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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)

**STIPULATION OF CLASS ACTION SETTLEMENT**

Judge: John A. Kronstadt

1 Subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil  
2 Procedure, Plaintiffs Andre Galvan, Lucinda Lopez, Thu Thuy Nguyen, Robert  
3 Meyer, and Jamelia Harris (“Plaintiffs”), on behalf of themselves and each of the  
4 Class Members, and Smashburger IP Holder LLC and Smashburger Franchising LLC  
5 (“Defendants”) (collectively, the “Parties”), by and through their respective counsel,  
6 authorized to settle this Action on their behalf, in consideration for and subject to the  
7 promises, terms, and conditions contained in this Stipulation of Class Action  
8 Settlement (“Agreement”), hereby stipulate and agree, as follows:

9 **I. RECITALS**

10 A. On February 8, 2019, Plaintiff Andre Galvan filed a proposed  
11 nationwide (or, in the alternative, California) class action complaint against  
12 Defendants in the United States District Court for the Central District of California,  
13 Case No. 2:19-CV-00993-JAK-(JEMx).<sup>1</sup> On March 18, 2019, Mr. Galvan filed a first  
14 amended class action complaint against Defendants.<sup>2</sup> The lawsuit alleged that  
15 Defendants misrepresented the size of the hamburgers sold under the Smashburger  
16 brand with any name that included the phrase “Triple Double,” including, but not  
17 limited to hamburgers sold as the Triple Double, Bacon Triple Double, French Onion  
18 Triple Double, and Pub Triple Double (collectively the “Subject Products”).

19 B. On March 11, 2019, Barbara Trevino filed a similar lawsuit against  
20 Defendants in the United States District Court for the Central District of California,  
21 Case No. 2:19-CV-02794. On May 16, 2019, the Court ordered Galvan’s lawsuit  
22 consolidated with the Trevino lawsuit and appointed the law firm of Bursor & Fisher,  
23 P.A. as interim lead class counsel.

24 C. On July 24, 2019, Plaintiffs Galvan, Lopez, Nguyen, Meyer, Trevino,  
25 and Harris, filed a Consolidated Amended Class Action Complaint. On August 22,  
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27 <sup>1</sup> Jollibee Foods Corporation was also named as a defendant in the complaint.

28 <sup>2</sup> The first amended complaint added Lucinda Lopez as a co-plaintiff and omitted Jollibee Foods Corporation as a defendant.

1 2019, Plaintiffs filed their Second Amended Consolidated Class Action Complaint,  
2 which is the Operative Complaint.<sup>3</sup> The Operative Complaint asserts claims for  
3 violations of the California Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750,  
4 *et seq.*) (“CLRA”), California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§  
5 17200, *et seq.*) (the “UCL”), California’s False Advertising Law (Cal. Bus. & Prof.  
6 Code §§ 17500, *et seq.*) (the “FAL”), and violations of New York General Business  
7 Law §§ 349 and 350 (collectively, “NYGBL”), as well as claims for Breach of  
8 Express Warranty, Fraud, and Unjust Enrichment.

9 D. Before entering into this Agreement, the Parties, by and through their  
10 respective counsel, conducted a thorough examination, investigation, and evaluation  
11 of the relevant law, facts, and allegations to assess the merits of the claims and  
12 potential claims to determine the strength of liability, potential remedies, and all  
13 defenses thereto, including an extensive investigation into the facts and law relating  
14 to (i) the development and formulation of the Subject Products; (ii) the marketing and  
15 advertising of the Subject Products; (iii) sales, pricing, and financial data relating to  
16 the Subject Products; and (iv) the sufficiency of the claims asserted and  
17 appropriateness of class certification.

18 E. This Agreement was reached as a result of extensive arm’s-length  
19 negotiations between the Parties and their counsel. Counsel have engaged in  
20 extensive settlement discussions to determine if the Parties could reach a resolution  
21 short of protracted litigation. This included two full days of mediation before Jill R.  
22 Sperber, Esq. of Judicate West on February 6, 2020 and May 7, 2020, and several  
23 months of follow-up settlement discussions with Ms. Sperber and amongst counsel  
24 before a settlement in principle was reached.

25 F. Before and during these settlement negotiations, the Parties had an  
26 arm’s-length exchange of sufficient information to permit Plaintiffs and their counsel  
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<sup>3</sup> Barbara Trevino dismissed her individual claims on November 26, 2019.

1 to evaluate the claims and potential defenses and to meaningfully conduct informed  
2 settlement discussions. This included conducting extensive discovery where  
3 Defendants provided and Plaintiffs reviewed over 14,500 documents. Plaintiffs also  
4 reviewed numerous files from the trademark case filed against Smashburger, entitled  
5 *In n Out Burgers v. Smashburger IP Holder LLC and Smashburger Franchising LLC*,  
6 Case No. 8:17-cv-01474. Finally, Plaintiffs investigated the potential damages model  
7 for the claims in this action and discussed the case with a potential damages expert.

8 G. Based upon their review, investigation, and evaluation of the facts and  
9 law relating to the matters alleged in the pleadings, Plaintiffs, as settlement class  
10 representatives, believe that the claims settled herein have merit. However, they and  
11 their counsel recognize and acknowledge the expense and length of continued  
12 proceedings necessary to prosecute the claims through trial, appeal, and ancillary  
13 actions. Plaintiffs and their counsel have also taken into account the uncertain  
14 outcome and risk of litigation, and the difficulties and delay inherent in such  
15 litigation, and they believe that the settlement set forth in this Agreement confers  
16 important benefits upon the Class Members (defined herein). Accordingly, based  
17 upon their evaluation, after considering, among other things: (i) the benefits to the  
18 Class Members under the terms of this Agreement; (ii) the risks, costs, and  
19 uncertainty of protracted litigation, especially in complex actions such as this, as well  
20 as the difficulties and delays inherent in such litigation; and (iii) the desirability of  
21 consummating this Agreement promptly to provide effective relief to Class Members,  
22 Plaintiffs and their counsel have determined that the settlement set forth in this  
23 Agreement is in the best interests of the Class and, on behalf of Plaintiffs and the  
24 Class, have agreed to settle the Action pursuant to the provisions of this Agreement.

25 H. Defendants denied and continue to deny all charges of wrongdoing or  
26 liability against them arising out of any of the conduct, statements, acts or omissions  
27 alleged, or that could have been alleged, in the Action. Defendants specifically deny  
28 all allegations that their advertising and marketing of the Subject Products contained

1 any false or misleading statements. As a result, Defendants believe they cannot be  
2 held liable for any of the alleged conduct, statements, acts, or omissions at issue in  
3 the Action.

4 I. Defendants also denied and continue to deny, amongst other things,  
5 allegations that Plaintiffs, the Class, or any member of the Class have suffered  
6 damage or harm by reason of any alleged conduct, statement, act, or omission of  
7 Defendants, or that Plaintiffs could establish damages or entitlement to injunctive  
8 relief on a classwide basis. Defendants further have denied and continue to deny that  
9 the Action meets the requisites for certification as a class action under federal,  
10 California, or New York law, except for purposes of settlement, or that the evidence  
11 is sufficient to support a finding of liability on an individual or classwide basis.  
12 Nonetheless, Defendants have concluded that further defense of the Action would be  
13 protracted and expensive, and that it is desirable that the Action be fully and finally  
14 settled in the manner and upon the terms and conditions set forth in the Agreement.  
15 Defendants also have taken into account the uncertainty and risks inherent in any  
16 litigation. Defendants, therefore, have determined that it is desirable and beneficial to  
17 them that the Action be settled in the manner and upon the terms and conditions set  
18 forth in this Agreement.

19 J. This Agreement, and the proposed certification, for settlement purposes  
20 only, of the Class, effectuates the resolution of disputed claims and is for settlement  
21 purposes only.

22 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and  
23 between the Parties that: (a) the Action and all Released Claims be fully and finally  
24 compromised, settled, and released upon final settlement approval by the Court after  
25 the hearings as provided for in this Agreement; and (b) upon such approval by the  
26 Court, a Final Order and Final Judgment, substantially in the form attached hereto as  
27 Exhibits A and B, respectively, be entered dismissing the Action with prejudice upon  
28 the following terms and conditions:

1 **II. DEFINITIONS**

2 As used in this Agreement and the attached exhibits, the following terms have  
3 the following meanings, unless this Agreement specifically provides otherwise.

4 Other capitalized terms used in this Agreement but not defined below shall have the  
5 meaning ascribed to them in this Agreement and the exhibits attached hereto:

6 1. “Action” shall mean the proposed class action lawsuit entitled *In Re:*  
7 *Smashburger IP Holder, LLC, et al*, Lead Case No. 2:19-CV-00993-JAK-(JEMx)  
8 pending in the United States District Court for the Central District of California.

9 2. “Agreement” means this Stipulation of Settlement and its exhibits,  
10 attached hereto and incorporated herein, including all subsequent amendments agreed  
11 to in writing by the Parties and any exhibits to such amendments.

12 3. “Attorneys’ Fees and Expenses” means such funds as may be awarded  
13 by the Court to Plaintiffs’ Counsel to compensate Plaintiffs’ Counsel for their fees  
14 and expenses in connection with the Action and the Settlement, as described more  
15 particularly in Section VI of this Agreement.

16 4. “Authorized Claimant” means a member of the Class who timely  
17 submits a valid Claim Form in accordance with the terms of this Agreement.

18 5. “Claim Deadline” means the final time and date by which a valid Claim  
19 Form must be postmarked or received by the Settlement Administrator for a Class  
20 Member to be eligible for any of the settlement consideration contemplated in this  
21 Agreement. The Claim Deadline shall be clearly set forth in the Court order granting  
22 preliminary approval of the Settlement, the Long Form Notice and Summary Notice,  
23 on the Settlement Website, and on the front page of the Claim Form.

24 6. “Claim Form” means the proof of claim and release form(s),  
25 substantially in the form attached hereto as Exhibit C, the format of which may be  
26 modified to meet the requirements of the Court and/or Settlement Administrator, to  
27 be submitted by Class Members seeking to recover settlement consideration pursuant  
28 to this Agreement.

1           7.     “Class” means all persons in the United States and United States  
2 Territories who purchased and/or consumed one or more of the Subject Products  
3 during the Class Period. Specifically excluded from the Class are: (a) Defendants and  
4 their employees, principals, officers, directors, agents, affiliated entities, legal  
5 representatives, successors and assigns; (b) the judges to whom the Action has been  
6 or is assigned and any members of their immediate families; (c) those who purchased  
7 the Subject Products for the purpose of re-sale; and (d) all persons who have filed a  
8 timely Request for Exclusion from the Class.

9           8.     “Class Member(s)” means any member of the Class.

10          9.     “Class Notice” means, collectively, the Long Form Notice and Summary  
11 Notice provided to the Class as provided herein and directed by the Court, and the  
12 Internet advertising to be facilitated by the Settlement Administrator.

13          10.    “Class Period” means the period from July 1, 2017 up to and including  
14 the May 31, 2019.

15          11.    “Court” means the United States District Court for the Central District of  
16 California and all judges assigned to the Action.

17          12.    “Defense Counsel” means the law firm of Umberg Zipser LLP.

18          13.    “Effective Date” means the first date after which all of the following  
19 events and conditions have been met or have occurred:

- 20               (a)    The Court has entered the Preliminary Approval Order;
- 21               (b)    The Court has entered the Final Order and Final Judgment;
- 22               (c)    Unless the Parties otherwise agree in writing to waive all or any  
23 portions of the following provision, there has occurred: (i) in the event there is no  
24 properly and timely filed objection to entry of the Final Order and Final Judgment,  
25 the expiration (without the filing or noticing of an appeal) of the time to appeal from  
26 the Final Order and Final Judgment; (ii) if the Final Order and Final Judgment is  
27 appealed, the final dismissal of an appeal from the Final Order and Final Judgment or  
28 the affirmance on appeal of the Final Order and Final Judgment in its entirety; (iii) if

1 a ruling or decision is entered by an appellate court affirming the Final Order and  
2 Final Judgment, the time to petition for a writ of certiorari with respect to such ruling  
3 or decision has expired; or (iv) if a petition for a writ of certiorari with respect to the  
4 Final Order and Final Judgment is filed, the petition has been denied or dismissed or,  
5 if granted, has resulted in affirmance of the Final Order and Final Judgment in  
6 substantial form.

7 14. “Fairness Hearing” means the hearing that is to take place after the entry  
8 of the Preliminary Approval Order and after the Notice Date for purposes of: (a)  
9 determining the fairness, adequacy and reasonableness of the Agreement in  
10 accordance with applicable jurisprudence; (b) if the Court so decides, entering the  
11 Final Order and Final Judgment and dismissing the Action with prejudice; (c) ruling  
12 upon an application by Class Counsel for Attorneys’ Fees and Expenses and  
13 Plaintiffs’ incentive awards. The Parties shall request that the Court schedule the  
14 Fairness Hearing for a date that is in compliance with the provisions of 28 U.S.C. §  
15 1715(d).

16 15. “Final Order and Final Judgment” means the Court’s order and judgment  
17 fully and finally approving the Settlement and dismissing the Action with prejudice,  
18 substantially in the form attached hereto as Exhibits A and B.

19 16. “Long Form Notice” means the long form notice of settlement,  
20 substantially in the form attached hereto as Exhibit E.

21 17. “Defendants” means Smashburger IP Holder LLC and Smashburger  
22 Franchising LLC, and includes, without limitation all related entities, including but  
23 not limited to parents, subsidiaries, agents, employees and assigns, predecessors,  
24 successors and affiliates of Defendants and their related entities and owners.

25 18. “Net Cash Amount” means the value derived by subtracting the value of  
26 Attorneys’ Fees and Expenses to be awarded to Plaintiffs’ Counsel, any incentive  
27 awards to be awarded to Plaintiffs, and any Settlement Administration Expenses from  
28 two million five hundred thousand dollars (\$2,500,000).



1           19. “Notice Date” means the first date upon which the Class Notice is  
2 disseminated.

3           20. “Objection Deadline” means the date, to be set by the Court, by which  
4 Class Members must file objections, if any, to the Agreement in accordance with  
5 Section IX of this Agreement. The Parties shall request that the Court set an  
6 Objection Deadline coinciding with the Opt-Out Date.

7           21. “Opt-Out Date” means the date, to be set by the Court, by which a  
8 Request For Exclusion must be sent to Settlement Administrator for a Class Member  
9 to be excluded from the Settlement Class. The Parties shall request that the Court set  
10 an Opt-Out Date coinciding with the Objection Deadline.

11           22. “Parties” means Plaintiffs and Defendants, as each of those terms are  
12 defined in this Agreement.

13           23. “Plaintiffs” means Andre Galvan, Lucinda Lopez, Thu Thuy Nguyen,  
14 Robert Meyer, and Jamelia Harris.

15           24. “Plaintiffs’ Lead Counsel” and/or “Lead Counsel” means the law firm  
16 Bursor & Fisher, P.A.

17           25. “Plaintiffs’ Counsel” and/or “Class Counsel” means the law firms  
18 Bursor & Fisher, P.A., Ahdoot & Wolfson, PC and Reich Radcliffe & Hoover LLP.

19           26. “Preliminary Approval Order” means the order, substantially in the form  
20 attached hereto as Exhibit D, conditionally certifying, for settlement purposes only,  
21 the Class; appointing Plaintiffs’ Counsel as counsel for the Class; setting the date of  
22 the Fairness Hearing; preliminarily approving this Agreement; approving the Class  
23 Notice program and Claim Form; and setting dates for the Claim Deadline, Opt-Out  
24 Date, Objection Deadline, and Notice Date.

25           27. (a) “Released Claims” means and includes any and all claims,  
26 demands, rights, damages, obligations, suits, debts, liens, and causes of action under  
27 common law or statutory law (federal, state, or local) of every nature and description  
28 whatsoever, monetary, injunctive, or equitable, ascertained or unascertained,

1 suspected or unsuspected, existing or claimed to exist, including Unknown Claims as  
2 of the Notice Date by Plaintiffs and all Class Members (and Plaintiffs' and Class  
3 Members' respective heirs, guardians, executors, administrators, representatives,  
4 agents, attorneys, partners, successors, predecessors-in-interest, and assigns) that:

5 (i) were asserted or that could have been reasonably asserted in the Action  
6 against the Released Parties (as hereinafter defined), or any of them, and that  
7 arise out of or are related in any way to any or all of the acts, omissions, facts,  
8 matters, transactions, or occurrences that were or could have been directly or  
9 indirectly alleged or referred to in the Action (including, but not limited to,  
10 alleged violations of the CLRA, UCL, FAL, NYGBL or similar laws of any  
11 state or United States territory, and alleged claims for injunctive relief, breach  
12 of warranty, breach of the implied warranty of merchantability, negligent  
13 misrepresentation, fraud, and unjust enrichment); or

14 (ii) were asserted or that could have been reasonably asserted by any Class  
15 Member against the Released Parties (as hereinafter defined), or any of them,  
16 and that arise out of or are related in any way to any or all of the acts,  
17 omissions, facts, matters, transactions, or occurrences that were or could have  
18 been directly or indirectly alleged or referred to, including all claims for  
19 monetary, injunctive, or equitable relief that relate in any way to  
20 communications, disclosures, representations, statements, claims,  
21 nondisclosures and/or omissions, packaging, advertising, labeling, and/or  
22 marketing of or concerning the Subject Products.

23 28. "Released Parties" shall be defined and construed broadly to effectuate a  
24 complete and comprehensive release, and means Defendants and any entity that  
25 made, manufactured, tested, inspected, audited, certified, purchased, distributed,  
26 supplied, licensed, transported, donated, marketed, advertised, promoted, sold or  
27 offered for sale any Subject Product, including all of their respective franchisees,  
28 predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and

1 affiliates, and any and all of their past, present and future officers, directors,  
2 employees, shareholders, partners, principals, agents, servants, successors, attorneys,  
3 insurers, representatives, licensees, licensors, customers, subrogees and assigns. It is  
4 expressly understood that, to the extent a Released Party is not a Party to this  
5 Agreement, all such Released Parties are intended third party beneficiaries of this  
6 Agreement.

