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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

In Re: Smashburger IP Holder LLC, et al.

ALL CASES

Lead Case No. 2:19-CV-00993-JAK-(JEMx)

**[PROPOSED] FINAL ORDER
APPROVING CLASS ACTION
SETTLEMENT**

Judge: John A. Kronstadt

1 WHEREAS, the Parties have entered into the Stipulation of Class Action
2 Settlement, with its attached exhibits (collectively, the “Agreement”), signed and
3 filed with this Court on March 1, 2021, Exh. 1 to Dkt. No. 65-2, to settle *In Re:*
4 *Smashburger IP Holder, LLC, et al*, Lead Case No. 2:19-CV-00993-JAK-(JEMx),
5 pending in the United States District Court for the Central District of California (the
6 “Action”).

7 WHEREAS, by Order dated September 19, 2022 (the “Preliminary Approval
8 Order”), Dkt. No. 74, this Court granted preliminary approval of the proposed class
9 action settlement between the parties in the Action, ordering the dissemination of
10 Class Notice to potential Class Members, and providing potential Class Members
11 with an opportunity either to exclude themselves from the Class or to object to the
12 proposed settlement and issuing related Orders.

13 WHEREAS, the Preliminary Approval Order also preliminarily certified a
14 Class, for settlement purposes only, approved the procedure for giving notice and
15 forms of notice.

16 WHEREAS, by Order dated October 19, 2022, Dkt. No. 76, this Court set a
17 Fairness Hearing to take place on January 30, 2023. On that date, the Court held a
18 duly noticed Fairness Hearing to consider: (1) whether the terms and conditions of
19 the Agreement are fair, reasonable, and adequate; (2) whether a judgment should be
20 entered dismissing Plaintiffs’ complaint on the merits and with prejudice in favor of
21 Defendants and the Released Parties and against all persons who are Class
22 Members pursuant and subject to the terms of the Agreement; (3) whether and in
23 what amount to award Incentive Awards to Plaintiffs; and (4) whether and in what
24 amount to award Attorneys’ Fees and Expenses to Plaintiffs’ Counsel.

25 WHEREAS, the Court, having considered the papers submitted by the Parties
26 and by all other persons who timely submitted papers in accordance with the
27 Preliminary Approval Order, and having heard oral presentations by the Parties and
28 all persons who complied with the Preliminary Approval Order, and based on all of

1 the foregoing, together with this Court's familiarity with the Action, it is hereby
2 **ORDERED, ADJUDGED, AND DECREED** as follows:

3 1. Use of Capitalized Terms. Except where otherwise noted, all
4 capitalized terms used in this Final Order Approving Class Action Settlement shall
5 have the meanings attributed to them in the Agreement.

6 2. Incorporation of Other Documents. This Final Order Approving Class
7 Action Settlement incorporates and makes a part hereof: (a) the Agreement,
8 including all amendments and exhibits thereto, and definitions included therein,
9 which was signed and filed with this Court on March 1, 2021, Exh. 1 to Dkt. No.
10 65-2; (b) the briefs, affidavits, declarations, and other materials filed in support of
11 the Settlement and Plaintiffs' Counsel's request for an award of Attorneys' Fees
12 and Expenses; (c) the record at the Fairness Hearing; (d) the documents listed on
13 the docket sheet or otherwise submitted to the Court; and (e) all prior proceedings
14 in the Action.

15 3. Jurisdiction. The Court has personal jurisdiction over the Parties, and
16 because due, adequate, and the best practicable notice has been disseminated and all
17 potential Class Members have been given the opportunity to exclude themselves
18 from or object to this Settlement, the Court has personal jurisdiction over all Class
19 Members (as defined below and in the Agreement). The Court has subject matter
20 jurisdiction over the claims asserted in the Action pursuant to 28 U.S.C. §§ 1332
21 and 1367, including, without limitation, jurisdiction to approve the proposed
22 Settlement and the Agreement and all exhibits attached thereto, grant final
23 certification of the Class for settlement purposes, settle and release all claims
24 arising out of the transactions alleged in this Action, and dismiss the Action on the
25 merits and with prejudice and issue related orders. The Court finds that venue is
26 proper in this district pursuant to 28 U.S.C. § 1391.

