Compliance
21 for _____, at _____. A Declaration RE: Settlement Compliance shall be filed five
22 (5) days prior to the hearing.

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1 17. If the Settlement does not become final and effective in accordance with the
2 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
3 Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment,
4 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

5 **IT IS SO ORDERED.**

6 DATED: _____, 2023
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9 _____
10 Hon. Brad Seligman
11 JUDGE OF THE SUPERIOR COURT
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