7 29. “Releasing Parties” means Plaintiffs and all Class Members, and any  
8 person claiming by or through each Class Member, including but not limited to  
9 spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates,  
10 co-owners, attorneys, agents, administrators, predecessors, successors, assignees,  
11 representatives of any kind, shareholders, partners, directors, or affiliates.

12 30. “Request For Exclusion” means the written communication that must be  
13 sent to the Settlement Administrator and postmarked on or before the Opt-Out Date  
14 by a Class Member who wishes to be excluded from the Class.

15 31. “Settlement” means the settlement embodied in this Agreement,  
16 including all attached exhibits (which are an integral part of this Agreement and are  
17 incorporated in their entirety by reference).

18 32. “Settlement Administrator” means Heffler Claims Group.

19 33. “Settlement Administration Expenses” means the expenses incurred by  
20 the Settlement Administrator assisting with the implementation of this Agreement,  
21 which shall primarily result from administering the notice program and processing all  
22 claims made by Class Members.

23 34. “Summary Notice” means the summary notice of the proposed  
24 settlement, substantially in the form attached hereto as Exhibit F.

25 35. “Unknown Claims” means any and all Released Claims that a Class  
26 Member, or anyone acting on behalf of or in the Class Member’s interest, does not  
27 know or suspect to exist against any of the Released Parties relating to any Subject  
28 Product, which, if known, might have affected his or her decision to enter into or to

1 be bound by the terms of this Agreement. The Plaintiffs and Class Members  
2 acknowledge that they may hereafter discover facts in addition to or different from  
3 those that they now know or believe to be true concerning the subject matter of this  
4 Agreement, but nevertheless fully, finally, and forever settle and release any and all  
5 Released Claims, monetary, injunctive, or equitable, known or unknown, suspected  
6 or unsuspected, contingent or non-contingent, which now exist, may hereafter exist,  
7 or heretofore have existed which arise from, or in any way relate to, the labeling,  
8 packaging, sale, distribution, supply, marketing, testing, or advertising, regardless of  
9 medium, of any Subject Product, without regard to subsequent discovery or existence  
10 of such different or additional facts concerning each of the Released Parties.  
11 Notwithstanding this paragraph or any other paragraph herein, this Agreement shall  
12 not be deemed to release any individual, class, representative, group or collective  
13 claim, liability, right, demand, suit, matter, obligation, damage, loss, action or cause  
14 of action, of any kind or description that a Releasing Party has or may have for  
15 personal injuries.

16 **III. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR**  
17 **REVIEW AND APPROVAL**

18 36. As soon as is practicable following the signing of this Agreement, Class  
19 Counsel shall apply to the Court for entry of the Preliminary Approval Order  
20 (substantially in the form attached as Exhibit D), for the purpose of, among other  
21 things:

- 22 (a) Approving the Class Notice, including the Long Form Notice and  
23 Summary Notice, substantially in the form set forth at Exhibits E and F;  
24 (b) Finding that the requirements for preliminary certification of the  
25 Class have been satisfied, appointing Plaintiffs as the representatives of the Class and  
26 their counsel as Class Counsel, and preliminarily approving the Settlement as being  
27 within the range of reasonableness such that the Class Notice should be provided  
28

1 pursuant to this Agreement;

2 (c) Scheduling the Fairness Hearing on a date ordered by the Court,  
3 provided in the Preliminary Approval Order, and in compliance with applicable law,  
4 to determine whether the Settlement should be approved as fair, reasonable, and  
5 adequate, and to determine whether a Final Order and Final Judgment should be  
6 entered dismissing the Action with prejudice.

7 (d) Determining that the notice of the Settlement and of the Fairness  
8 Hearing, as set forth in this Agreement, complies with all legal requirements,  
9 including but not limited to the Due Process Clause of the United States Constitution;

10 (e) Preliminarily approving the form of the Final Order and Final  
11 Judgment;

12 (f) Appointing Heffler Claims Group as the Settlement  
13 Administrator;

14 (g) Directing that Class Notice shall be given to the Class as provided  
15 in Section V of this Agreement.

16 (h) Providing that Class Members will have until the Claim Deadline  
17 to submit Claim Forms;

18 (i) Providing that any objections by any Class Member to the  
19 certification of the Class and the proposed Settlement contained in this Agreement,  
20 and/or the entry of the Final Order and Final Judgment, shall be heard and any papers  
21 submitted in support of said objections shall be considered by the Court at the  
22 Fairness Hearing only if, on or before the Objection Deadline set by the Court, such  
23 objector files with the Court a written objection and notice of the objector's intention  
24 to appear, and otherwise complies with the requirements in Section IX of this  
25 Agreement;

26 (j) Establishing dates by which the Parties shall file and serve all  
27 papers in support of the application for final approval of the Settlement and/or in  
28 response to any valid and timely objections;

1 (k) Providing that all Class Members will be bound by the Final  
2 Order and Final Judgment dismissing the Action with prejudice unless such members  
3 of the Class timely file valid written Requests for Exclusion in accordance with this  
4 Agreement and the Class Notice;

5 (l) Providing that Class Members wishing to exclude themselves  
6 from the Settlement will have until the Opt-Out Date to submit a valid written  
7 Request for Exclusion to the Settlement Administrator, in accordance with the  
8 procedures set forth in Section IX of this Agreement;

9 (m) Directing the Parties, pursuant to the terms and conditions of this  
10 Agreement, to take all necessary and appropriate steps to establish the means  
11 necessary to implement the Settlement;

12 (n) Pending the Fairness Hearing, vacating any litigation deadlines  
13 and staying all proceedings in the Action, other than proceedings necessary to carry  
14 out or enforce the terms and conditions of this Agreement and the Preliminary  
15 Approval Order; and

16 (o) Pending the Fairness Hearing, enjoining Plaintiffs and Class  
17 Members, or any of them, from commencing or prosecuting, either directly or  
18 indirectly, any action in any forum (state or federal) asserting any Released Claims.

19 37. Following the entry of the Preliminary Approval Order, the Class Notice  
20 shall be given and published in the manner directed and approved by the Court, as set  
21 forth in fuller detail in Section V of this Agreement.

22 38. At the Fairness Hearing, the Parties shall seek to obtain from the Court a  
23 Final Order and Final Judgment in the form substantially similar to Exhibits A and  
24 Exhibit B, respectively. The Final Order and Final Judgment shall, among other  
25 things:

26 (a) Find that the Court has personal jurisdiction over all Class  
27 Members, the Court has subject matter jurisdiction over the claims asserted in the  
28 Action, and that venue is proper;

1 (b) Finally approve the Agreement and the Settlement pursuant to  
2 Rule 23 of the Federal Rules of Civil Procedure;

3 (c) Certify the Class for settlement purposes only;

4 (d) Find that the notice to the Class complied with all laws and  
5 requirements, including, but not limited to, the Due Process Clause of the United  
6 States Constitution;

7 (e) Incorporate and effectuate the release set forth in the Agreement  
8 and make the release effective as of the date of the Final Order and Final Judgment;

9 (f) Authorize the Parties to implement the terms of the Settlement;

10 (g) Dismiss the Action with prejudice; and

11 (h) Notwithstanding the aforementioned dismissal with prejudice,  
12 retain jurisdiction relating to the administration, consummation, enforcement, and  
13 interpretation of the Agreement, the Final Order and Final Judgment, any final order  
14 approving Attorneys' Fees and Expenses and incentive awards, and for any other  
15 necessary purpose.

16 39. The Parties acknowledge that each intends to implement the terms of this  
17 Agreement. The Parties shall, in good faith, cooperate and assist with and undertake  
18 all reasonable actions and steps to accomplish all required events on the schedule set  
19 by the Court, and shall use reasonable efforts to implement all terms and conditions  
20 of this Agreement. In the event the Court does not preliminarily or finally approve  
21 this Agreement, the Parties further agree to continue to cooperate in good faith in an  
22 attempt to address any deficiencies raised by the Court in an expeditious manner.

23 **IV. THE SETTLEMENT CONSIDERATION**

24 The consideration for this Settlement will be distributed in the form of cash  
25 payments and product vouchers as follows:

26 **A. Settlement Fund and Awards to Class Members**

27 40. Total Financial Commitment: Defendants' total financial commitment  
28 under the Settlement shall be two million five hundred thousand dollars

1 (\$2,500,000.00) in cash (the “Cash Settlement Fund”) and 1.5 million vouchers with  
2 a current value of between approximately \$2.00 and \$2.49 per voucher. The Cash  
3 Settlement Fund shall be used for any Court ordered Attorneys’ Fees and Expenses,  
4 Plaintiffs’ incentive awards, any and all Settlement Administration Expenses, and all  
5 cash awards paid to Class Members. That is, under no circumstances will Defendants  
6 be obligated to contribute more than \$2.5 million in cash. The Cash Settlement Fund  
7 and the vouchers are non-reversionary.

8 41. Cash or Voucher Option: Class Members who (a) execute and submit a  
9 valid Claim Form on or before the Claim Deadline; and (b) attest under the penalty of  
10 perjury that they purchased or consumed one or more of the Subject Products during  
11 the Class Period and comply with all other conditions and requirements specified  
12 herein, may opt to receive either a cash award or a product voucher (but not both) as  
13 follows:

14 (a) Cash Award Option: The relief to be provided to each Authorized  
15 Claimant who (i) submits a valid Claim Form on or before the Claim Deadline  
16 pursuant to the terms and conditions of this Agreement, and (ii) opts to receive a cash  
17 award, which is a \$4.00 cash award for each Subject Product the Authorized  
18 Claimant purchased or consumed during the Class Period, up to a maximum of five  
19 (5) claims (or \$20.00 in cash) per household without proof of purchase.

20 (b) Product Voucher Option: The relief to be provided to each  
21 Authorized Claimant who (i) submits a valid Claim Form on or before the Claim  
22 Deadline pursuant to the terms and conditions of this Agreement, and (ii) opts to  
23 receive a product voucher award in lieu of the cash award described in section (a)  
24 above, is a product voucher. The product vouchers will be fully and freely  
25 transferrable. The product vouchers will entitle the bearer of the voucher, upon the  
26 purchase of a regularly-priced entrée at a company owned Smashburger-branded  
27 restaurant, to either: a) upgrade a single beef hamburger to a double beef hamburger  
28 for no additional cost; or b) get a small fountain drink for no additional cost.



1 Authorized Claimants may elect to receive up to 10 product vouchers. Currently, an  
2 upgrade from a single beef hamburger to a double beef hamburger generally costs  
3 approximately \$2.00, and a small fountain drink generally costs approximately \$2.49.  
4 To the extent that all vouchers are not claimed, then a donation of the residual amount  
5 of the vouchers will be made to a charitable organization as described below. The  
6 vouchers shall, subject to reasonable measures to prevent fraud, duplicating or  
7 counterfeiting of vouchers, be redeemable at any Smashburger-branded, company-  
8 owned restaurant (but will not be redeemable at any franchisee-owned restaurant).

9 (c) Timing of Awards: Defendants shall pay the Settlement  
10 Administrator the two million five hundred thousand dollars (\$2,500,000.00) cash  
11 component of the settlement within 14 calendar days of the Court's issuance of the  
12 Preliminary Approval Order. All Class Members who submit Claim Forms shall be  
13 sent cash awards or product vouchers or, as applicable, a letter explaining the  
14 rejection of their Claim Forms, within forty-five (45) calendar days of the Effective  
15 Date (the "Award Issuance Date"). All cash awards to Class Members will be in the  
16 form of checks, or, at the option of the Class Member, through electronic means such  
17 as PayPal or Zelle, and such checks or payment will state that they must be redeemed  
18 within 120 calendar days of the Award Issuance Date (the "Expiration Date") or they  
19 will become void. Defendants shall provide the Settlement Administrator with all  
20 product vouchers no later than fifteen (15) calendar days before the Award Issuance  
21 Date. The product vouchers will expire no earlier than two years after the Award  
22 Issuance Date.

23 42. Insufficient or Excess Funds: If the aggregate value of the cash rewards  
24 claimed by Authorized Claimants pursuant to valid and timely Claim Forms exceeds  
25 the Net Cash Amount, then the monetary value of the awards to be provided to each  
26 Authorized Claimant shall be reduced on an equal pro rata basis, such that the  
27 aggregate value of the awards does not exceed the Net Cash Amount. If the  
28 aggregate value of the cash rewards claimed by Authorized Claimants pursuant to

1 valid and timely Claim Forms is less than the Net Cash Amount, then the monetary  
2 value of the awards to be provided to each Authorized Claimant shall be increased on  
3 an equal pro rata basis, such that the aggregate value of the awards equals the Net  
4 Cash Amount. After the Award Issuance Date, the Settlement Administrator, in  
5 consultation with the Parties as necessary, shall determine each Authorized  
6 Claimant's pro rata share based upon each Authorized Claimant's Claim Form and  
7 the aggregate value of the awards claimed by Authorized Claimants.

8 43. Insufficient or Excess Vouchers: If more than 1.5 million vouchers are  
9 requested, then the number of vouchers per person will be reduced on an equal pro  
10 rata basis and if more than 1.5 million people request vouchers, then the vouchers  
11 will be distributed based on when they were requested. If fewer than 1.5 million  
12 vouchers are requested, the remaining vouchers will be donated to the Boys and Girls  
13 Club, or some other charitable organization chosen by the Defendants, subject to the  
14 Court's approval.

15 **V. NOTICE TO THE CLASS**

16 44. The Parties shall jointly recommend and retain Heffler Claims Group as  
17 the Settlement Administrator. Following the entry of the Preliminary Approval Order  
18 and the Court's appointment of the proposed Settlement Administrator, the  
19 Settlement Administrator shall disseminate the Class Notice as specified in the  
20 Preliminary Approval Order and in this Section, to comply with all applicable laws  
21 and requirements, including, but not limited to, the Due Process Clause of the United  
22 States Constitution. The Settlement Administrator shall develop a notice and claims  
23 administration program, subject to the approval of the Parties and the Court, designed  
24 to achieve at least 80% reach under a budget not to exceed \$400,000. If the costs of  
25 notice and claims administration exceeds this budget, the Settlement Administrator  
26 will make a motion to the Court for payment of its additional fees and costs. Direct  
27 notice will be provided to class members for whom Defendants have contact  
28 information including its SmashClub Rewards customer loyalty program. All costs

1 of notice and administration will be paid from the Cash Settlement Fund. Defendants  
2 will have the right to review, and reasonably approve, all notices and media plans.  
3 Following the dissemination of the Class Notice, the Settlement Administrator shall  
4 submit a declaration under the penalty of perjury attesting that the Class Notice has  
5 achieved at least 80% reach.

6 45. The Long Form Notice: The Long Form Notice, which shall be made  
7 available on the Settlement Website, to Class Members requesting a hard copy from  
8 the Settlement Administrator, and to Class Members that Defendants can identify in  
9 its records through reasonable effort, shall be in a form substantially similar to the  
10 document attached to this Agreement as Exhibit E, and shall comport to the following  
11 terms and requirements:

12 (a) General Terms: The Long Form Notice shall contain a plain and  
13 concise description of the nature of the Action and the proposed Settlement, including  
14 information on the definition of the Class, the identity of eligible Class Members,  
15 how the proposed Settlement would provide relief to Class Members, what claims are  
16 released under the proposed Settlement, and other relevant information.

17 (b) Opt-Out Rights: The Long Form Notice shall inform Class  
18 Members that they have the right to opt out of the Settlement. The Long Form Notice  
19 shall provide the deadlines and procedures for exercising this right.

20 (c) Objection to Settlement: The Long Form Notice shall inform  
21 Class Members of their right to object to the proposed Settlement and appear at the  
22 Fairness Hearing. The Class Notice shall provide the deadlines and procedures for  
23 exercising these rights.

24 (d) Fees and Expenses: Class Counsel will be seeking Attorneys'  
25 Fees and Expenses and Plaintiffs' incentive awards. Class Counsel will arrange for  
26 the motion to be posted to the Settlement Website.

27 (e) Claim Form: The Long Form Notice and Settlement Website  
28 shall include the Claim Form, which shall inform Class Members that they must fully

1 complete and timely return the Claim Form prior to the Claim Deadline to be eligible  
2 to obtain relief pursuant to this Agreement.

3 46. Internet Advertising Program: No later than the Notice Date, the  
4 Settlement Administrator shall cause notice of the settlement to be provided through  
5 digital advertising, pursuant to the Settlement Administrator's notice plan set forth in  
6 the declaration of the Settlement Administrator to be filed in support of preliminary  
7 approval of the Settlement.

8 47. Settlement Website: No later than the Notice Date, the Settlement  
9 Administrator shall establish and caused to be published an Internet website (the  
10 "Settlement Website"), [www.burgersettlement.com](http://www.burgersettlement.com) (or something appropriately  
11 similar if this domain is not available). All Internet advertising that is part of the  
12 Class Notice program will direct Class Members to the Settlement Website. The  
13 Settlement Website will allow Class Members to submit Claim Forms online and will  
14 contain information relevant to Class Members, including but not limited to all  
15 applicable deadlines, the Agreement, Class Notice, a downloadable Claim Form, all  
16 papers filed by the Parties in support of this Agreement (including Plaintiffs'  
17 anticipated motion for Attorneys' Fees and Expenses), orders of the Court pertaining  
18 to this Agreement, and contact information for reaching the Settlement Administrator  
19 via a toll-free telephone number, e-mail and U.S. mail. The Parties shall use  
20 reasonable efforts to agree on all information and documents to be posted on this  
21 website and no information shall be posted or provided on the website without the  
22 Parties' express approval. The website may be rendered inactive one hundred fifty  
23 (150) days after the Award Issuance Date. Settlement Administration Expenses  
24 include the costs associated with maintenance of the Settlement Website.