27 4. Final Class Certification for Settlement Purposes Only. The Class
28 preliminarily certified by this Court is hereby finally certified, for settlement

1 purposes only, under Fed. R. Civ. P. 23(a), (b)(2), (b)(3), and (c)(2), the Court
2 finding that the Class fully satisfies all the applicable requirements of Fed. R. Civ.
3 P. 23 and due process. The Class shall consist of all persons in the United States
4 and United States Territories who purchased and/or consumed one or more of the
5 Subject Products during the Class Period. Specifically excluded from the Class are:
6 (a) Defendants, their employees, principals, officers, directors, agents, affiliated
7 entities legal representatives, successors, and assigns; (b) the judges to whom the
8 Action has been or is assigned and any members of their immediate families;
9 (c) those who purchased the Subject Products for the purpose of resale; and (d) all
10 consumers who have filed a timely Request for Exclusion from the Class. The
11 “Subject Products” at issue in the Settlement are hamburgers sold under the
12 Smashburger brand with any name that included the phrase “Triple Double,”
13 including but not limited to hamburgers sold as the Triple Double, Bacon Triple
14 Double, French Onion Triple Double, and Pub Triple Double.

15 5. Requests for Exclusion. The Court finds that no persons have
16 submitted timely and valid Requests for Exclusion from the Class. Plaintiffs’
17 Counsel and Defense Counsel may mutually agree to allow Class Members to
18 exclude themselves by filing an appropriate notice with the Court.

19 6. Adequacy of Representation. The Court designates Plaintiffs as
20 representatives of the Class, and finds that these Plaintiffs have adequately
21 represented the Class for purposes of entering into and implementing the
22 Agreement. The Court appoints the law firm of Bursor & Fisher, P.A. as lead
23 counsel for the Class (“Plaintiffs’ Lead Counsel”) and Bursor & Fisher, P.A.,
24 together with Reich Radcliffe & Hoover LLP, and Ahdoot & Wolfson, P.C. as
25 Class Counsel. For purposes of these settlement approval proceedings only, the
26 Court finds that Plaintiffs’ Lead Counsel and Class Counsel are experienced and
27 adequate Plaintiffs’ Counsel. Plaintiffs and Plaintiffs’ Counsel have satisfied the
28 requirements of Fed. R. Civ. P. 23(a)(4) and 23(g).

1 7. Class Notice. The Court finds that the dissemination of the Class
2 Notice in accordance with the terms of the Agreement and this Court’s Preliminary
3 Approval Order, as described in the Settlement Administrator’s Declaration filed
4 before the Fairness Hearing, a copy of which is incorporated herein and made a part
5 hereof:

6 a. Constituted the best practicable notice to Class Members under
7 the circumstances of the Action;

8 b. Constituted notice that was reasonably calculated, under the
9 circumstances, to apprise Class Members of (i) the pendency of this class action;
10 (ii) the terms of the proposed Settlement; (iii) their rights under the proposed
11 Settlement; (iv) their right to exclude themselves from the Class and the proposed
12 Settlement; (v) their right to object to any aspect of the proposed Settlement
13 (including, but not limited to, final certification of the Class, the fairness,
14 reasonableness or adequacy of the proposed Settlement, the adequacy of the Class’
15 representation by Plaintiffs or Plaintiffs’ Counsel, and/or the award of attorneys’
16 fees and expenses and representative awards); (vi) their right to appear at the
17 Fairness Hearing—either on their own or through counsel hired at their own
18 expense—if they did not exclude themselves from the Class; and (vii) the binding
19 effect of the Orders and Final Judgment in this Action, whether favorable or
20 unfavorable, on all persons who did not request exclusion from the Class;

21 c. Constituted notice that was reasonable, due, adequate, and
22 sufficient notice to all persons and entities entitled to be provided with notice; and

23 d. Constituted notice that fully satisfied all applicable requirements
24 of the Federal Rules of Civil Procedure, including Rule 23(c)(2) and (e) of the
25 Federal Rules of Civil Procedure, the United States Constitution (including the Due
26 Process Clause), the Rules of this Court, and any other applicable law, as well as
27 complied with the Federal Judicial Center’s illustrative class action notices.
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1 8. CAFA Notice. The Court finds that Defendants provided notice of the
2 proposed Settlement to the appropriate state and federal government officials
3 pursuant to 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate
4 state and federal government officials the requisite ninety (90) day time period
5 (pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C.
6 § 1715(d)) to comment or object to the proposed settlement before entering its
7 Orders and Final Judgment and no such objections or comments were received.