25 48. Toll-Free Telephone Number: Prior to the dissemination of the Class  
26 Notice, the Settlement Administrator shall establish a toll-free telephone number that  
27 will provide Settlement-related information to Class Members, pursuant to the terms  
28 and conditions of this Agreement. Settlement Administration Expenses include the

1 costs associated with maintenance of this toll-free telephone number. The Parties  
2 shall also create a protocol for the Settlement Administrator to refer Class Member  
3 inquiries to Class Counsel. The toll-free telephone number may be rendered inactive  
4 one hundred fifty (150) calendar days after the Award Issuance Date.

5 49. Nothing contained herein shall limit Class Counsel's ability to  
6 disseminate notice by publishing a link to the Settlement Website on their firm or  
7 attorneys' websites, Facebook pages, or social media accounts, provided that any  
8 such dissemination must comply with Paragraph 103 of this Agreement.

9 **VI. ATTORNEYS' FEES AND EXPENSES AND CLASS**  
10 **REPRESENTATIVE INCENTIVE AWARD**

11 50. In recognition of the time and effort the representative Plaintiffs  
12 expended in pursuing this action and in fulfilling their obligations and responsibilities  
13 as class representatives, and of the benefits conferred on all Class Members by the  
14 Settlement, Class Counsel may ask the Court for the payment of incentive awards to  
15 the representative Plaintiffs. Defendants will not oppose and Plaintiffs and Class  
16 Counsel will submit an application for an incentive award of five thousand dollars  
17 (\$5,000.00) to each Plaintiff. Any court-ordered incentive award will be paid to  
18 Plaintiffs from the Cash Settlement Fund no later than fifteen (15) calendar days after  
19 the Effective Date.

20 51. Class Counsel will make an application to the Court for an award of  
21 Attorneys' Fees and Expenses in the Action. Defendants will not have the right to  
22 challenge Class Counsel's entitlement to Attorneys' Fees and Expenses. Defendants  
23 will have the right to challenge the amount of Attorneys' Fees and Expenses  
24 requested by Class Counsel. The Parties have no agreement between themselves as  
25 to the amounts of Attorneys' Fees and Expenses that Class Counsel will request or  
26 that Defendants will oppose. The Attorneys' Fees and Expenses ordered by the Court  
27 shall represent Class Counsel's sole compensation under the Settlement and shall be  
28 inclusive of all fees and costs of Class Counsel to be paid from the Cash Settlement

1 Fund. Plaintiffs and Class Counsel agree that Defendants shall not pay or be  
2 obligated to pay Class Counsel in excess of any award of Attorneys' Fees and  
3 Expenses ordered by the Court. And in no event shall Defendants be obligated to pay  
4 Attorneys' Fees and Expenses (or any other payments) that would make Defendants'  
5 total cash payment towards the Settlement an amount in excess of two million five  
6 hundred thousand (\$2,500,000.00).

7 52. Any court-ordered Attorneys' Fees and Expenses shall be paid to Class  
8 Counsel from the Class Settlement Fund no later than thirty (30) calendar days after  
9 the Court's order awarding Attorneys' Fees and Expenses, provided that, pursuant to  
10 the terms of the undertaking attached as Exhibit G to this Agreement, any such  
11 Attorneys' Fees and Expenses will be repaid to Defendants by Class Counsel should  
12 the Court's order awarding Attorneys' Fees and Expenses or Final Approval Order be  
13 reversed on appeal and/or should the Settlement be terminated according to its terms.

14 53. Plaintiffs' Lead Counsel shall have the sole and absolute discretion to  
15 allocate the Attorneys' Fees and Expenses amongst Plaintiffs' Counsel and any other  
16 attorneys for Plaintiffs. Defendants shall have no liability or other responsibility for  
17 allocation of any such Attorneys' Fees and Expenses awarded, and, in the event that  
18 any dispute arises relating to the allocation of fees, Class Counsel agree to hold  
19 Defendants harmless from, and indemnify Defendants with respect to, any and all  
20 such liabilities, costs, and expenses, including attorneys' fees and dispute costs, of  
21 such dispute.

22 **VII. RELEASES AND DISMISSAL OF ACTION**

23 54. Upon the Effective Date, the Releasing Parties shall be deemed to have,  
24 and by operation of the Final Order and Final Judgment shall have, fully, finally and  
25 forever released, relinquished, and discharged all Released Claims against the  
26 Released Parties. In connection with the Released Claims, each Releasing Party shall  
27 be deemed as of the Effective Date to have expressly, knowingly, and voluntarily  
28 waived any and all provisions, rights, benefits conferred by Section 1542 of the

1 California Civil Code, and any statute, rule, and legal doctrine similar, comparable, or  
2 equivalent to Section 1542, which provides as follows:

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

9  
10 In connection with such waiver and relinquishment, the Releasing Parties hereby  
11 acknowledge that they are aware that they or their attorneys may hereafter discover  
12 claims or facts in addition to or different from those that they now know or believe  
13 exist with respect to Released Claims, but that it is their intention to hereby fully,  
14 finally, and forever settle and release all of the Released Claims, whether known or  
15 unknown, suspected or unsuspected, that they have against the Released Parties. In  
16 furtherance of such intention, the release herein given by the Releasing Parties shall  
17 be and remain in effect as a full and complete general release notwithstanding the  
18 discovery or existence of any such additional different claims or facts. Each of the  
19 Releasing Parties expressly acknowledges that he/she/it has been advised by  
20 his/her/its attorney of the contents and effect of Section 1542, and with knowledge,  
21 each of the Parties hereby expressly waives whatever benefits he/she/it may have had  
22 pursuant to such section. Releasing Parties are not releasing any claims for personal  
23 injuries. Plaintiffs acknowledge, and the Class Members shall be deemed by  
24 operation of the Final Judgment to have acknowledged, that the foregoing waiver was  
25 separately bargained for and a material element of the Settlement of which this  
26 release is a part.

27 55. Upon the Effective Date, the Action shall be dismissed with prejudice.  
28 Plaintiffs and Class Counsel shall have the responsibility for ensuring that the Action

1 is dismissed with prejudice in accordance with the terms of this Agreement.

2 56. The Court shall enter an order retaining jurisdiction over the Parties to  
3 this Agreement with respect to the future performance of the terms of this Agreement.  
4 In the event that any applications for relief are made, such applications shall be made  
5 to the Court.

6 57. Upon the Effective Date: (a) the Agreement shall be the exclusive  
7 remedy for any and all Released Claims of Plaintiffs and Class Members; and (b)  
8 Plaintiffs and the Class Members stipulate to be and shall be permanently barred and  
9 enjoined by Court order from initiating, asserting, or prosecuting against the Released  
10 Parties in any federal or state court or tribunal any and all Released Claims.

11 **VIII. ADMINISTRATION OF THE SETTLEMENT**

12 58. The Parties shall, subject to Court approval, retain Heffler Claims Group  
13 as the Settlement Administrator to help implement the terms of the Agreement.  
14 Subject to the terms and conditions of this Agreement, all costs and fees associated  
15 with the Settlement Administrator, including costs of providing Class Notice and  
16 reviewing and processing claims shall be paid from the Cash Settlement Fund.

17 59. In fulfilling its responsibilities, the Settlement Administrator shall be  
18 responsible for, without limitation: (a) consulting on and designing the notice to be  
19 disseminated to Class Members; (b) dissemination of Class Notice; (c) responding to  
20 requests from Class Counsel and/or Defense Counsel; and (d) otherwise assisting  
21 with administration of the Settlement.

22 60. The Settlement Administrator also shall be responsible for, without  
23 limitation, the dissemination of Class Notice and implementing the terms of the claim  
24 process and related administrative activities that include communications with Class  
25 Members concerning the Settlement, claim process, and their options thereunder. In  
26 particular, the Settlement Administrator shall be responsible for: (a) printing, e-  
27 mailing, mailing or otherwise arranging for the mailing of the Class Notice in  
28 response to Class Members' requests; (b) making any mailings required under the



1 terms of this Agreement; (c) establishing the Settlement Website; (d) establishing a  
2 toll-free voice line to which Class Members may refer for information about the  
3 Action and the Settlement; (e) receiving and maintaining any Class Member  
4 correspondence regarding requests for exclusion and objections to the Settlement; (f)  
5 forwarding inquiries from Class Members to Class Counsel or their designee for a  
6 response, if warranted; (g) establishing a post office box for the receipt of Claim  
7 Forms, exclusion requests, and any correspondence; (h) reviewing Claim Forms  
8 according to the review protocols agreed to by the Parties and standards set forth in  
9 this Agreement; and (i) otherwise implementing and/or assisting with the claim  
10 review process and payment of the claims.

11 61. The Settlement Administrator shall administer the Settlement in  
12 accordance with the terms of this Agreement and, without limiting the foregoing,  
13 shall: (a) treat any and all documents, communications and other information and  
14 materials received in connection with the administration of the Settlement as  
15 confidential and shall not disclose any or all such documents, communications or  
16 other information to any person or entity except as provided for in this Agreement or  
17 by court order; and (b) receive Requests for Exclusion and provide to Class Counsel  
18 and Defense Counsel a copy thereof within three (3) business days of receipt. If the  
19 Settlement Administrator receives any Requests for Exclusion after the deadline for  
20 the submission of such forms and requests, the Settlement Administrator shall  
21 promptly provide Class Counsel and Defense Counsel with copies thereof and receive  
22 and maintain all correspondence from any Class Member regarding the Settlement.

23 62. The Claim Form will be available for downloading and may be  
24 completed and submitted online at the Settlement Website, and, at Class Counsel's  
25 option, the Claim Form will be available for downloading on Class Counsel's  
26 websites. The Claim Form may also be requested by calling the toll-free number  
27 provided by the Settlement Administrator or by writing to the Settlement  
28 Administrator.

1           63. To be eligible for a cash award or product voucher, each Class Member  
2 must submit or postmark a Claim Form, on or before the Claim Deadline, containing  
3 his or her name, mailing address, and e-mail address, and an attestation, under  
4 penalty of perjury, that the Class Member purchased or consumed one or more  
5 Subject Products during the Class Period. The Claim Form will be deemed to have  
6 been submitted when the Claim Form is posted, if received with a postmark, or  
7 equivalent mark by a courier company indicated on the envelope or mailer and if  
8 mailed with pre-paid postage and addressed in accordance with the instructions set  
9 out in the Claim Form. In the case of online claims, the Claim Form shall be deemed  
10 to have been submitted when it is fully uploaded to the Settlement Website.

11           64. Any Class Member who, in accordance with the terms and conditions of  
12 this Agreement, neither seeks exclusion from the Class nor submits a valid and timely  
13 Claim Form, will not be entitled to receive any relief pursuant to this Agreement, but  
14 will be bound together with all Class Members by all of the terms of this Agreement,  
15 including the terms of the Final Order and Final Judgment to be entered in the Action  
16 and the releases provided for herein, and will be barred from bringing any action in  
17 any forum (state or federal) against any of the Released Parties concerning the  
18 Released Claims.

19           65. The Settlement Administrator shall use adequate and customary  
20 procedures and standards to determine whether a Claim Form meets the requirements  
21 set forth in this Agreement and to prevent the payment of fraudulent claims and/or  
22 pay only valid and eligible claims. Each Claim Form shall be submitted to and  
23 reviewed by the Settlement Administrator, who shall determine the extent, if any, to  
24 which each claim shall be allowed. The Settlement Administrator shall use all  
25 reasonable efforts and means to identify and reject duplicate and/or fraudulent claims,  
26 including, without limitation, indexing all awards provided to Class Members.

27           66. Claim Forms that do not meet the terms and conditions of this  
28 Agreement shall be promptly rejected by the Settlement Administrator. The

1 Settlement Administrator shall have forty-five (45) calendar days from the Effective  
2 Date to exercise the right of rejection. The Settlement Administrator shall notify the  
3 Class Member using the contact information provided in the Claim Form of the  
4 rejection, including via electronic mail. Class Counsel and Defense Counsel shall be  
5 provided with copies of all such notifications to Class Members. If any claimant  
6 whose Claim Form has been rejected, in whole or in part, desires to contest such  
7 rejection, the claimant must, within fifteen (15) business days from receipt of the  
8 rejection, transmit to the Settlement Administrator by e-mail or U.S. mail a notice and  
9 statement of reasons indicating the claimant's grounds for contesting the rejection,  
10 along with any supporting documentation, and requesting further review by the  
11 Settlement Administrator, in consultation with Class Counsel and Defense Counsel,  
12 of the denial of the claim. If Class Counsel and Defense Counsel cannot agree on a  
13 resolution of claimant's notice contesting the rejection, the disputed claim shall be  
14 presented to the Court or a referee appointed by the Court for summary and non-  
15 appealable resolution.

16 67. No person shall have any claim against Defendants, Defense Counsel,  
17 Plaintiffs, Plaintiffs' Counsel, the Class, Class Counsel, and/or the Settlement  
18 Administrator based on any eligibility determinations, distributions, or awards made  
19 in accordance with this Agreement. This provision does not affect or limit in any  
20 way the right of review by the Court or referee of any disputed Claim Forms as  
21 provided in this Agreement.

22 68. Class Counsel and Defense Counsel shall have the right to inspect the  
23 Claim Forms and supporting documentation received by the Settlement Administrator  
24 at any time upon reasonable notice.

25 69. Not later than seven (7) calendar days before the date of the Fairness  
26 Hearing, the Settlement Administrator shall file with the Court: (a) a list of those  
27 persons who have opted out or excluded themselves from the Settlement; and (b) the  
28 details regarding the number of valid Claim Forms received and processed by the

1 Settlement Administrator.

2 70. The Settlement Administrator may retain one or more persons to assist in  
3 the completion of its responsibilities.

4 71. The Settlement Administrator shall distribute benefits to eligible Class  
5 Members only after the Effective Date and pursuant to the deadlines set forth in  
6 Section 41(c) of this Agreement.

7 72. If the Settlement is not approved or for any reason the Effective Date  
8 does not occur, no payments or distributions of any kind shall be made pursuant to  
9 this Agreement, except as otherwise provided herein and except for the costs and  
10 expenses of the Settlement Administrator, for which Plaintiffs and/or Plaintiffs'  
11 Counsel are not responsible.

12 73. In the event the Settlement Administrator fails to perform its duties,  
13 and/or makes a material or fraudulent misrepresentation to, or conceals requested  
14 material information from, Class Counsel, Defendants, and/or Defense Counsel, then  
15 the party to whom the misrepresentation is made shall, in addition to any other  
16 appropriate relief, have the right to demand that the Settlement Administrator  
17 immediately be replaced. No party shall unreasonably withhold consent to remove  
18 the Settlement Administrator. The Parties will attempt to resolve any disputes  
19 regarding the retention or dismissal of the Settlement Administrator in good faith,  
20 and, if they are unable to do so, will refer the matter to the Court for resolution.

21 74. The Settlement Administrator shall coordinate with the Parties to  
22 provide notice as required by 28 U.S.C. § 1715, and the costs of such notice shall be  
23 considered Settlement Administration Expenses.

24 75. Defendants and the Released Parties are not obligated to (and will not be  
25 obligated to) compute, estimate, or pay any taxes on behalf of any Plaintiffs, any  
26 Class Member, Plaintiffs' Counsel, Class Counsel, and/or the Settlement  
27 Administrator.

1                    **IX. OBJECTIONS AND REQUESTS FOR EXCLUSION**

2            76. Members of the Class who fail to file, no later than the Objection  
3 Deadline, through the Court’s Case Management/Electronic Case Files (“CM/ECF”)  
4 system or through any other method in which the Court will accept objections, if any,  
5 and serve upon the Settlement Administrator, Class Counsel, and Defense Counsel,  
6 written objections in the manner specified in this Agreement and the Class Notice  
7 shall be deemed to have waived all objections and shall be foreclosed from making  
8 any objection (whether by appeal or otherwise) to the Settlement.

9            77. Any Class Member who intends to object to the fairness, reasonableness,  
10 and/or adequacy of the Settlement must, in addition to filing the written objection  
11 with the Court through the Court’s CM/ECF system (or any other method in which  
12 the Court will accept filings, if any) no later than the Objection Deadline, provide a  
13 copy of the written objection by U.S. mail or e-mail to the Settlement Administrator  
14 with a copy by U.S. Mail or e-mail to Class Counsel and Defense Counsel (at the  
15 addresses set forth below) postmarked no later than the Objection Deadline. Class  
16 Members who object must set forth in their written objection: (a) their full name; (b)  
17 current address; (c) a written statement of their objection(s) and the reasons for each  
18 objection; (d) a statement of whether they intend to appear at the Fairness Hearing  
19 (with or without counsel); (e) their signature; (f) a statement, sworn to under penalty  
20 of perjury, attesting to the fact that he or she purchased or consumed one or more of  
21 the Subject Products during the Class Period; (g) details of the purchase of the  
22 Subject Products, including the Subject Products purchased, and the date and location  
23 of purchase; and (h) the case name and number of the Action. Objections must be  
24 served on Class Counsel and Defense Counsel as follows:

25                    *Upon Class Counsel at:*

26                    L. Timothy Fisher  
27                    **BURSOR & FISHER P.A.**  
28                    1990 North California Blvd., Suite 940  
                      Walnut Creek, California 94596

1           ltfisher@bursor.com

2           *Upon Defense Counsel at:*

3           Dean J. Zipser  
4           Mark A. Finkelstein  
5           Adina W. Stowell  
6           **UMBERG ZIPSER LLP**  
7           1920 Main Street, Suite 750  
8           Irvine, California 92614  
9           dzipser@umbergzipser.com  
          mfinkelstein@umbergzipser.com  
          astowell@umbergzipser.com

10           78.    The Parties shall request that the Court allow any interested party to file  
11 a reply to any objection no later than seven (7) calendar days before the Fairness  
12 Hearing, or as the Court may otherwise direct.

13           79.    Members of the Class may also elect to opt out of the Settlement,  
14 relinquishing their rights to benefits hereunder. Members of the Class who opt out of  
15 the Settlement will not release their claims pursuant to this Agreement. Proposed  
16 Class Members wishing to opt out of the Settlement must send to the Settlement  
17 Administrator by U.S. Mail a Request for Exclusion postmarked no later than the  
18 Opt-Out Date. The Request for Exclusion must be a personally signed letter from the  
19 Class Member including (a) their full name; (b) current address; (c) a clear statement  
20 communicating that they elect to be excluded from the Class, do not wish to be a  
21 Class Member, and elect to be excluded from any judgment entered pursuant to the  
22 Settlement; (d) their signature; and (e) the case name and case number of the Action.  
23 Members of the Class who fail to submit a valid Request for Exclusion on or before  
24 the Opt Out Date shall, in accordance with this Agreement, be bound by all terms of  
25 this Agreement and the Final Order and Final Judgment, regardless of whether they  
26 have requested exclusion from the Settlement.

27           80.    Any member of the Class who submits a timely Request for Exclusion or  
28 opt out may not file an objection to the Settlement and shall be deemed to have

1 waived any rights or benefits under this Agreement. So-called “mass” or “class” opt  
2 outs shall not be allowed.

3 81. The Settlement Administrator shall promptly provide copies of all  
4 Requests for Exclusion, objections, and/or related correspondence from Class  
5 Members to Class Counsel and Defense Counsel. Not later than three (3) business  
6 days after the deadline for submission of Requests for Exclusion, the Settlement  
7 Administrator shall provide to Class Counsel and Defense Counsel a complete list of  
8 Class Members requesting exclusion from the Settlement together with copies of the  
9 Requests for Exclusion. Notwithstanding any other provision of this Agreement, if  
10 more than five percent of the Class opt out of the Settlement, Defendants, in their sole  
11 discretion, may rescind and revoke the entire Settlement and this Agreement, thereby  
12 rendering the Settlement null and void in its entirety, by sending written notice that  
13 Defendants revoke the settlement pursuant to this paragraph to Class Counsel within  
14 twenty (20) business days following the date the Settlement Administrator informs  
15 Defendants of the number of Class members who have requested to opt out of the  
16 Settlement pursuant to the provisions set forth above. If Defendants rescind the  
17 Settlement pursuant to this paragraph, they shall have no further obligations to pay  
18 into the settlement and shall be paid back any money they have contributed to the  
19 Class Settlement Fund. Defendants shall only be responsible for the fees and  
20 expenses actually incurred by the Settlement Administrator, for which Plaintiffs and  
21 their Counsel are not liable.

22 82. On the date set forth in the Preliminary Approval Order, a Fairness  
23 Hearing shall be conducted to determine final approval of the Settlement. A Motion  
24 in support of the Fairness Hearing shall be filed no later than fourteen (14) calendar  
25 days after the deadline to object or opt out of the Settlement. Upon final approval of  
26 the Settlement by the Court at or after the Fairness Hearing, the Parties shall present  
27 the Final Order and Final Judgment, substantially in the form attached to this  
28 Agreement as Exhibits A and B, and a final order approving Attorneys’ Fees and

1 Expenses and incentive award, to the Court for approval and entry. Class Members  
2 who wish to be heard at the Fairness Hearing (whether individually or through  
3 separate counsel) and are objecting to the Settlement shall comply with the provisions  
4 of this Agreement. Class Members who wish to be heard at the Fairness Hearing  
5 (whether individually or through separate counsel) and are not objecting to the  
6 Settlement shall file a notice of appearance with the Court's CM/ECF system or  
7 through any other method in which the Court will accept filings, if any, and serve  
8 upon Class Counsel and Defense Counsel at the addresses indicated above at least  
9 seven (7) calendar days before the Fairness Hearing.

10 **X. SCOPE AND EFFECT OF CONDITIONAL CERTIFICATION OF THE**  
11 **CLASS SOLELY FOR PURPOSES OF SETTLEMENT**

12 83. For purposes of settlement only, the Parties agree to seek preliminary  
13 certification, pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), of a  
14 damages and injunctive relief Class on a nationwide basis, including United States  
15 territories. The Parties further agree that the Court should make preliminary findings  
16 and enter the Preliminary Approval Order (substantially in the form attached at  
17 Exhibit D) granting preliminary certification of the Class subject to final findings and  
18 ratification in the Final Order and Final Judgment, and appointing Plaintiffs as the  
19 representative of the Class and Class Counsel as counsel for the Class.

20 84. Defendants do not consent to certification of the Class for any purpose  
21 other than to effectuate the Settlement of the Action or otherwise admit that the  
22 litigation of any claims that have or could have been asserted in the Action on a  
23 classwide basis is appropriate under applicable laws and standards. Defendants'  
24 agreement to conditional certification does not constitute an admission of  
25 wrongdoing, fault, liability, or damage of any kind to Plaintiffs or any of the putative  
26 class members.

27 85. If this Agreement is terminated pursuant to its terms, disapproved by any  
28 court (including any appellate court), and/or not consummated for any reason, or the



1 Effective Date for any reason does not occur, the order certifying the Class for  
2 purposes of effectuating this Agreement, and all preliminary and/or final findings  
3 regarding that class certification order, shall be automatically vacated upon notice of  
4 the same to the Court, the Action shall proceed as though the Class had never been  
5 certified pursuant to this Agreement and such findings had never been made, the  
6 Action shall return to the procedural status quo in accordance with this paragraph,  
7 and nothing in this Agreement or other papers or proceedings related to the  
8 Settlement shall be used as evidence or argument by any Party concerning whether  
9 the Action may properly be maintained as a class action, whether the purported class  
10 is ascertainable, whether the case has any merit, or whether Class Counsel or the  
11 Plaintiffs can adequately represent the Class Members under applicable law.

12 **XI. MODIFICATION OR TERMINATION OF THE SETTLEMENT**

13 86. If the preconditions necessary to trigger the Effective Date (as set forth  
14 in this Agreement) are not met, this Agreement shall be cancelled and terminated  
15 unless Defense Counsel and Class Counsel mutually agree in writing to proceed with  
16 and effectuate this Agreement.

17 87. The terms and provisions of this Agreement may be amended, modified,  
18 or expanded by written agreement of the Parties and approval of the Court; provided,  
19 however that, after entry of the Final Order and Final Judgment, the Parties may by  
20 written agreement effect such amendments, modifications, or expansions of this  
21 Agreement and its implementing documents (including all exhibits hereto) without  
22 further notice to the Class or approval by the Court if such changes are consistent  
23 with the Court's Final Order and Final Judgment and do not materially alter, reduce  
24 or limit the rights of Class Members under this Agreement.

25 88. Either Party may terminate this Agreement by providing written notice  
26 to the other Party and the Court within twenty (20) days of the occurrence of the  
27 following: (a) The preliminary or final approval of this Agreement is not obtained  
28 without substantial modification, which modification the Parties did not agree to and

1 which modification the terminating Party deems in good faith to be material (*e.g.*,  
2 because it significantly increases the costs of the settlement or deprives the  
3 terminating party of an expressly stated benefit of the settlement); or (b) The Final  
4 Order and Final Judgment is reversed, vacated, or modified in any material respect by  
5 another court, except that it is expressly agreed by the Parties that any reduction of  
6 the Court's award of Attorneys' Fees and Expenses shall not be grounds to terminate  
7 this Agreement.

8 89. In the event that this Agreement is not approved by the Court or the  
9 settlement set forth in this Agreement is terminated or fails to become effective in  
10 accordance with its terms, the Parties shall be restored to their respective pre-  
11 settlement positions in the Action, including with regard to any agreements  
12 concerning tolling and similar agreements, and this entire Agreement shall be null  
13 and void, shall have no further force and effect with respect to any Party in the  
14 Action, and shall not be offered in evidence or used in any litigation for any purpose,  
15 including the existence, certification, or maintenance of any purported class or  
16 Defendants' liability with respect to the claims that are, were or could have been  
17 asserted in the Action. In the event of such, this Agreement and all negotiations,  
18 proceedings, documents prepared, and statements made in connection with it shall be  
19 without prejudice to the Parties, shall not be admissible for any purpose whatsoever,  
20 and shall not be deemed or construed to be an admission or confession by any Party  
21 of any fact, matter, or proposition of law, and shall not be used in any manner for any  
22 purpose, and all Parties to the Action shall stand in the same position as if this  
23 Agreement had not been negotiated, made, or filed with the Court.

24 90. In the event of termination, the terminating Party shall cause the  
25 Settlement Administrator to post information regarding the termination on the  
26 Settlement Website.

27 **XII. SETTLEMENT NOT EVIDENCE AGAINST PARTIES**

28 91. The Parties expressly acknowledge and agree that this Agreement and its

1 exhibits, along with all related drafts, motions, pleadings, conversations, negotiations,  
2 and correspondence, constitute an offer of compromise and a compromise within the  
3 meaning of Federal Rule of Evidence 408 and any equivalent state law or rule. In no  
4 event shall this Agreement, any of its provisions or any negotiations, statements or  
5 court proceedings relating to its provisions in any way be construed as, offered as,  
6 received as, used as, or deemed to be evidence of any kind in the Action, any other  
7 action, or in any judicial, administrative, regulatory or other proceeding, except in a  
8 proceeding to enforce this Agreement or the rights of the Parties or their counsel.

9 Without limiting the foregoing, neither this Agreement nor any related negotiations,  
10 statements, or court proceedings shall be construed as, offered as, received as, used as  
11 or deemed to be evidence or an admission or concession of any liability or  
12 wrongdoing whatsoever on the part of any person or entity, including, but not limited  
13 to, Defendants, the Released Parties, Plaintiffs, or the Class, or as a waiver by  
14 Defendants, the Released Parties, Plaintiffs, or the Class of any applicable privileges,  
15 claims or defenses.

16 92. The provisions contained in this Agreement are not and shall not be  
17 deemed a presumption, concession, or admission by Defendants of any default,  
18 liability or wrongdoing as to any facts or claims alleged or asserted in the Action, or  
19 in any actions or proceedings, nor shall they be interpreted, construed, deemed,  
20 invoked, offered, or received in evidence or otherwise used by any person in the  
21 Action, or in any other action or proceeding, whether civil, criminal or administrative.  
22 Defendants expressly deny the allegations in the Action. Defendants do not admit  
23 that they or any of the Released Parties has engaged in any wrongful activity or that  
24 any person has sustained any damage by reason of any of the facts complained of in  
25 the Action. And Defendants do not consent to certification of the Class for any  
26 purpose other than to effectuate the Settlement of the Action or otherwise admit that  
27 the treatment of any claims that have been or could have been asserted in the Action  
28 on a classwide basis is appropriate.

**XIII. BEST EFFORTS**

1  
2 93. Class Counsel shall take all necessary actions to accomplish approval of  
3 the Settlement, the Class Notice, and dismissal of the Action. The Parties (including  
4 their counsel, successors, and assigns) agree to cooperate fully and in good faith with  
5 one another and to use their best efforts to effectuate the Settlement, including  
6 without limitation in seeking preliminary and final Court approval of the Agreement  
7 and the Settlement embodied herein, carrying out the terms of this Agreement, and  
8 promptly agreeing upon and executing all such other documentation as may be  
9 reasonably required to obtain final approval by the Court of the Settlement. In the  
10 event that the Court fails to approve the Settlement or fails to issue the Final Order  
11 and Final Judgment, the Parties agree to use all reasonable efforts, consistent with  
12 this Agreement and subject to Section XI, to cure any defect identified by the Court.

13 94. Each party will cooperate with the other party in connection with  
14 effectuating the Settlement or the administration of claims thereunder. Any requests  
15 for cooperation shall be narrowly tailored and reasonably necessary for the requesting  
16 party to recommend the Settlement to the Court, and to carry out its terms.

**XIV. MISCELLANEOUS PROVISIONS**

17  
18 95. The Parties agree that the recitals are contractual in nature and form a  
19 material part of this Agreement.

20 96. This Agreement and its accompanying exhibits set forth the entire  
21 understanding of the Parties. No change or termination of this Agreement shall be  
22 effective unless in writing and signed by Plaintiffs' Counsel and Defense Counsel.  
23 No extrinsic evidence or parol evidence shall be used to interpret this Agreement.

24 97. Any and all previous agreements and understandings between or among  
25 the Parties regarding the subject matter of this Agreement, whether written or oral,  
26 are superseded and hereby revoked by this Agreement. The Parties expressly agree  
27 that the terms or conditions of this Agreement will control over any other written or  
28 oral agreements.

1           98. All of the Parties warrant and represent that they are agreeing to the  
2 terms of this Agreement based upon the legal advice of their respective attorneys, that  
3 they have been afforded the opportunity to discuss the contents of this Agreement  
4 with their attorneys and that the terms and conditions of this document are fully  
5 understood and voluntarily accepted.

6           99. The waiver by any party of a breach of any term of this Agreement shall  
7 not operate or be construed as a waiver of any subsequent breach by any party. The  
8 failure of a party to insist upon strict adherence to any provision of the Agreement  
9 shall not constitute a waiver or thereafter deprive such party of the right to insist upon  
10 strict adherence.

11           100. The headings in this Agreement are inserted merely for the purpose of  
12 convenience and shall not affect the meaning or interpretation of this document.

13           101. This Agreement may be executed by facsimile signature and in  
14 counterparts, each of which shall be deemed an original and all of which, when taken  
15 together, shall constitute one and the same instrument. The date of execution shall be  
16 the latest date on which any party signs the Agreement.

17           102. This Agreement has been negotiated among and drafted by Class  
18 Counsel and Defense Counsel. Plaintiffs, Plaintiffs' Counsel, Class Members, and  
19 Defendants shall not be deemed to be the drafter of this Agreement or of any  
20 particular provision, nor shall they argue that any particular provision should be  
21 construed against its drafter or otherwise resort to the contra proferentem canon of  
22 construction. Accordingly, this Agreement should not be construed in favor of or  
23 against one party as to the drafter, and the Parties agree that the provisions of  
24 California Civil Code § 1654 and common law principles of construing ambiguities  
25 against the drafter shall have no application. All Parties agree that counsel for the  
26 Parties drafted this Agreement during extensive arm's-length negotiations. No parol  
27 or other evidence may be offered to explain, construe, contradict, or clarify its terms,  
28 the intent of the Parties or their counsel, or the circumstances under which this

1 Agreement was made or executed.

2 103. Except in connection with any court filing or proceeding, or the  
3 dissemination of notice to the Class or as otherwise provided in this Agreement,  
4 Plaintiffs and Class Counsel will not issue any press releases regarding the Settlement  
5 or the Action without prior approval of Defendants. Plaintiffs and Class Counsel  
6 agree not to disparage Defendants, Defense Counsel, or the Settlement in the media,  
7 through any public statements, or otherwise and agree to never publicly state that  
8 Defendants have engaged in any wrongdoing in connection with the Subject  
9 Products. Defendants agree not to disparage Plaintiffs, Class Counsel, or the  
10 Settlement in the media, through any public statements, or otherwise.

11 104. Each individual Defendant represents and warrants that the individual(s)  
12 executing this Agreement on behalf of that Defendant are authorized to enter into this  
13 Agreement on behalf of that Defendant.

14 105. Any disagreement and/or action to enforce this Agreement shall be  
15 commenced and maintained only in the Court in which this Action is pending.

16 106. Whenever this Agreement requires or contemplates that one of the  
17 Parties shall or may give notice to the other to the addresses set forth above, such  
18 notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays  
19 and Legal Holidays) express delivery service.

20 107. The Parties reserve the right, subject to the Court's approval, to agree to  
21 any reasonable extensions of time that might be necessary to carry out any of the  
22 provisions of this Agreement.

23 108. Plaintiffs expressly affirm that the allegations contained in the  
24 complaints filed in the Action were made in good faith and have a basis in fact, but  
25 consider it desirable for the Action to be settled and dismissed because of the  
26 substantial benefits that the proposed Settlement will provide to Class Members.

27 109. In the event any one of the provisions contained in this Agreement shall  
28 for any reason be held to be invalid, illegal, or unenforceable in any respect, such

1 invalidity, illegality, or unenforceability shall not affect other provisions if Defense  
2 Counsel and Class Counsel, on behalf of the Parties, mutually elect to proceed as if  
3 such invalid, illegal, or unenforceable provision had never been included in this  
4 Agreement.

5  
6 IN WITNESS WHEREOF, the Parties hereto, by and through their respective  
7 attorneys, and intending to be legally bound hereby, have duly executed this  
8 Agreement as of the date set forth below.

9  
10 **AGREED AND ACCEPTED:**


11  
12 **PLAINTIFFS' COUNSEL**

13  
14 Dated: Feb 24, 2021, 2021

  
Timothy Fisher (Feb 24, 2021 12:16 PST)

15 By: L. Timothy Fisher  
16 Bursor & Fisher P.A.  
17 Lead Counsel for Plaintiffs and the Class

18 Dated: March 1, 2021



19 By: Tina Wolfson  
20 Ahdoot & Wolfson, P.C.  
21 Attorneys for Plaintiffs

22 Dated: Feb 24, 2021, 2021


  
Marc Reich (Feb 24, 2021 12:48 PST)

23 By: Marc Reich  
24 Reich Radcliffe & Hoover LLP  
25 Attorneys for Plaintiffs  
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**DEFENSE COUNSEL**

Dated: 2/24, 2021

  
\_\_\_\_\_  
By: Dean J. Zipser  
Umberg Zipser LLP  
Attorneys for Defendants



**EXHIBIT A**

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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 \_\_\_\_\_, 2021, to settle *In Re: Smashburger IP*  
4 *Holder, LLC, et al*, Lead Case No. 2:19-CV-00993-JAK-(JEMx), pending in the  
5 United States District Court for the Central District of California (the “Action”).

6 WHEREAS, by Order dated \_\_\_\_\_, 2021 (the “Preliminary  
7 Approval Order”), this Court granted preliminary approval of the proposed class  
8 action settlement between the parties in the Action, ordering the dissemination of  
9 Class Notice to potential Class Members, and providing potential Class Members  
10 with an opportunity either to exclude themselves from the Class or to object to the  
11 proposed settlement and issuing related Orders.