8 9. Final Settlement Approval. The terms and provisions of the
9 Agreement, including any and all amendments and exhibits, have been entered into
10 in good faith and are hereby fully and finally approved as fair, reasonable, and
11 adequate as to, and in the best interests of, each of the Parties and the Class
12 Members, and in full compliance with all applicable requirements of the Federal
13 Rules of Civil Procedure, CAFA, the United States Constitution (including the Due
14 Process Clause), and any other applicable law. The Settlement is approved [and all
15 objections to the Settlement are overruled as without merit.] The Parties and Class
16 Members are hereby directed to implement and consummate the Agreement in
17 accordance with its terms and provisions. Lead Plaintiffs’ Counsel shall take all
18 steps necessary and appropriate to provide Class Members with the benefits to
19 which they are entitled under the terms of the Agreement.

20 The Court finds that the Agreement is fair, adequate, and reasonable based on
21 the following factors, among other things:

22 a. There was no fraud or collusion underlying this Settlement, and
23 it was reached as a result of extensive arm’s-length negotiations, occurring over the
24 course of several months. This included two full day mediation sessions before Jill
25 R. Sperber, Esq. of Judicate West. Between and after the mediation sessions, Ms.
26 Sperber maintained communication with the parties and facilitated the Settlement.
27 *See, e.g., Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.
28 1982); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir.

1 2011) (presence of a neutral mediator is a factor weighing in favor of a finding of
2 non-collusiveness).

3 b. The complexity, expense, and likely duration of the litigation
4 favor settlement—which provides meaningful benefits on a much shorter time
5 frame than otherwise possible—on behalf of the Settlement Class. *See, e.g., Lane*
6 *v. Facebook, Inc.*, 696 F.3d 811, 820 (9th Cir. 2012) (affirming the district court’s
7 approval of a settlement where Plaintiffs’ Counsel “reasonably concluded that the
8 immediate benefits represented by the Settlement outweighed the possibility—
9 perhaps remote—of obtaining a better result at trial”); *Class Plaintiffs v. Seattle*,
10 955 F.2d 1268, 1276 (9th Cir. 1992) (the Ninth Circuit has a “strong judicial policy
11 that favors settlements, particularly where complex class action litigation is
12 concerned”). Based on the stage of the proceedings and the amount of investigation
13 and discovery completed, the parties had developed a sufficient factual record to
14 evaluate their chances of success at trial and the proposed settlement. In addition,
15 the parties negotiated the benefits to the class *before* discussing Plaintiffs’ claim to
16 attorneys’ fees. *See In re Apple Deriv. Litig.*, 2008 WL 4820784, at *3 (N.D. Cal.
17 Nov. 5, 2008) (parties’ negotiations free of collusion because, among other things,
18 the parties negotiated the benefits to the class before discussing attorneys’ fees); *In*
19 *re Midland Nat’l Life Ins. Co. Annuity Sales Practices Litig.*, No. 07-1825, 2012
20 WL 5462665, at *2-3 (C.D. Cal. Nov. 7, 2012) (same).

21 c. The support of Plaintiffs’ Lead Counsel and Class Counsel, who
22 are highly skilled in class action litigation such as this, and the Plaintiffs, who have
23 participated in this litigation and evaluated the proposed settlement, also favors
24 final approval. *See Class Plaintiffs*, 955 F.2d at 1291; *Fernandez v. Victoria Secret*
25 *Stores, LLC*, No. 06-04149, 2008 WL 8150856, at *7 (C.D. Cal. July 21, 2008);
26 *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979).

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1 d. The Settlement provides meaningful relief to the Class,
2 including cash relief, and certainly falls within the range of possible recoveries by
3 the Class.

4 The Settlement is approved and all objections to the Settlement are overruled
5 as without merit. The Parties and Class Members are hereby directed to implement
6 and consummate the Agreement in accordance with its terms and provisions.
7 Plaintiffs' Lead Counsel and Class Counsel shall take all steps necessary and
8 appropriate to provide Class Members with the benefits to which they are entitled
9 under the terms of the Agreement.

10 10. Settlement Consideration.

11 a. As described in the Agreement, Defendants' financial
12 commitment under the Settlement shall be two million five hundred thousand
13 dollars (\$2,500,000.00) in cash (the "Cash Settlement Fund") and 1.5 million
14 vouchers with a current value of between approximately \$2.00 and \$2.49 per
15 voucher. The Cash Settlement Fund shall be used for Court-ordered Attorneys'
16 Fees and Expenses, Plaintiffs' incentive awards, Settlement Administration
17 Expenses, and all cash awards paid to or issued to Class Members. The settlement
18 fund shall be administered and implemented by Kroll Settlement Administration
19 and under the terms set forth in the Agreement. The Cash Settlement Fund and the
20 vouchers are non-reversionary.