12 WHEREAS, the Court also preliminarily certified a Class, for settlement  
13 purposes only, approved the procedure for giving notice and forms of notice, and  
14 set a Fairness Hearing to take place on \_\_\_\_\_, 2021. On that date,  
15 the Court held a duly noticed Fairness Hearing to consider: (1) whether the terms  
16 and conditions of the Agreement are fair, reasonable, and adequate; (2) whether a  
17 judgment should be entered dismissing Plaintiffs’ complaint on the merits and with  
18 prejudice in favor of Defendants and the Released Parties and against all persons  
19 who are Class Members pursuant and subject to the terms of the Agreement;  
20 (3) whether and in what amount to award Incentive Awards to Plaintiffs; and  
21 (4) whether and in what amount to award Attorneys’ Fees and Expenses to  
22 Plaintiffs’ Counsel.

23 WHEREAS, the Court, having considered the papers submitted by the Parties  
24 and by all other persons who timely submitted papers in accordance with the  
25 Preliminary Approval Order, and having heard oral presentations by the Parties and  
26 all persons who complied with the Preliminary Approval Order, and based on all of  
27 the foregoing, together with this Court’s familiarity with the Action, it is hereby  
28 **ORDERED, ADJUDGED, AND DECREED** as follows:

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

4           2.     Incorporation of Other Documents. This Final Order Approving Class  
5 Action Settlement incorporates and makes a part hereof: (a) the Agreement,  
6 including all amendments and exhibits thereto, and definitions included therein,  
7 which was signed and filed with this Court on \_\_\_\_\_, 2021; (b) the  
8 briefs, affidavits, declarations, and other materials filed in support of the Settlement  
9 and Plaintiffs' Counsel's request for an award of Attorneys' Fees and Expenses;  
10 (c) the record at the Fairness Hearing; (d) the documents listed on the docket sheet  
11 or otherwise submitted to the Court; and (e) all prior proceedings in the Action.

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

24           4.     Final Class Certification for Settlement Purposes Only. The Class  
25 preliminarily certified by this Court is hereby finally certified, for settlement  
26 purposes only, under Fed. R. Civ. P. 23(a), (b)(2), (b)(3), and (c)(2), the Court  
27 finding that the Class fully satisfies all the applicable requirements of Fed. R. Civ.  
28 P. 23 and due process. The Class shall consist of all persons in the United States

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

12 5. Requests for Exclusion. The Court finds that only those persons listed  
13 in Exhibit A to this Order have submitted timely and valid Requests for Exclusion  
14 from the Class and are therefore not bound by this Final Order and the  
15 accompanying Final Judgment. Plaintiffs’ Counsel and Defense Counsel may  
16 mutually agree to allow additional Class Members to exclude themselves or to  
17 withdraw their exclusion requests by filing an appropriate notice with the Court.

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

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.  
28

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).



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 Heffler Claims Group and under  
19 the terms set forth in the Agreement. The Cash Settlement Fund and the vouchers  
20 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  
28

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.

19  
20 DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable John A. Kronstadt  
UNITED STATES DISTRICT JUDGE

**EXHIBIT B**

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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 JUDGMENT**

Judge: John A. Kronstadt



1 IT IS on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, HEREBY ADJUDGED  
2 AND DECREED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 58  
3 THAT:

4 1. The Settlement of *In Re: Smashburger IP Holder, LLC, et al*, Lead  
5 Case No. 2:19-CV-00993-JAK-(JEMx), pending in the United States District Court,  
6 Central District of California (the “Action”), on the terms set forth in the Parties’  
7 Stipulation of Class Action Settlement, with exhibits (collectively, the  
8 “Agreement”), and definitions included therein, signed and filed with this Court on  
9 \_\_\_\_\_, 2021, is finally approved.

10 2. The following class is granted final certification, for settlement  
11 purposes only, under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3): all persons in the  
12 United States and United States Territories who purchased and/or consumed one or  
13 more of the Subject Products during the Class Period. Specifically excluded from  
14 the Class are: (a) Defendants and their employees, principals, officers, directors,  
15 agents, affiliated entities, legal representatives, successors, and assigns; (b) the  
16 judges to whom the Action has been or is assigned and any members of their  
17 immediate families; (c) those who purchased the Subject Products for the purpose  
18 of resale; and (d) all persons who have filed a timely Request for Exclusion from  
19 the Class. The “Subject Products” are all hamburgers sold under the Smashburger  
20 brand during the Class Period that included the phrase “Triple Double,” including  
21 but not limited to the Triple Double, Bacon Triple Double, French Onion Triple  
22 Double, and Pub Triple Double.

23 3. The dissemination of the Class Notice in accordance with the terms of  
24 the Agreement and this Court’s Preliminary Approval Order, as described in the  
25 Settlement Administrator’s Declaration filed before the Fairness Hearing:  
26 (a) constituted the best practicable notice to Class Members under the  
27 circumstances; (b) constituted notice that was reasonably calculated, under the  
28 circumstances, to apprise Class Members of the pendency of the Action, the terms

1 of the Settlement, and their rights under the Settlement, including, but not limited  
2 to, their right to object to any aspect of the proposed Settlement or exclude  
3 themselves from the proposed Settlement and to appear at the Fairness Hearing, and  
4 the binding effect of the Final Orders and this Final Judgment on all persons and  
5 entities who did not request exclusion from the Class; (c) were reasonable and  
6 constituted due, adequate, and sufficient notice to all persons entitled to be provided  
7 with notice; and (d) met all applicable requirements of law, including, but not  
8 limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, the United  
9 States Constitution (including the Due Process Clause), and the Rules of this Court,  
10 as well as complied with the Federal Judicial Center’s illustrative class action  
11 notices.

12 4. Only those persons listed in Exhibit A to this Final Judgment have  
13 submitted timely and valid requests for exclusion from the Class and are therefore  
14 not bound by this Final Judgment and the accompanying Final Order Approving  
15 Class Action Settlement.

16 5. The claims in the Action are dismissed on the merits and with  
17 prejudice pursuant to the terms (including the Release) set forth in the Parties’  
18 Agreement and in the Court’s Final Order Approving Class Action Settlement and  
19 Final Order Approving Attorneys’ Fees and Expenses and Incentive Awards,  
20 without costs to any party except as provided in these Final Orders.

21 6. Plaintiffs and Class Members and/or their representatives, and all  
22 persons acting on behalf of, or in concert or participation with, Plaintiff or Class  
23 Members (including but not limited to the Releasing Parties), who have not been  
24 timely excluded from the Class are hereby permanently barred and enjoined from:  
25 (a) filing, commencing, asserting, prosecuting, maintaining, pursuing, continuing,  
26 intervening in, or participating in, or receiving any benefits from, any lawsuit,  
27 arbitration, or administrative, regulatory or other proceeding or order in any  
28 jurisdiction based upon or asserting any of the Released Claims; and (b) bringing an

1 individual action or class action on behalf of Plaintiff or Class Members seeking to  
2 certify a class that includes Plaintiff or Class Members, or continuing to prosecute  
3 or participate in any previously filed and/or certified class action, in any lawsuit  
4 based upon or asserting any of the Released Claims. Pursuant to 28 U.S.C.  
5 §§ 1651(a) and 2283, the Court finds that issuance of this permanent injunction is  
6 necessary and appropriate in aid of the Court’s continuing jurisdiction and authority  
7 over the Action.

8 7. Plaintiffs’ Lead Counsel and Class Counsel shall take all steps  
9 necessary and appropriate to provide Class Members with the benefits to which  
10 they are entitled under the terms of the Agreement and pursuant to the Orders of the  
11 Court.

12 8. The Court will retain continuing jurisdiction over the parties and the  
13 Action for the reasons and purposes set forth in this Final Judgment, the Final  
14 Order Approving Class Action Settlement, and the Final Order Approving  
15 Attorneys’ Fees and Expenses and Incentive Awards. Without in any way affecting  
16 the finality of these Final Orders and/or this Final Judgment, this Court expressly  
17 retains jurisdiction as to all matters relating to the administration, consummation,  
18 enforcement and interpretation of the Agreement and of these Final Orders and this  
19 Final Judgment, and for any other necessary purpose. *See Kokkonen v. Guardian*  
20 *Life Ins. Co. of Am.*, 511 U.S. 375, 381-82 (1994).

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23 DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable John A. Kronstadt  
UNITED STATES DISTRICT JUDGE

**Exhibit A – List of Persons Who Requested Exclusion**

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**EXHIBIT C**

**In Re: Smashburger IP Holder, LLC, et al.**

In the United States District Court for the Central District of California

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

**Claim Form**

**If you are a Class Member and wish to receive a payment or product vouchers, your completed Claim Form must be postmarked on or before [\_\_\_\_], or submitted online at [www.burgersettlement.com](http://www.burgersettlement.com) on or before [\_\_\_\_].**

Please read the full notice of this settlement available at [www.burgersettlement.com](http://www.burgersettlement.com) carefully before filling out this Claim Form. To be eligible to receive any benefits from the settlement obtained in this class action lawsuit, you can either file your claim form online no later than \_\_\_\_\_, 2021 or submit this form no later than \_\_\_\_\_, 2021 by mail:

**ONLINE:**      [www.burgersettlement.com](http://www.burgersettlement.com)

**MAIL:**        Smashburger Settlement  
                      c/o Claims Administrator  
                      PO Box 188  
                      Warminster, PA 18974-0188

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**PART ONE: CLAIMANT INFORMATION**

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Provide your name and contact information below. It is your responsibility to notify the Claims Administrator of any changes to your contact information after the submission of your Claim Form.

\_\_\_\_\_  
First Name

\_\_\_\_\_  
Last Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Zip4 (optional)

\_\_\_\_\_  
Email

@

QUESTIONS? VISIT [www.BurgerSettlement.com](http://www.BurgerSettlement.com) OR CALL TOLL-FREE 1-833-644-1593

**PART TWO: PURCHASE INFORMATION AND CASH OR VOUCHER SELECTION**

To qualify for a cash award or product voucher, you must have purchased and/or consumed one or more hamburgers sold under the Smashburger brand with any name that included the phrase “Triple Double,” including but not limited to any of the following hamburgers (“**Subject Products**”) between July 1, 2017 through May 31, 2019:

- **Triple Double hamburger**
- **Bacon Triple Double hamburger**
- **French Onion Triple Double hamburger**
- **Pub Triple Double hamburger**

**TOTAL NUMBER OF SUBJECT PRODUCTS**

Write the **total number** of the Subject Products you purchased and/or consumed between July 1, 2017 through May 31, 2019:

**SETTLEMENT BENEFIT SELECTION**

Choose **one** of the following settlement benefits (you cannot choose both options).  
Please see below for more information about these benefits.

CASH  **OR** VOUCHER

**CASH AWARD OPTION:** If you elect to receive cash, you are entitled to receive a **\$4.00** cash award for every Subject Product you purchased or consumed between July 1, 2017 through May 31, 2019, up to a **maximum of \$20.00 per household without proof of purchase**. If you do not select a different option below, you will receive your cash award via email in the form of a Digital Mastercard card that can be used anywhere Mastercard is accepted. There is no activation fee, and the card can be reissued if lost for up to 3 years. You may alternatively elect to receive payment by Check, PayPal or Zelle.

Please select **only one** preferred method to receive payment and provide requested information:

<b>Digital Mastercard</b>	Email Address: _____@_____
<b>PayPal</b>	Email Address: _____@_____
<b>Zelle</b>	Provide Phone Number ( ____ ____ ) _____ - _____ OR Email Address: _____@_____
<b>Check</b>	Your check will be sent to the address listed above.

**PRODUCT VOUCHER OPTION:** If you elect to receive a product voucher, you are entitled to receive a voucher redeemable, upon the purchase of a regularly priced entrée at a company owned Smashburger-branded restaurant, for either a) an upgrade of a single beef Smashburger hamburger to a double beef hamburger for no additional cost; or b) a small Smashburger fountain drink for no additional cost. You may receive a voucher for every Subject Product you purchased or consumed between July 1, 2017 through May 31, 2019, up to a **maximum of 10 vouchers**. The product voucher will be sent to the email address you provided in the Claimant Information above, as a certificate redeemable for the Subject Products with an expiration date of no less than two years.

QUESTIONS? VISIT [www.BurgerSettlement.com](http://www.BurgerSettlement.com) OR CALL TOLL-FREE 1-833-644-1593

Submission of false or fraudulent information may result in the claim being rejected in its entirety.

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**PART THREE: ATTESTATION UNDER PENALTY OF PERJURY**

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I declare under penalty of perjury under the laws of the United States of America that I purchased or consumed the total number of the Subject Products listed above between July 1, 2017 and May 31, 2019 and that all of the information on this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review.

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
**DATE (mm/dd/yyyy)**

**CLAIM FORM REMINDER CHECKLIST**

**Before submitting this Claim Form, please make sure you:**

1. Complete all fields in the Claimant Information section of this Claim Form.
2. Provide the **total number** of the Subject Products you purchased or consumed between July 1, 2017 and May 31, 2019.
3. Select only **one** of the settlement benefits (cash or voucher). If you select a cash benefit choose how you would like to receive it.
4. Sign the Attestation under penalty of perjury in Part Three. You must sign the Attestation in order to be eligible to receive settlement benefits.

**Please keep a copy of your Claim Form for your records.**

QUESTIONS? VISIT [www.BurgerSettlement.com](http://www.BurgerSettlement.com) OR CALL TOLL-FREE 1-833-644-1593



**EXHIBIT D**

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

In Re: Smashburger IP Holder LLC, et al.

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

ALL CASES

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

Judge: John A. Kronstadt

1           WHEREAS, on February 8, 2019, Plaintiff Andre Galvan filed a proposed  
2 nationwide (or, in the alternative, California) class action complaint against  
3 Defendants in the United States District Court for the Central District of California,  
4 Case No. 2:19-CV-00993-JAK-(JEMx).<sup>1</sup> On March 18, 2019, Mr. Galvan filed a  
5 first amended class action complaint against Defendants.<sup>2</sup> The lawsuit alleged that  
6 Defendants misrepresented the size of the hamburgers sold under the Smashburger  
7 brand with any name that included the phrase “Triple Double,” including but not  
8 limited to hamburgers sold as Triple Double, Bacon Triple Double, French Onion  
9 Triple Double, and Pub Triple Double (collectively the “Subject Products”).

10           WHEREAS, on March 11, 2019, Barbara Trevino filed a similar lawsuit  
11 against Defendants in the United States District Court for the Central District of  
12 California, Case No. 2:19-CV-02794. On May 16, 2019, the Court ordered  
13 Galvan’s lawsuit consolidated with the Trevino lawsuit and appointed the law firm  
14 of Bursor & Fisher, P.A. interim lead class counsel.

15           WHEREAS, on July 24, 2019, Plaintiffs Galvan, Lopez, Nguyen, Meyer,  
16 Trevino, and Harris, filed a Consolidated Amended Class Action Complaint. On  
17 August 22, 2019, Plaintiffs filed their Second Amended Consolidated Class Action  
18 Complaint, which is the Operative Complaint. The Operative Complaint asserts  
19 claims for violations of the California Consumers Legal Remedies Act (Cal. Civ.  
20 Code §§ 1750, *et seq.*) (“CLRA”), California’s Unfair Competition Law (Cal. Bus.  
21 & Prof. Code §§ 17200, *et seq.*) (the “UCL”), California’s False Advertising Law  
22 (Cal. Bus. & Prof. Code §§ 17500, *et seq.*) (the “FAL”), and violations of New  
23 York General Business Law §§ 349 and 350 (collectively, “NYGBL”), as well as  
24 claims for Breach of Express Warranty, Fraud, and Unjust Enrichment.

25           WHEREAS, Defendants answered the Second Amended Consolidated Class  
26 \_\_\_\_\_

27 <sup>1</sup> Jollibee Foods Corporation was also named as a defendant in the complaint.

28 <sup>2</sup> The first amended complaint added Lucinda Lopez as a co-plaintiff and omitted Jollibee Foods Corporation as a defendant.

1 Action Complaint on September 9, 2019.

2 WHEREAS, Plaintiff Barbara Trevino dismissed her individual claims on  
3 November 26, 2019.

4 WHEREAS, the Parties have entered into a Stipulation of Class Action  
5 Settlement, with its attached exhibits (collectively, the “Agreement”), signed and  
6 filed with this Court on \_\_\_\_\_, 2021, to settle this Action.

7 WHEREAS, before entering into the Agreement, the Parties, by and through  
8 their respective counsel, conducted a thorough examination, investigation, and  
9 evaluation of the relevant law, facts, and allegations to assess the merits of the  
10 claims and potential claims to determine the strength of liability, potential remedies,  
11 and all defenses thereto, including an extensive investigation into the facts and law  
12 relating to (i) the development and formulation of the Subject Products; (ii) the  
13 marketing and advertising of the Subject Products; (iii) sales, pricing, and financial  
14 data relating to the Subject Products; and (iv) the sufficiency of the claims asserted  
15 and appropriateness of class certification.

16 WHEREAS, this Agreement was reached as a result of extensive arm’s-  
17 length negotiations between the Parties and their counsel. Counsel have engaged in  
18 extensive settlement discussions to determine if the Parties could reach a resolution  
19 short of protracted litigation. This included two full days of mediation before Jill  
20 R. Sperber, Esq. of Judicate West on February 6, 2020 and May 7, 2020, and  
21 several months of follow-up settlement discussions amongst counsel before a  
22 settlement in principle was reached.

23 WHEREAS, before and during these settlement negotiations, the Parties had  
24 an arm’s-length exchange of sufficient information to permit Plaintiffs and their  
25 counsel to evaluate the claims and potential defenses and to meaningfully conduct  
26 informed settlement discussions. This included conducting extensive discovery  
27 where Defendants provided and Plaintiffs reviewed over 14,500 documents.  
28 Plaintiffs also reviewed numerous files from the trademark case filed against

1 Smashburger, entitled *In n Out Burgers v. Smashburger IP Holder LLC and*  
2 *Smashburger Franchising LLC*, Case No. 8:17-cv-01474. Finally, Plaintiffs  
3 investigated the potential damages model for the claims in this action and discussed  
4 the case with a potential damages expert.