21 11. Binding Effect. The terms of the Agreement and of this Final Order
22 and the accompanying Final Judgment shall be forever binding on the Parties and
23 all Class Members, as well as their heirs, guardians, executors, administrators,
24 representatives, agents, attorneys, partners, successors, predecessors-in interest, and
25 assigns, and those terms shall have *res judicata* and other preclusive effect in all
26 pending and future claims, lawsuits or other proceedings maintained by or on behalf
27 of any such persons, to the extent those claims, lawsuits or other proceedings
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1 involve matters that were or could have been raised in the Action or are otherwise
2 encompassed by the Release set forth in the Agreement.

3 12. Release. The following Release, which is also set forth in Section VII
4 of the Agreement, is expressly incorporated herein in all respects, including all
5 defined terms used therein, is effective as of the date of this Final Order and the
6 accompanying Final Judgment, and forever discharges the Released Parties from
7 any claims or liabilities arising from or related to the Release:

8 a. Upon the Effective Date, the Releasing Parties shall be deemed
9 to have, and by operation of the Final Order and Final Judgment shall have, fully,
10 finally and forever released, relinquished, and discharged all Released Claims
11 against the Released Parties. In connection with the Released Claims, each
12 Releasing Party shall be deemed as of the Effective Date to have expressly,
13 knowingly, and voluntarily waived any and all provisions, rights, benefits conferred
14 by Section 1542 of the California Civil Code, and any statute, rule, and legal
15 doctrine similar, comparable, or equivalent to Section 1542, which provides as
16 follows:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
18 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**
19 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
20 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

21 In connection with such waiver and relinquishment, the Releasing Parties hereby
22 acknowledge that they are aware that they or their attorneys may hereafter discover
23 claims or facts in addition to or different from those that they now know or believe
24 exist with respect to Released Claims, but that it is their intention to hereby fully,
25 finally, and forever settle and release all of the Released Claims, whether known or
26 unknown, suspected or unsuspected, that they have against the Released Parties. In
27 furtherance of such intention, the Release herein given by the Releasing Parties
28 shall be and remain in effect as a full and complete general release notwithstanding

1 the discovery or existence of any such additional different claims or facts. Each of
2 the Releasing Parties expressly acknowledges that he/she/it has been advised by its
3 attorney of the contents and effect of Section 1542, and with knowledge, each of
4 the Parties hereby expressly waives whatever benefits he/she/it may have had
5 pursuant to such section. Plaintiffs and Class Members are not releasing any claims
6 for personal injuries. Plaintiffs acknowledge, and the Class Members shall be
7 deemed by operation of the Final Judgment to have acknowledged, that the
8 foregoing waiver was separately bargained for and a material element of the
9 Settlement of which this Release is a part.

10 13. Permanent Injunction. All Class Members and/or their representatives
11 who have not been timely excluded from the Class are hereby permanently barred
12 and enjoined from bringing, filing, commencing, prosecuting, maintaining,
13 intervening in, participating in, continuing or receiving any benefits from, as class
14 members or otherwise, any lawsuit (including putative class actions), arbitration,
15 administrative, regulatory or other proceeding in any jurisdiction that is covered by
16 the Release. All Class Members and all persons in active concert or participation
17 with Class Members are permanently barred and enjoined from organizing or
18 soliciting the participation of any Class Members who did not timely exclude
19 themselves from the Class into a separate class or group for purposes of pursuing a
20 putative class action, any claim or lawsuit in any jurisdiction that is covered by the
21 Release. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance
22 of this permanent injunction is necessary and appropriate in aid of the Court's
23 continuing jurisdiction and authority over the Action. However, Class Members do
24 not waive their right to contact, in any way or for any purpose, any state or federal
25 agency regarding the activities of any Party, nor do they waive any right to enjoy
26 any benefits obtained by a state or federal agency.

27 14. Enforcement of Settlement. Nothing in this Final Order or in the
28 accompanying Final Judgment shall preclude any action to enforce the terms of the

1 Agreement; nor shall anything in this Final Order or in the accompanying Final
2 Judgment preclude Plaintiffs or other Class Members from participating in the
3 claims process described in the Agreement if they are entitled to do so under the
4 terms of the Agreement.

5 15. Attorneys' Fees and Expenses and Plaintiffs' Incentive Awards. The
6 Court is concurrently issuing a separate Order with respect to Attorneys' Fees and
7 Expenses and the Incentive Awards to the representative, entitled Final Order
8 Approving Attorneys' Fees and Expenses and Incentive Awards.