5 WHEREAS, the Court has carefully reviewed the Agreement, including the  
6 exhibits attached thereto and all file, records and prior proceedings to date in this  
7 matter, and good cause appearing based on the record,

8 IT IS hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

9 1. Defined Terms. For purposes of this Order, except as otherwise  
10 indicated herein, the Court adopts and incorporates the definitions contained in the  
11 Agreement.

12 2. Stay of the Action. All proceedings in the Action, other than  
13 proceedings necessary to carry out or enforce the terms and conditions of the  
14 Agreement and this Order, are hereby stayed.

15 3. Preliminary Class Certification for Settlement Purposes Only. The  
16 Action is preliminarily certified as a class action, for settlement purposes only,  
17 pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3). The Court preliminarily finds  
18 for settlement purposes that: (a) the Class certified herein numbers at least in the  
19 tens of thousands of persons, and joinder of all such persons would be  
20 impracticable; (b) there are questions of law and fact that are common to the Class,  
21 and those questions of law and fact common to the Class predominate over any  
22 questions affecting any individual Class Member; (c) the claims of the Plaintiffs are  
23 typical of the claims of the Class they seek to represent for purposes of settlement;  
24 (d) a class action on behalf of the Class is superior to other available means of  
25 adjudicating this dispute; and (e) as set forth below, Plaintiffs and Plaintiffs'  
26 Counsel are adequate representatives of the Class. Defendants retain all rights to  
27 assert that the Action may not be certified as a class action, other than for  
28 settlement purposes. The Court also concludes that, because the Action is being

1 settled rather than litigated, the Court need not consider manageability issues that  
2 might be presented by the trial of a nationwide class action involving the issues in  
3 this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

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

16       5.     Class Representative and Plaintiffs’ Counsel. Plaintiffs Andre Galvan,  
17 Lucinda Lopez, Thu Thuy Nguyen, Robert Meyer, and Jamelia Harris are  
18 designated as representatives of the conditionally certified Class. The Court  
19 preliminarily finds that these individuals are similarly situated to absent Class  
20 Members and therefore typical of the Class, and that they will be adequate class  
21 representatives. Further, Bursor & Fisher, P.A., whom the Court finds are  
22 experienced and adequate counsel for purposes of these Settlement approval  
23 proceedings, are hereby designated as Plaintiffs’ Lead Counsel and Bursor &  
24 Fisher, P.A., together with Reich Radcliffe & Hoover, LLP and Ahdoot & Wolfson,  
25 P.C. are designated as Class Counsel.

26       6.     Preliminary Settlement Approval. Upon preliminary review, the Court  
27 finds that the Agreement, and the Settlement it incorporates, appears fair,  
28 reasonable, and adequate. *See generally* Fed. R. Civ. P. 23; *Manual for Complex*

1 *Litigation* (Fourth) § 21.632 (2004). Accordingly, the Agreement is preliminarily  
2 approved and is sufficient to warrant sending notice to the Class.

3 7. Jurisdiction. The Court has subject matter jurisdiction over the Action  
4 pursuant to 28 U.S.C. §§ 1332 and 1367, and personal jurisdiction over the Parties  
5 before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. §  
6 1391.

7 8. Fairness Hearing. A Fairness Hearing shall be held before this Court  
8 on \_\_\_\_\_ at the United States District Court for the Central  
9 District of California, First Street Courthouse, 350 W. First Street, Courtroom 10B,  
10 Los Angeles, CA 90012, to determine, among other things, (a) whether the Action  
11 should be finally certified as a class action for settlement purposes pursuant to Fed.  
12 R. Civ. P. 23(a), (b)(2), and (b)(3); (b) whether the settlement of the Action  
13 pursuant to the terms and conditions of the Agreement should be approved as fair,  
14 reasonable and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c)  
15 whether the Action should be dismissed with prejudice pursuant to the terms of the  
16 Agreement; (d) whether Class Members who do not timely request exclusion  
17 should be bound by the Release set forth in the Agreement; (e) whether Class  
18 Members and related persons should be subject to a permanent injunction; and (f)  
19 whether to grant Plaintiffs' Counsel's application for an award of Attorneys' Fees  
20 and Expenses and Incentive Awards for Plaintiffs (the "Fee Application"). Papers  
21 in support of final approval of the Agreement and the Fee Application shall be filed  
22 with the Court according to the schedule set forth in Paragraph 14 below.

23 Objections to the Agreement or the Fee Application shall be filed with the Court on  
24 or before the Objection Deadline set forth in Paragraph 14 below, and papers in  
25 response to such objections must be filed on or before \_\_\_\_\_.

26 The Fairness Hearing may be postponed, adjourned, or continued by order of the  
27 Court without further notice to the Class. After the Fairness Hearing, the Court  
28 may enter a Final Order and Final Judgment in accordance with the Agreement that

1 will fully and finally adjudicate the rights of the Class Members with respect to the  
2 proposed Released Claims.

3 9. Administration. In consultation with and with the approval of  
4 Defendants, Plaintiffs' Counsel is hereby authorized to establish the means  
5 necessary to administer the proposed Settlement and implement the claims process,  
6 in accordance with the terms of the Agreement.

7 10. Class Notice. The form and content of the proposed Long Form  
8 Notice and Summary Notice, attached as Exhibits E and F, respectively, to the  
9 Agreement, and the notice methodology described in the Agreement are hereby  
10 approved. Pursuant to the Agreement, the Court appoints Heffler Claims Group as  
11 the Settlement Administrator to help implement the terms of the Agreement.

12 (a) Notice Date. No later than \_\_\_\_\_, the  
13 Settlement Administrator shall provide notice to the Class pursuant to the terms of  
14 the Agreement and the deadlines set forth in Paragraph 14 below. The Parties shall  
15 coordinate with the Settlement Administrator to provide notice to the Class  
16 pursuant to terms therein.

17 (b) Findings Concerning Notice. The Court finds that the  
18 Settlement is fair and reasonable such that the Long Form Notice and Summary  
19 Notice should be provided pursuant to the Agreement and this Order.

20 (c) The Court finds that the form, content, and method of  
21 disseminating notice to the Class as described in Paragraphs 10 and 14 of this  
22 Order: (i) comply with Rule 23(c)(2) of the Federal Rules of Civil Procedure as  
23 they are the best practicable notice under the circumstances, and are reasonably  
24 calculated, under all the circumstances, to apprise the members of the Class of the  
25 pendency of the Action, the terms of the Settlement, and their right to object to the  
26 Settlement or exclude themselves from the Settlement Class; (ii) comply with Rule  
27 23(e) as they are reasonably calculated, under the circumstances, to apprise the  
28 Class Members of the pendency of the Action, the terms of the proposed



1 Settlement, and their rights under the proposed Settlement, including, but not  
2 limited to, their right to object to or exclude themselves from the proposed  
3 Settlement and other rights under the terms of the Settlement Agreement;  
4 (iii) constitute due, adequate, and sufficient notice to all Class Members and other  
5 persons entitled to receive notice; and (iv) meet all applicable requirements of law,  
6 including, but not limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e), and  
7 the Due Process Clause(s) of the United States Constitution. The Court further  
8 finds that all of the notices are written in simple terminology, are readily  
9 understandable by Class Members, and comply with the Federal Judicial Center’s  
10 illustrative class action notices.

11       11. Exclusion from Class. Any Class Member who wishes to be excluded  
12 from the Class must send to the Settlement Administrator by U.S. Mail a personally  
13 signed letter, including their (a) full name, (b) current address, (c) a clear statement  
14 communicating that they elect to be excluded from the Class, do not wish to be a  
15 Class Member, and elect to be excluded from any judgment entered pursuant to the  
16 Settlement, (d) their signature, and (e) the case name and case number of the  
17 Action. A Class Member can exclude only himself or herself from the Class, and  
18 shall not be allowed to request that another individual or a group be excluded.  
19 “Mass” or “class” opt-outs are not permitted. Any such Request for Exclusion must  
20 be postmarked and sent to the Settlement Administrator no later than  
21 \_\_\_\_\_ (the “Opt-Out Date”). The Settlement  
22 Administrator shall forward copies of any written requests for exclusion to  
23 Plaintiffs’ Counsel and Defense Counsel. The Settlement Administrator shall file a  
24 list reflecting all timely requests for exclusion with the Court no later than seven (7)  
25 days before the Fairness Hearing.

26       If the proposed Settlement is finally approved, any potential Class Member  
27 who has not submitted a timely written Request for Exclusion on or before the  
28 Opt-Out Date shall be bound by all terms of the Agreement and the Final Order and

1 Final Judgment, regardless of whether they have requested exclusion from the  
2 Settlement, even if the potential Class Member previously initiated or subsequently  
3 initiates any litigation against any or all of the Released Parties relating to Released  
4 Claims. All persons or entities who properly exclude themselves from the Class  
5 shall not be Class Members and shall relinquish their rights or benefits under the  
6 Agreement, should it be approved, and may not file an objection to the Settlement  
7 or be entitled to any settlement benefits.

8       12. Objections and Appearances. Any Class Member who intends to  
9 object to the fairness, reasonableness, and/or adequacy of the Settlement must, in  
10 addition to filing the written objection with the Court through the Court's CM/ECF  
11 system (or any other method in which the Court will accept filings, if any) no later  
12 than the Objection Deadline, provide a copy of the written objection by U.S. mail or  
13 e-mail to the Settlement Administrator with a copy by U.S. Mail or e-mail to  
14 Plaintiffs' Counsel and Defense Counsel (at the addresses set forth below)  
15 postmarked no later than the Objection Deadline. Class Members who object must  
16 set forth: (a) their full name; (b) current address; (c) a written statement of their  
17 objection(s) and the reasons for each objection; (d) a statement of whether they  
18 intend to appear at the Fairness Hearing (with or without counsel); (e) their  
19 signature; (f) a statement, sworn to under penalty of perjury pursuant to 28 U.S.C.  
20 § 1746, attesting to the fact that he or she purchased or consumed one or more of  
21 the Subject Products during the Class Period; (g) details of the purchase of the  
22 Subject Products, including the Subject Products purchased, and the date and  
23 location of purchase; and (h) the case name and case number of the Action.  
24 Objections must be served on Lead Plaintiffs' Counsel and Defense Counsel as  
25 follows:

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*Upon Lead Plaintiffs' Counsel at:*

L. Timothy Fisher  
**BURSOR & FISHER, P.A.**  
1990 North California Blvd., Suite 940  
Walnut Creek, California 94596  
ltfisher@bursor.com

*Upon Defense Counsel at:*

Dean J. Zipser  
Mark A. Finkelstein  
Adina W. Stowell  
**UMBERG ZIPSER**  
1920 Main Street  
Irvine, California 92614  
dzipser@umbergzipser.com  
mfinkelstein@umbergzipser.com  
astowell@umbergzipser.com

Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to Lead Plaintiffs' Counsel and to Defense Counsel, and file said notice with the Court, no later than the date scheduled in paragraph 14 below, or as the Court may otherwise direct. Objections that are mailed to the Court (and not filed pursuant to the Court's CM/ECF system, or any other method in which the Court will accept filings, if any), or objections that are served on the Parties but not filed with the Court, shall not be received or considered by the Court at the Fairness Hearing. And any Class Member who fails to comply with the provisions in this Paragraph shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of the Agreement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the release in the Agreement. The Settlement Administrator, Defense Counsel, and Class Counsel shall promptly furnish each other copies of any and all objections that might come into their possession.

13. Preliminary Injunction. All Class Members and/or their representatives who do not timely and properly exclude themselves from the Class

1 are barred and enjoined from directly, indirectly, derivatively, in a representative  
2 capacity, or in any other capacity filing, commencing, prosecuting, maintaining,  
3 intervening in, participating in, conducting, or continuing any action in any forum  
4 (state or federal) as individual actions, class members, putative class members, or  
5 otherwise against the Released Parties (as that term is defined in the Agreement) in  
6 any court or tribunal asserting any of the Released Claims (as that term is defined in  
7 the Agreement), and/or from receiving any benefits from any lawsuit,  
8 administrative or regulatory proceeding, or order in any jurisdiction, based on or  
9 relating to the Released Claims. In addition, all such persons are hereby barred and  
10 enjoined from filing, commencing, or prosecuting a lawsuit against Defendants (or  
11 against any of their related parties, parents, subsidiaries, or affiliates) as a class  
12 action, a separate class, or group for purposes of pursuing a putative class action  
13 (including by seeking to amend a pending complaint to include class allegations or  
14 by seeking class certification in a pending action in any jurisdiction) on behalf of  
15 Class Members who do not timely exclude themselves from the Class, arising out  
16 of, based on or relating to the Released Claims. Pursuant to 28 U.S.C. §§ 1651(a)  
17 and 2283, the Court finds that issuance of this preliminary injunction is necessary  
18 and appropriate in aid of the Court's continuing jurisdiction and authority over the  
19 Action.

20 14. Summary of Deadlines. In summary, the deadlines set by this Order  
21 are as follows. If any deadline set forth in this Order falls on a Saturday, Sunday,  
22 or federal holiday, then such deadline shall extend to the next Court day. These  
23 deadlines may be extended by order of the Court, for good cause shown, without  
24 further notice to the Class. Class Members must check the Settlement Website  
25 regularly for updates and further details regarding this settlement:

26 (a) The Long Form Notice shall be published on the Settlement  
27 Website and sent via mail or email to class members for whom Defendants have  
28

1 contact information no later than \_\_\_\_\_ (the “Notice  
2 Date”);

3 (b) The Internet advertising portion of the Class Notice program  
4 shall commence no later than \_\_\_\_\_.

5 (c) The Settlement Website and Toll-Free Telephone Number shall  
6 be established and become operational no later than \_\_\_\_\_.

7 (d) All completed Claim Forms must be postmarked and mailed to  
8 the Settlement Administrator or uploaded to the Settlement Website no later than  
9 \_\_\_\_\_ (“the Claim Deadline”).

10 (e) All written objections to the Agreement and written notices of  
11 an objector’s intention to appear at the Fairness Hearing shall be filed with the  
12 Court and served on Lead Plaintiffs’ Counsel and Defense Counsel no later than  
13 \_\_\_\_\_ (“the Objection Deadline”).

14 (f) All Requests for Exclusion shall be postmarked and sent to the  
15 Settlement Administrator no later than \_\_\_\_\_ (“the Opt-Out Date”).

16 (g) A Fairness Hearing shall be scheduled for \_\_\_\_\_.

17 (h) Not later than seven (7) calendar days before the date of the  
18 Fairness Hearing, the Settlement Administrator shall file with the Court: (a) a list of  
19 those persons who have opted out or excluded themselves from the Settlement; and  
20 (b) the details regarding the number of valid Claim Forms received and processed  
21 by the Settlement Administrator.

22 (i) Plaintiffs’ motion in support of final approval of the Settlement  
23 and Plaintiffs’ Counsel’s Fee Application shall be filed no later than \_\_\_\_\_  
24 and posted to the Settlement Website as soon as practicable thereafter, and may be  
25 supplemented no later than seven (7) days prior to the Fairness Hearing.

26 15. Termination of Settlement. In the event the Court does not grant final  
27 approval to the Settlement, or for any reason the Parties fail to obtain a Final Order  
28 and Final Judgment as contemplated in the Agreement, or the Agreement is

1 terminated pursuant to its terms for any reason or the Effective Date does not occur  
2 for any reason, then the following shall apply:

3 (a) All orders and findings entered in connection with the  
4 Agreement shall become null and void and have no force and effect whatsoever,  
5 shall not be used or referred to for any purposes whatsoever, and shall not be  
6 admissible or discoverable in this or any other proceeding;

7 (b) The conditional certification of the Class pursuant to this Order  
8 shall be vacated automatically, and the Action shall proceed as though the Class  
9 had never been certified pursuant to this Agreement and such findings had never  
10 been made;

11 (c) Nothing contained in this Order is, or may be construed as, a  
12 presumption, concession, or admission by or against Defendants or Plaintiffs of any  
13 default, liability, or wrongdoing as to any facts or claims alleged or asserted in the  
14 Action, or in any actions or proceedings, whether civil, criminal, or administrative,  
15 including, but not limited to, factual or legal matters relating to any effort to certify  
16 the Action as a class action;

17 (d) Nothing in this Order or pertaining to the Agreement, including  
18 any of the documents or statements generated or received pursuant to the claims  
19 administration process, shall be used as evidence in any further proceeding in this  
20 case, including, but not limited to, motions or proceedings seeking treatment of the  
21 Action as a class action;

22 (e) Nothing in this Order or pertaining to the Agreement is, or may  
23 be construed as, a presumption, concession, or admission by or against Defendants  
24 that the Action meets the requisites for certification as a class action under federal  
25 or California law; and

26 (f) All of the Court's prior Orders having nothing whatsoever to do  
27 with the Settlement shall, subject to this Order, remain in full force and effect.  
28

1           16. Use of Order. This Order shall be of no force or effect if the  
2 Settlement does not become final and shall not be construed or used as an  
3 admission, concession, or declaration by or against Defendants of any fault,  
4 wrongdoing, breach, or liability, or that any of the claims asserted in the Action  
5 meet the requisites for certification as a class action under federal or California law.  
6 Nor shall this Order be construed or used as an admission, concession, or  
7 declaration by or against Plaintiffs or the other Class Members that their claims lack  
8 merit or that the relief requested is inappropriate, improper, or unavailable, or as a  
9 waiver by any party of any defenses or claims he, she or it may have in the Action  
10 or in any other lawsuit.

11           17. Alteration of Exhibits. Plaintiffs' Lead Counsel and Defense Counsel  
12 are hereby authorized to use all reasonable procedures to further the administration  
13 of the Settlement that are not materially inconsistent with this Order or the  
14 Agreement, including making, without further approval of the Court, minor  
15 changes to the form or content of the Long Form Notice, Summary Notice, and  
16 other exhibits that they jointly agree are reasonable or necessary.

17           18. Retaining Jurisdiction. This Court shall maintain continuing  
18 jurisdiction over these settlement proceedings to ensure the effectuation thereof for  
19 the benefit of the Class, and for any other necessary purpose.

20           19. Extension of Deadlines. Upon application of the Parties and good  
21 cause shown, the deadlines set forth in this Order may be extended by order of the  
22 Court, without further notice to the Class. Class Members must check the  
23 Settlement website regularly for updates and further details regarding settlement  
24 deadlines.

25  
26  
27 DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable John A. Kronstadt  
UNITED STATES DISTRICT JUDGE





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

**If You Bought or Consumed Smashburger’s “Triple Double” Hamburgers between July 1, 2017 and May 31, 2019, You Could Receive A Cash Payment or Product Voucher from A Class Action Settlement**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- A proposed settlement has been reached in a class action lawsuit alleging that Defendants Smashburger IP Holder LLC and Smashburger Franchising LLC (“Defendants”) either mislabeled or misrepresented the amount of meat in their “Triple Double” hamburgers.
- The settlement will provide \$2,500,000 in cash to pay claims for those who purchased and/or consumed one or more Triple Double hamburgers from Smashburger and to pay litigation fees and expenses. Class members can receive up to \$20 in cash without proof of purchase.
- Alternatively, Class members can choose to get a voucher that will entitle the bearer of the voucher, after purchasing a regularly-priced entrée, to either a) an upgrade of a single beef Smashburger hamburger to a double beef hamburger for no additional cost; or b) a small Smashburger fountain drink for no additional cost. Class members can claim up to 10 vouchers without proof of purchase.

To qualify, you must have purchased and/or consumed a hamburger sold under the Smashburger brand with any name that included the phrase “Triple Double,” including but not limited to, one or more of the following hamburgers listed below between July 1, 2017 and May 31, 2019.

- **Triple Double hamburger;**
- **Bacon Triple Double hamburger;**
- **French Onion Triple Double hamburger;**
- **Pub Triple Double hamburger.**

- Defendants deny that they did anything wrong or unlawful and say that the representations at issue were truthful, not misleading, and consistent with the law. The Court has not decided who is right. Both sides have agreed to settle the dispute and give benefits to Class Members.

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM BY [DATE]</b>	This is the only way to receive a cash award or product voucher.
<b>EXCLUDE YOURSELF BY [DATE]</b>	Exclude yourself by [DATE] and get no award from the proposed settlement. This is the only choice that allows you to participate in another lawsuit against Defendants about the claims at issue in this case for the products and claims covered by the Class Period.
<b>OBJECT BY [DATE]</b>	You can write to the Court by [DATE] about why you don’t like the settlement.
<b>GO TO A HEARING</b>	You can ask by [DATE] to speak in Court about the fairness of the proposed settlement.
<b>DO NOTHING</b>	Get no payment. Give up your rights to sue Defendants regarding any of the claims at issue in this case.

- The Court in charge of this case still has to decide whether to approve the proposed settlement. Payments will be made if the Court approves the settlement and after appeals are resolved.
- Please be patient. Your legal rights are affected whether you act or not. **Read this notice carefully because it explains decisions you must make and actions you must take now.**

{212608.1} **QUESTIONS? VISIT [www.burgersettlement.com](http://www.burgersettlement.com), OR CALL 1-833-644-1593 TOLL FREE**

*Para una notificación en Español, por favor llame o visite nuestro website.*

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## BASIC INFORMATION

### 1. Why was this notice issued?

This notice, given pursuant to an Order of the Court dated [DATE], describes a proposed settlement of a class action against Defendants Smashburger IP Holder LLC and Smashburger Franchising LLC (“Defendants”), *In Re: Smashburger IP Holder, LLC, et al*, Lead Case No. 2:19-CV-00993-JAK-(JEMx). The Court in charge of this lawsuit is the United States District Court for the Central District of California. The people who sued are called the “Plaintiffs,” and Smashburger IP Holder LLC and Smashburger Franchising LLC are the “Defendants.”

This notice is provided because you have the right to know about a proposed settlement of a class action lawsuit, and about your rights and options, before the Court decides whether to approve the proposed settlement.

Plaintiffs’ Second Amended Consolidated Class Action Complaint and the settlement agreement, called the “Stipulation of Class Action Settlement” or “Agreement,” are available at [www.burgersettlement.com](http://www.burgersettlement.com) and provide greater detail concerning this lawsuit and the rights and duties of the parties and Class Members.

**If you are a Class Member, your legal rights are affected whether you act or do not act, so please read this notice carefully.**

### 2. What is this lawsuit about?

The lawsuit claims that Defendants misrepresented the amount of beef in the hamburgers sold under the Smashburger brand with any name that included the phrase “Triple Double,” including but not limited to hamburgers sold as the Triple Double, Bacon Triple Double, French Onion Triple Double, and Pub Triple Double (collectively the “Subject Products”).

Defendants deny that they did anything wrong or unlawful and assert that the representations at issue were truthful, not misleading, and consistent with the law. The Court did not rule in favor of either party. Plaintiffs entered into the settlement to avoid the delay, risks, and increased costs associated with continued litigation and believe the settlement is in the best interests of the Class. Defendants entered into a settlement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation and to eliminate future controversy with respect to this lawsuit. Accordingly, the parties have agreed to a proposed settlement, and Defendants agreed, under the terms of the settlement, to provide you with an opportunity to submit a valid and timely Claim Form through which you may be eligible to receive monetary compensation or product vouchers.

### 3. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case Andre Galvan, Lucinda Lopez, Thu Thuy Nguyen, Robert Meyer, and Jamelia Harris) sue on behalf of themselves and other people who have similar claims. Together, all of these people are “Class Members.” One Court resolves the issues for all Class Members in a class action, except for those who exclude themselves from the Class. United States District Court Judge John A. Kronstadt presides over this action.

### 4. Why is there a settlement?

The Court has not decided in favor of the Plaintiffs or the Defendants. Instead, both sides have agreed to the proposed settlement. By agreeing to the proposed settlement, they avoid the costs and uncertainty of a trial, and Class Members receive the benefits described in this notice. The proposed settlement does not mean that any law was broken or that Defendants did anything wrong, or that the Plaintiffs and the Class would or would not win

their case if it were to go to trial. The parties believe that the proposed settlement is fair, reasonable, and adequate, and will provide substantial benefits to the Class.

## WHO IS PART OF THE SETTLEMENT?

### 5. Who is included in the proposed settlement?

The Class includes all persons in the United States and United States Territories who purchased and/or consumed one or more of the Subject Products (defined further under Question 7) during the period July 1, 2017 through May 31, 2019 (the “Class Period”).

### 6. Are there exceptions to being included?

Specifically excluded from the Class are:

- (a) Defendants and their employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors, and assigns;
- (b) The judges to whom the Action has been or is assigned and any members of their immediate families;
- (c) Those who purchased the Subject Products for the purpose of resale; and
- (d) All persons who have filed a timely Request for Exclusion from the Class.  
(Explained further under Questions 17-19 below.)

The proposed settlement does not include a release of any claims for personal injury relating to the use of the Subject Products.

### 7. Which products are included?

The Subject Products in this settlement are the following products sold at any Smashburger-branded restaurant (regardless of whether the restaurant was owned by Defendants, by Defendants’ affiliates, or by any franchisee) during the Class Period under any name that included the phrase “Triple Double,” including but not limited to the following hamburgers:

- **Triple Double hamburger;**
- **Bacon Triple Double hamburger;**
- **French Onion Triple Double hamburger;**
- **Pub Triple Double hamburger.**

### 8. What if I’m still not sure if I’m included?

If you are not sure whether you are a Class Member, or have any other questions about the settlement, visit the website, [www.burgersettlement.com](http://www.burgersettlement.com), or call the toll free number, [NUMBER]. You may also send questions to the Settlement Administrator at [ADDRESSES].

## THE SETTLEMENT BENEFITS – WHAT YOU CAN GET

### 9. What does the Settlement provide?

If the settlement is approved and becomes final, the settlement provides \$2,500,000 in cash and 1.5 million product vouchers to resolve the lawsuit. This represents Defendants’ total financial commitment under the settlement, and will be used to make payments to Class Members who file valid and timely claims by submitting a Claim Form (*see* Questions 13 and 14), as well as to pay for costs associated with the notice and administration of the Settlement, Attorneys’ Fees and Expenses (*see* Question 20), and a special service payment (or “Incentive

Award”) to the Class Representative (*see* Question 20).

The settlement agreement, called the “Stipulation of Settlement” or “Agreement,” available at [www.burgersettlement.com](http://www.burgersettlement.com), has more information regarding the settlement.

#### 10. What can I get from the Settlement?

You may be entitled to a \$4.00 cash payment for each Subject Product you purchased or consumed during the Class Period, up to a maximum of \$20.00 in cash per household without proof of purchase.

In the alternative, you may be entitled to receive a product voucher redeemable, upon the purchase of a regularly-priced entrée at a company owned Smashburger-branded restaurant, for either a) an upgrade of a single beef hamburger to a double beef hamburger for no additional cost; or b) a small fountain drink for no additional cost, up to 10 vouchers. For claims administration purposes, each voucher will be assigned a cash value of \$2.00, although the actual value of the voucher will depend on the price of Defendants’ products at your preferred retailer. Currently, an upgrade from a single beef hamburger to a double beef hamburger generally costs approximately \$2.00, and a small fountain drink generally costs approximately \$2.49.

You may only elect to receive a cash award **or** a product voucher award. **You cannot receive both.**

If the total value of all approved cash claims is less than or greater than the amount of money available to pay claims (after costs and fees have been deducted), eligible Class Members’ payments will be increased or reduced proportionally. Thus, the amount of your payment will depend on the number of Subject Products you purchased or consumed during the Class Period and on the number of Class Members who choose to make a cash claim.

If more than 1.5 million vouchers are requested, then the number of vouchers per person will be reduced on a pro rata basis. If fewer than 1.5 million vouchers are requested, the remaining vouchers will be donated to the Boys & Girls Club of America, or some other charitable organization, subject to the Court’s approval.

The actual cash amounts and product vouchers available for each eligible Class Member who submits a valid and timely Claim Form (or “Authorized Claimant”) will not be determined until after all Claims Forms have been received, and may not be determined until after the proposed settlement is final.

#### 11. What am I giving up if I stay in the Class?

**If you meet the definition of a Class Member, you are part of the Class, unless you exclude yourself.**

This means that you can’t sue, continue to sue, or be part of any other lawsuit, arbitration, or other proceeding against Defendants or any other “Released Party” about the legal issues in this case. It also means that all of the Court’s orders will apply to you and legally bind you. **You are a Class Member and bound by the settlement whether or not you file a Claim Form or receive a payment or a voucher.**

When and if the settlement is approved, Plaintiffs and Class Members who do not validly exclude themselves from the Class pursuant to the settlement will be deemed to have released Defendants and other “Released Parties” (as defined in the Agreement) from any all any Released Claims (as defined in the Agreement).

**A word-for-word copy of the Release sections from the Agreement is copied below. Please carefully read the following excerpts from the Agreement regarding “Released Claims”:**

“Released Claims” means and includes any and all claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action under common law or statutory law (federal, state, or local) of every nature and description whatsoever, monetary, injunctive, or equitable, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims as of the Notice Date by Plaintiffs and all

Class Members (and Plaintiffs' and Class Members' respective heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns) that:

(i) were asserted or that could have been reasonably asserted in the Action against the Released Parties (as hereinafter defined), or any of them, and that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged or referred to in the Action (including, but not limited to, alleged violations of the CLRA, UCL, FAL, NYGBL, or similar laws of any state or United States territory, and alleged claims for injunctive relief, breach of warranty, breach of the implied warranty of merchantability, negligent misrepresentation, fraud, and unjust enrichment); or

(ii) were asserted or that could have been reasonably asserted by any Class Member against the Released Parties (as hereinafter defined), or any of them, and that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged or referred to, including all claims for monetary, injunctive, or equitable relief that relate in any way to communications, disclosures, representations, statements, claims, nondisclosures and/or omissions, packaging, advertising, labeling, and/or marketing of or concerning the Subject Products, in the Related Actions; or

(iii) relate in any way to communications, disclosures, representations, statements, claims, nondisclosures and/or omissions, packaging, advertising, labeling, and/or marketing of or concerning the Subject Products related to the nutritional value and/or content, including but not limited to the quantity of meat, made through any medium.

**"Released Parties"** shall be defined and construed broadly to effectuate a complete and comprehensive release, and means Defendants and any entity that made, manufactured, tested, inspected, audited, certified, purchased, distributed, supplied, licensed, transported, donated, marketed, advertised, promoted, sold or offered for sale any Subject Product, or any entity that contributed to any labeling, sale, distribution, supply, advertising, marketing, or packaging of any Product, including all of their respective franchisees, predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, shareholders, partners, principals, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees, and assigns. It is expressly understood that, to the extent a Released Party is not a Party to this Agreement, all such Released Parties are intended third-party beneficiaries of this Agreement.

**"Releasing Parties"** means Plaintiffs, and all Class Members, and any person claiming by or through each Class Member, including but not limited to spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents, administrators, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, or affiliates.

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

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF 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.**

In connection with such waiver and relinquishment, the Releasing Parties hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, whether known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Releasing Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Releasing Parties expressly acknowledges that he/she/it has been advised by his/her/its attorney of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Releasing Parties are not releasing any claims for personal injuries. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

The Agreement is available at [www.burgersettlement.com](http://www.burgersettlement.com) and describes the claims that you give up if you remain in the settlement in further detail.

#### 12. When will I get my payment, if any?

The Court will hold a Fairness Hearing on [DATE] during which it will decide whether it will finally approve all terms of the settlement. If the Court approves the settlement, there may be appeals or other challenges. Payment is contingent upon the Court's final approval of the proposed settlement. After the Court enters an order and judgment finally approving the settlement and all objections and appeals (if any) are resolved, the checks and product vouchers will be mailed within forty-five (45) calendar days.

Defendants have the right to challenge the requested amounts of attorneys' fees and expenses.

The progress of the approval process and expected dates of payment will be updated periodically on [www.burgersettlement.com](http://www.burgersettlement.com) and can also be obtained by calling [NUMBER] toll free.

If there are appeals, resolving them can take time (potentially more than a year). Please be patient.

### HOW TO RECEIVE A PAYMENT

#### 13. How can I get a payment?

To get a payment under the settlement, you must mail in a Claim Form or submit a Claim Form electronically at [www.burgersettlement.com](http://www.burgersettlement.com). You may submit a claim by visiting [www.burgersettlement.com](http://www.burgersettlement.com). You can also request a claim form by calling [NUMBER] toll free.

Please read the instructions carefully, and fill out the form completely and accurately.

Claim Forms can be submitted two ways: electronically or by mail. Your Claim Form must be submitted electronically at [www.burgersettlement.com](http://www.burgersettlement.com) no later than [DATE] or by mail postmarked no later than [DATE] and mailed to: [ADDRESS].

#### 14. What is the claim process?

The Settlement Administrator will review each Claim Form.

Claim Forms that do not meet the terms and conditions of the Agreement shall be rejected by the Settlement Administrator. The Settlement Administrator shall have forty-five (45) days from the date the settlement is final

(if there have been no appeals, or if any appeals have been withdrawn or rejected) to exercise the right of rejection. The Settlement Administrator shall notify the Class Member using the contact information provided in the Claim Form of the rejection, including via electronic mail.

Plaintiffs' Lead Counsel and Defense Counsel shall be provided with copies of all such notifications to Class Members. If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must, **within fifteen (15) business days from receipt of the rejection**, transmit to the Settlement Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Settlement Administrator, in consultation with Plaintiffs' Lead Counsel and Defense Counsel, of the denial of the claim. If Plaintiffs' Lead Counsel and Defense Counsel cannot agree on a resolution of claimant's notice contesting the rejection, the disputed claim shall be presented to the Court or a referee appointed by the Court for summary and non-appealable resolution. No person shall have any claim against Defendants, Defense Counsel, Plaintiffs, Plaintiffs' Lead Counsel, Class Counsel, the Class, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Agreement.

If a Claim is not contested, you will receive payment for that Claim in accordance with the terms of the Agreement. All usual and customary steps to prevent fraud and abuse in the Claim Process will be taken. This includes denying claims in whole or in part to prevent fraud or abuse. Plaintiffs' Lead Counsel and Defense Counsel will be provided a report on the denial of any claim due to insufficient documentation and may recommend additional action, including payment.

The Court will hold a Fairness Hearing on **[DATE, TIME]** to decide whether or not to approve the proposed settlement. The Court must finally approve the proposed settlement before any payments can be made. The Court will grant its approval only if it finds that the proposed settlement is fair, reasonable, and adequate. In addition, the Court's order may be subject to appeals. It is always uncertain whether these appeals can be resolved, and resolving them takes time, sometimes more than a year.

#### **15. What if I do nothing?**

If you are a Class Member and you do nothing, you will not get any awards from the settlement and you will be bound by the Court's decisions and the settlement's release. (See Question 11.)

To receive an award, you must submit a Claim Form on or before **[DATE]**. (See Question 13.)

Unless you exclude yourself from the Class, if the settlement is approved, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or the "Released Parties" about the claims in this lawsuit, **ever again**, regardless of whether you submit a Claim Form.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself—or it is sometimes referred to as "opting out" of the Class.

#### **16. How can I get out of the settlement?**

To exclude yourself from the Class (or "opt out"), you must send by U.S. mail a letter or written request to the Settlement Administrator. Your request must include all of the following:

1. Your full name and current address;
2. A clear statement that you wish to be excluded from the Class;



3. The case name and case number: *In Re: Smashburger IP Holder, LLC, et al*, Lead Case No. 2:19-CV-00993-JAK-(JEMx); and
4. Your signature (you must personally sign the letter).

Please write “**REQUEST FOR EXCLUSION**” on the lower left-hand corner of the front of the envelope.

Your exclusion request must be postmarked no later than [DATE]. Send your request to: [ADDRESS].

**17. If I exclude myself, can I still get a payment?**

No. You will not get a payment or product voucher if you exclude yourself from the settlement.