9 16. Modification of Settlement Agreement. The Parties are hereby
10 authorized, without needing further approval from the Court, to agree to written
11 amendments, modifications, or expansions of the Agreement and its implementing
12 documents (including all exhibits) without further notice to the Class or approval by
13 the Court if such changes are consistent with this Final Order and the
14 accompanying Final Judgment and do not materially alter, reduce, or limit the
15 rights of Class Members under the Agreement.

16 17. Retention of Jurisdiction. The Court has jurisdiction to enter this Final
17 Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive
18 Awards, and the accompanying Final Judgment. Without in any way affecting the
19 finality of these Final Orders and/or the accompanying Final Judgment, this Court
20 expressly retains jurisdiction as to all matters relating to the administration,
21 consummation, enforcement, and interpretation of the Agreement, and of these
22 Final Orders and the accompanying Final Judgment, and for any other necessary
23 purpose, including, without limitation (*see Kokkonen v. Guardian Life Ins. Co. of*
24 *Am.*, 511 U.S. 375, 381-82 (1994)):

25 a. Enforcing the terms and conditions of the Agreement and
26 resolving any disputes, claims or causes of action that, in whole or in part, are
27 related to or arise out of the Agreement, this Final Order, the Final Order
28 Approving Attorneys' Fees and Expenses and Incentive Awards, or the

1 accompanying Final Judgment (including, without limitation, whether a person or
2 entity is or is not a Class Member; and whether claims or causes of action allegedly
3 related to this case are or are not barred by this Final Order and the accompanying
4 Final Judgment; and whether persons or entities are enjoined from pursuing any
5 claims against Defendants);

6 b. Entering such additional Orders, if any, as may be necessary or
7 appropriate to protect or effectuate this Final Order, the Final Order Approving
8 Attorneys' Fees and Expenses and Incentive Awards, the accompanying Final
9 Judgment, and the Agreement (including, without limitation, orders enjoining
10 persons or entities from pursuing any claims against Defendants), or dismissing all
11 claims on the merits and with prejudice, and permanently enjoining Class Members
12 from initiating or pursuing related proceedings, or to ensure the fair and orderly
13 administration of this settlement; and

14 c. Entering any other necessary or appropriate Orders to protect
15 and effectuate this Court's retention of continuing jurisdiction; provided, however,
16 that nothing in this paragraph is intended to restrict the ability of the Parties to
17 exercise their rights as provided in the Agreement.

18 18. No Admissions. Neither this Final Order, the accompanying Final
19 Judgment nor the Agreement (nor any other document referred to herein, nor any
20 action taken to carry out this Final Order or the accompanying Final Judgment) is,
21 may be construed as, or may be used as an admission or concession by or against
22 Defendants or the Released Parties of the validity of any claim or defense or any
23 actual or potential fault, wrongdoing or liability whatsoever or the propriety of class
24 certification. Defendants continue to deny that the Action meets the requisites for
25 class certification under Fed. R. Civ. P. 23 for any purpose other than settlement.
26 Entering into or carrying out the Agreement, and any negotiations or proceedings
27 related to it, shall not in any event be construed as, or deemed evidence of, an
28 admission or concession as to Defendants' denials or defenses and shall not be

1 offered or received in evidence in any action or proceeding against any Party hereto
2 in any court, administrative agency or other tribunal for any purpose whatsoever,
3 except as evidence of the Settlement or to enforce the provisions of this Final Order
4 and the accompanying Final Judgment and the Settlement Agreement; provided,
5 however, that this Final Order, the accompanying Final Judgment and the
6 Settlement Agreement may be filed in any action against or by Defendants or
7 Released Parties to support a defense of *res judicata*, collateral estoppel.

8 19. Dismissal of Action. The Action (including all individual and Class
9 claims presented therein) is hereby dismissed on the merits and with prejudice,
10 without fees or costs to any Party except as otherwise provided in this Final Order,
11 the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards,
12 and the accompanying Final Judgment, and the Agreement.

13 20. Occurrence of Terminating Conditions. In the event that the Effective
14 Date does not occur, certification shall be automatically vacated and this Final
15 Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive
16 Awards, and the accompanying Final Judgment, and all other orders entered and
17 releases delivered in connection herewith, shall be vacated and shall become null
18 and void.

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20 Dated: _____

21 _____
22 John A. Kronstadt
23 UNITED STATES DISTRICT JUDGE
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