If you request exclusion from the Class, then:

- You will not be eligible to receive a payment or product voucher under the proposed settlement;
- You will not be allowed to object to the terms of the proposed settlement, and
- You will not be bound by any subsequent rulings entered in this case if the proposed settlement is finally approved.

However, if your request for exclusion is late or not complete, you will still be a part of the Class, you will be bound by the settlement and by all other orders and judgments in this lawsuit, and you will not be able to participate in any other lawsuits based on the claims in this case.

**18. If I don't exclude myself, can I sue Defendants for the same thing later?**

No. If the Court approves the proposed settlement and you do not exclude yourself from the Class, you give up (or “fully, finally and forever release, relinquish, and discharge”) all Released Claims against the Released Parties, as set forth above in response to Question 11.

As part of this settlement, the Court has preliminarily stopped all Class Members and/or their representatives (who do not timely exclude themselves from the Class) from filing, participating in, or continuing litigation against Defendants (or against any of their related parties or affiliates), and/or from receiving any benefits from any other lawsuit relating to the claims being resolved in this case.

If you have a pending lawsuit, arbitration, or other proceeding against Defendants, speak to your lawyer in that lawsuit or proceeding. You must exclude yourself from the Class to continue litigating the claims this settlement resolves. Remember, the exclusion deadline (or “Opt-Out Date”) is [DATE].

Upon final approval of the settlement, Plaintiffs and Defendants will ask the Court to enter a permanent ruling forbidding all Class Members and/or their representatives and/or personnel from suing, or continuing to sue, Defendants regarding any of the Released Claims. All Class Members will be bound by this order.

The representative Plaintiffs and their lawyers will not represent you as to any claims you choose to pursue against Defendants.

## **THE LAWYERS REPRESENTING THE CLASS**

**19. Do I have a lawyer in this case?**

The Court has appointed attorneys at the law firm of Bursor & Fisher, P.A. to represent you and the other Class

Members in this lawsuit. The lawyers representing you and the Class Members are called “Plaintiffs’ Lead Counsel.” You will not be charged for the services of these lawyers.

You may contact Plaintiffs’ Lead Counsel as follows:

L. Timothy Fisher  
BURSOR & FISHER P.A.  
1990 North California Blvd., Suite 940  
Walnut Creek, California 94596  
info@bursor.com  
Tel: 925-300-4455

The Class Members are represented by Bursor & Fisher, P.A., Reich Radcliffe & Hoover, LLP and Ahdoot & Wolfson, P.C. Together, these firms are called Class Counsel.

You have the right to retain your own lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer.

Plaintiffs’ Lead Counsel, Class Counsel Defense Counsel, or the Settlement Administrator may **not** advise you on the tax consequences of participating or not participating in the settlement.

#### **20. How will the lawyers be paid?**

Plaintiffs’ Lead Counsel and Class Counsel have worked on this case since 2019 and have not been paid anything to date for their work on this case. Plaintiffs’ Lead Counsel and Class Counsel will request attorneys’ fees and reimbursement of costs and expenses, which will be paid using a portion of the \$2,500,000.00 settlement fund, prior to the distribution of settlement benefits to Class Members who submit valid and timely Claim Forms. Defendants will have the right to challenge the amount of attorneys’ fees and expenses requested.

Plaintiffs’ Lead Counsel and Class Counsel will also ask the Court for a special service payment (or “Incentive Awards”) of up to \$5,000.00 for Plaintiffs Andre Galvan, Lucinda Lopez, Thu Thuy Nguyen, Robert Meyer, and Jamelia Harris, for their work on behalf of the Class. Any special service payments also must be approved by the Court, and any awarded amounts also will be paid using a portion of the \$2,500,000.00 settlement fund, prior to the distribution of settlement benefits to Class Members who submit valid and timely Claim Forms.

The Court has to approve any Attorneys’ Fees and Expenses and Incentive Award requested by Plaintiffs’ Lead Counsel and Class Counsel in this case. Plaintiffs’ Lead Counsel and Class Counsel’s motion for these Attorneys’ Fees and Expenses or Incentive Awards will be filed on or before [DATE] and posted at [www.burgersettlement.com](http://www.burgersettlement.com).

### **OBJECTING TO THE SETTLEMENT**

You have the right to tell the Court that you do not agree with the Settlement or any or all of its terms.

#### **21. How can I tell the Court if I do not like the Settlement?**

If you are a Class Member but do not like the proposed settlement and think the Court should not approve it, you may object. Objecting is simply telling the Court that you don’t like something about the settlement. The Court will consider your views.

**You can object only if you stay in the Class (i.e., if you do not “opt out” or exclude yourself).** As a Class

Member, you will be bound to the Agreement and Court orders regardless of your objection and regardless of whether you believe the terms of the settlement are favorable to the Class. You will be bound even if you have another claim, lawsuit, arbitration or other proceeding pending against Defendants concerning the Subject Products.

To object, you must **file** a timely, written, compliant objection with the Court, through the Court's Case Management/Electronic Case Files ("CM/ECF") system or through any other method in which the Court will accept filings, if any, send the written objection by fax, U.S. mail, or e-mail to the Settlement Administrator, and send by U.S. mail or e-mail a copy to Plaintiffs' Lead Counsel and Defense Counsel postmarked no later than **[DATE]**. Members of the Class who fail to file and serve timely and fully compliant written objections as described here and in the Agreement shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the settlement.

Your written objection **must** include:

- (1) your full name;
- (2) your current address;
- (3) a written statement of your objection(s) and the reasons for each objection;
- (4) a statement of whether you intend to appear at the Fairness Hearing;
- (5) your signature;
- (6) a statement, sworn to under penalty of perjury attesting to the fact that you purchased and/or consumed one or more of the Subject Products during the Class Period;
- (7) details of the purchase of the Subject Products, including the Subject Products purchased, and the date and location of purchase; and
- (8) the case name and case number: *In Re: Smashburger IP Holder, LLC, et al*, Lead Case No. 2:19-CV-00993-JAK-(JEMx).

Objections that are mailed to the Court (and not filed pursuant to the Court's CM/ECF system, or any other method in which the Court will accept filings, if any), or objections that are served on the Parties but not filed with the Court, shall not be received or considered by the Court at the Fairness Hearing. Objections that do not contain all of the information itemized above shall not be considered by the Court at the Fairness Hearing.

Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a Notice of Intention to Appear to Plaintiffs' Lead Counsel identified and to Defense Counsel, and file said notice with the Court, no later than **[DATE]**, or as the Court may otherwise direct.

Objections and notices of intention to appear must be served:

*Upon Settlement Administrator at:*

Smashburger Settlement  
Claims Administrator  
[STREET]  
[CITY STATE ZIP]

*Upon Plaintiffs' Lead Counsel at:*

L. Timothy Fisher  
**BURSOR & FISHER, P.A.**  
1990 North California Blvd., Suite 940  
Walnut Creek, California 94596  
info@bursor.com

*Upon Defense Counsel at:*

Dean J. Zipser  
Mark. A. Finkelstein  
Adina W. Stowell  
**UMBERG ZIPSER LLP**  
1920 Main Street, Suite 750  
Irvine, California 92614  
[dzipser@umbergzipser.com](mailto:dzipser@umbergzipser.com)  
[mfinkelstein@umbergzipser.com](mailto:mfinkelstein@umbergzipser.com)  
[astowell@umbergzipser.com](mailto:astowell@umbergzipser.com)

If you file objections, but the Court approves the settlement as proposed, you can still complete a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions discussed in this Notice and in the settlement agreement called the “Stipulation of Settlement.”

**22. What is the difference between objecting and asking to be excluded?**

Objecting is simply a way of telling the Court that you don’t like something about the settlement. You can only object if you stay in the Class. You will also be bound by any subsequent rulings in this case, and you will not be able to file or participate in any other lawsuit based upon or relating to the claims of this lawsuit. If you object to the settlement, you still remain a Class Member and you will still be eligible to submit a Claim Form. Excluding yourself is telling the Court that you don’t want to be a part of the Class. If you exclude yourself, you have no basis to object to the settlement and appear at the Fairness Hearing because it no longer affects you.

**THE COURT’S FAIRNESS HEARING**

The Court will hold a final hearing (called a Fairness Hearing) to decide whether to finally approve the settlement. You may attend and ask to speak, but you don’t have to.

**23. When and where will the Court decide whether to approve the settlement?**

The Court will hold a hearing in this case on [DATE] at [TIME] in Courtroom 10B at the First Street Courthouse, 350 W. First Street, Los Angeles, CA 90012.

The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.burgersettlement.com](http://www.burgersettlement.com) for updates. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also decide whether to award Attorneys’ Fees and Expenses and Plaintiffs’ Incentive Award.

If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

**24. Do I have to come to the hearing?**

No. Plaintiffs’ Lead Counsel and Class Counsel will answer questions the Court may have at the Fairness Hearing. But you are welcome to come at your own expense. Please note that the Court has the right to change the date and/or time of the Fairness Hearing without further notice, so it is a good idea to check the settlement website [www.burgersettlement.com](http://www.burgersettlement.com) for updates. If you are planning to attend the hearing, you should confirm the date and time on this website before going to the Court.

**25. May I speak at the fairness hearing?**

Yes, you may ask the Court for permission to speak at the hearing. To do so, you must **file** a document called a “Notice of Intention to Appear” through the Court’s Case Management/Electronic Case Files (“CM/ECF”) system or through any other method in which the Court will accept filings, if any.

If you or your attorney wants to appear and speak at the Fairness Hearing, you (or your attorney) must also mail a Notice of Intention to Appear at the Fairness Hearing to the addresses listed above in Question 21.

Your Notice of Intention to Appear at the Fairness Hearing must be filed and received by the Court, and mailed and/or e-mailed to the Settlement Administrator, Defense Counsel, and Plaintiffs’ Lead Counsel no later than **[DATE]**.

## **GETTING ADDITIONAL INFORMATION**

### **26. How can I get more information?**

This notice summarizes the proposed settlement. More details are in the settlement agreement which is called the “Stipulation of Class Action Settlement” or “Agreement.” For a complete, definitive statement of the settlement terms, refer to the Agreement at **[www.burgersettlement.com](http://www.burgersettlement.com)**. You also may write with questions to the Settlement Administrator at **[ADDRESS]** or call **[NUMBER]** toll free.

**PLEASE DO NOT CALL THE COURT**

**EXHIBIT F**

**If you bought or consumed Smashburger’s “Triple Double” hamburgers between July 1, 2017 and May 31, 2019, you could receive a cash payment or product voucher from a class action settlement**

*Para una notificación en Español, por favor llame o visite nuestro website.*

A settlement has been proposed in a class action lawsuit claiming that Smashburger (“the Defendant”) misrepresented the amount of beef in its Triple Double hamburgers, including the Triple Double, Bacon Triple Double, French Onion Triple Double, and Pub Triple Double (collectively the “Subject Products”). The Defendant denies any wrongdoing and stands behind its products and representations.

**Who is included?**

The Class includes all persons in the United States and U.S. Territories who purchased and/or consumed one or more of the Subject Products during the period July 1, 2017 through May 31, 2019.

**What are the benefits?**

The proposed settlement provides \$2,500,000 in cash and \$1.5 million in product vouchers to resolve the lawsuit. Eligible class members may be entitled to a \$4.00 cash payment for each Subject Product purchased or consumed during the Class Period, up to a maximum of \$20.00 in cash per household without proof of purchase. Alternatively, eligible class members may receive a product voucher redeemable, upon the purchase of a regularly-priced entrée at a company owned Smashburger-branded restaurant, for either a) an upgrade of a single beef hamburger to a double beef hamburger for no additional cost; or b) a small fountain drink for no additional cost, up to 10 vouchers. Eligible class members may elect to receive a cash award **or** a product voucher award. **Not both.**

The amount of the payment and total available product vouchers will depend upon the number of Class Members who choose to make claims. The actual cash amounts and product vouchers available for each eligible Class Member who submits a valid and timely Claim Form (an “Authorized Claimant”) will not be determined until after all Claims Forms have been received, and may not be determined until after the proposed settlement is final.

**What are my options?**

The only way to receive money or product vouchers is to file a claim. Claim Forms can be submitted electronically at [www.burgersettlement.com](http://www.burgersettlement.com) no later than [DATE] or by mail postmarked no later than [DATE] and mailed to: [ADDRESS].

**What are my rights?**

**Do Nothing:** stay in the settlement and be bound by all decisions of the court. You will not receive money or be eligible for a product voucher. **Opt-Out** of the settlement: You will maintain your right to pursue a lawsuit against the Defendants concerning the claims asserted in this Settlement.

**Object:** Remain in the settlement and tell the Court in writing why you do not like the settlement. Detailed instructions concerning how to Object are found on the website below.

The Court will hold a hearing in this case on [DATE] at [TIME] in Courtroom 10B at the First Street Courthouse, 350 W. First Street, Los Angeles, CA 90012, to decide whether it will finally approve all terms of the settlement. You may appear at the hearing but you don't have to. You may hire an attorney at your own expense, but you don't have to. Plaintiffs' Lead Counsel and Class Counsel will also seek attorney fees and costs as well as representative plaintiff awards of \$5,000 each. The motion for attorney fees, costs and representative plaintiff awards will be posted at [www.burgersettlement.com](http://www.burgersettlement.com) after they are filed. That motion will also be heard on [DATE] at [TIME].

This is only a summary. For more information, including the terms of the Settlement and detailed instructions concerning how to Object, visit [www.burgersettlement.com](http://www.burgersettlement.com), or call [000.000.0000].



**EXHIBIT G**

**Undertaking**

I, the undersigned, acknowledge and agree as follows on behalf of the firm of Bursor & Fisher, P. A. (the "Firm")

I have read the Stipulation of Class Action Settlement entered into by the parties in *In Re: Smashburger IP Holder, LLC, et al, Lead Case No. 2:19-CV-00993-JAK-(JEMx)*, currently pending in the United State District Court for the Central District of California ("Stipulation of Settlement") and understand its terms. The terms of the Settlement Agreement are incorporated herein. I make this Undertaking on behalf of the Firm. In the event the Final Approval Order and Judgment is reversed or rendered void as a result of an appeal or the Stipulation of Settlement is voided, rescinded, or terminated for any other reason ("Repayment Event"), the Firm is severally liable to Defendants for repayment of all such payments received by the Firm pursuant to the Stipulation of Settlement. Within thirty (30) days of receiving written notice of a Repayment Event from any counsel for the parties, the Firm will reimburse to Defendants all sums received by the Firm as attorney's fees or costs pursuant to the Stipulation of Settlement. By receiving any such sums, the Firm and its shareholders and/or partners submit to the jurisdiction of the United State District Court for the Central District of California for the enforcement of any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Stipulation of Settlement. I represent and warrant that I am authorized to execute this agreement on the Firm's behalf and to bind the firm to the obligations set forth herein.

DATED: Feb 24, 2021

By:   
Timothy Fisher (Feb 24, 2021 12:15 PST)

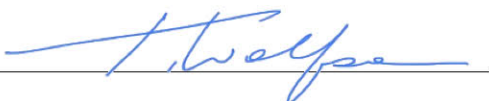
On behalf of Bursor & Fisher, P.A.

**Undertaking**

I, the undersigned, acknowledge and agree as follows on behalf of the firm of  
Ahdoot & Wolfson, PC (the "Firm")

I have read the Stipulation of Class Action Settlement entered into by the parties in *In Re: Smashburger IP Holder, LLC, et al, Lead Case No. 2:19-CV-00993-JAK-(JEMx)*, currently pending in the United State District Court for the Central District of California ("Stipulation of Settlement") and understand its terms. The terms of the Settlement Agreement are incorporated herein. I make this Undertaking on behalf of the Firm. In the event the Final Approval Order and Judgment is reversed or rendered void as a result of an appeal or the Stipulation of Settlement is voided, rescinded, or terminated for any other reason ("Repayment Event"), the Firm is severally liable to Defendants for repayment of all such payments received by the Firm pursuant to the Stipulation of Settlement. Within thirty (30) days of receiving written notice of a Repayment Event from any counsel for the parties, the Firm will reimburse to Defendants all sums received by the Firm as attorney's fees or costs pursuant to the Stipulation of Settlement. By receiving any such sums, the Firm and its shareholders and/or partners submit to the jurisdiction of the United State District Court for the Central District of California for the enforcement of any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Stipulation of Settlement. I represent and warrant that I am authorized to execute this agreement on the Firm's behalf and to bind the firm to the obligations set forth herein.

DATED:

By: 

On behalf of Ahdoot & Wolfson, PC

**Undertaking**

I, the undersigned, acknowledge and agree as follows on behalf of the firm of  
Reich Radcliffe & Hoover LLP (the "Firm")

I have read the Stipulation of Class Action Settlement entered into by the parties in *In Re: Smashburger IP Holder, LLC, et al, Lead Case No. 2:19-CV-00993-JAK-(JEMx)*, currently pending in the United State District Court for the Central District of California ("Stipulation of Settlement") and understand its terms. The terms of the Settlement Agreement are incorporated herein. I make this Undertaking on behalf of the Firm. In the event the Final Approval Order and Judgment is reversed or rendered void as a result of an appeal or the Stipulation of Settlement is voided, rescinded, or terminated for any other reason ("Repayment Event"), the Firm is severally liable to Defendants for repayment of all such payments received by the Firm pursuant to the Stipulation of Settlement. Within thirty (30) days of receiving written notice of a Repayment Event from any counsel for the parties, the Firm will reimburse to Defendants all sums received by the Firm as attorney's fees or costs pursuant to the Stipulation of Settlement. By receiving any such sums, the Firm and its shareholders and/or partners submit to the jurisdiction of the United State District Court for the Central District of California for the enforcement of any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Stipulation of Settlement. I represent and warrant that I am authorized to execute this agreement on the Firm's behalf and to bind the firm to the obligations set forth herein.

DATED: Feb 24, 2021

By: Marc G. Reich  
Marc G. Reich (Feb 24, 2021 12:46 PST)

On behalf of Reich Radcliffe & Hoover LLP