

1 **BURSOR & FISHER, P.A.**
L. Timothy Fisher (State Bar No. 191626)
2 1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
3 Telephone: (925) 300-4455
Facsimile: (925) 407-2700
4 E-mail: ltfisher@bursor.com

5
6 *Lead Interim Class Counsel*

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 In Re: Smashburger IP Holder, LLC, et al.) Lead Case No. LA CV19-00993-JAK (JEMx)
12 ALL CASES)
13) **SUPPLEMENTAL DECLARATION OF**
14) **SCOTT M. FENWICK OF KROLL**
15) **SETTLEMENT ADMINISTRATION LLC**
16) **IN CONNECTION WITH FINAL**
17) **APPROVAL OF SETTLEMENT**
18)
19) Date: January 30, 2023
20) Time: 8:30 a.m.
21) Courtroom: 10B
22)
23) Hon. John A. Kronstadt
24)
25)
26)
27)
28)

1 I, Scott M. Fenwick, declare as follows:

2 1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),¹ the
3 Settlement Administrator² appointed in the above-captioned case, whose principal office is located
4 at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age
5 and am authorized to make this declaration on behalf of Kroll and myself. The following statements
6 are based on my personal knowledge and information provided by other experienced Kroll
7 employees working under my general supervision. This declaration is being filed to update the
8 Court in connection with final approval of the Settlement and supplements the *Declaration of Frank*
9 *Ballard of Kroll Settlement Administration LLC in connection with Final Approval of Settlement*
10 filed on December 5, 2022 (the “Initial Declaration”).

11 2. Kroll has extensive experience in class action matters, having provided services in
12 class action settlements involving antitrust, securities fraud, labor and employment, consumer, and
13 government enforcement matters. Kroll has provided notification and/or claims administration
14 services in more than 3,000 cases.

15 3. As stated in the Initial Declaration, Kroll was appointed as the Settlement
16 Administrator to provide notification and administration services in connection with that certain
17 Stipulation of Class Action Settlement (the “Settlement Agreement”) entered into in connection
18 with the above-captioned case, referred to herein as the “Settlement”.

19 4. As noted in the Initial Declaration, on January 22, 2021, Kroll established a toll-free
20 number, 1-833-644-1593, for Class Members to call and obtain additional information regarding
21 the Settlement through an Interactive Voice Response (“IVR”) system. As of January 6, 2023, the
22 IVR has received 122 calls.

23 5. As noted in the Initial Declaration, commencing on October 19, 2022, Kroll caused
24 the Summary Notice to be sent to the 977,271 email addresses on file for Class Members. A true
25

26 ¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement
27 Agreement (as defined below).

28 ² The Settlement Agreement and Preliminary Approval Order appoint “Heffler Claims Group” (“Heffler”) as the
Settlement Administrator. Heffler was acquired by Duff & Phelps LLP (now known as Kroll, LLC) in July 2019. In
April 2021, Heffler changed its name to Kroll Settlement Administration LLC.

1 and correct copy of a complete exemplar Summary Notice (including the subject line), along with
2 the Long Form Notice, and Claim Form are attached hereto as **Exhibits A, B, and C**, respectively.
3 Of the 977,271 emails attempted for delivery, 100,718 emails were rejected/bounced back as
4 undeliverable.

5 6. The required digital advertising program commenced on October 19, 2022. Details
6 of the digital advertising program are included in the declaration of my colleague, Jeanne C.
7 Finegan, APR.

8 7. The last day to submit Requests for Exclusion and objections was December 19,
9 2022. As of January 6, 2023, Kroll has received no timely Requests for Exclusion and no objections
10 to the Settlement.

11 8. The last day to submit Claim Forms is January 17, 2023. As of January 6, 2023,
12 Kroll has received 246 Claim Forms through the mail and 892,204 Claim Forms filed electronically
13 through the Settlement Website. The claims filing rate exceeds Kroll's original estimate. Kroll
14 suspects that the higher than anticipated claims filing rate is the result of suspicious online claim
15 filing activity; therefore, Kroll will require additional time to analyze and validate Claim Forms.
16 Kroll is still in the process of reviewing and validating the claims it has received, and the number
17 of valid claims that will receive a benefit remains subject to change until such review is completed.

18 9. As of January 6, 2023, Kroll will have billed approximately \$267,802 for Settlement
19 Administration Expenses of this matter, which includes all media costs, website development,
20 project setup, Class Member communications, and claims received through November 30, 2022.
21 Kroll's initial estimate assumed that there would be a 5% claim rate from an estimated population
22 of 4,548,000 potential claimants, resulting in roughly 227,400 claims. Taking into account the
23 892,450 Claim Forms submitted through January 6, 2023, along with additional Claim Forms that
24 will be received through the Claim Deadline, and the time required to validate Claim Forms and
25 send out payments, Kroll now estimates that Settlement Administration Expenses will be in excess
26 of \$400,000. Once the Claim Deadline has passed and the total number of Claim Forms is known,
27 Kroll will assess the amount of work required to finalize the claims process and distributions and
28

1 will provide the Parties and the Court with a revised estimate of Settlement Administration
2 Expenses for approval to complete work on the administration.

3 I declare under penalty of perjury under the laws of the United States that the above is true
4 and correct to the best of my knowledge and that this Declaration was executed on January 6, 2023,
5 in Woodbury, Minnesota.


6
7
8 
9 SCOTT M. FENWICK
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Subject: Legal Notice of Smashburger Settlement

A California Federal Court authorized this notice. This is not a solicitation.

If you bought Smashburger’s Triple Double Hamburgers, you may be eligible for benefits from a class action settlement.

Para una notificación en español, visite www.burgersettlement.com

Class Member ID: [REDACTED]

You are receiving this notice to inform you of your rights and options in a proposed settlement in a class action lawsuit called *In Re: Smashburger IP Holder, LLC, et al*, Lead Case No. 2:19-CV-00993-JAK-(JEMx), (the “Settlement”).

What is this about? This notice informs you of a proposed settlement in a class action lawsuit alleging that Defendants, Smashburger IP Holder LLC and Smashburger Franchising LLC (“Defendants”), misrepresented the amount of meat in their “Triple Double” hamburgers. 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.

What can I get? You may be entitled to a \$4.00 cash payment for each Subject Product you purchased during the Class Period, up to a maximum of \$20.00 in cash per household 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.**

Alternatively, 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 \$2.50, and a small fountain drink generally costs approximately \$3.09.

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

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. 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 Claim Forms have been received and may not be determined until after the proposed Settlement is final.

The Cash Settlement Fund will be used to pay for the following: (1) all notice and administration expenses; (2) any award of Settlement Attorneys’ Fees and Expenses; (3) any incentive awards to the class representatives; and (4) Settlement benefits for approved claims. The Settlement benefits are described more fully in the Settlement Agreement available at www.burgersettlement.com.

How do I file a claim? To receive any benefits under the Settlement, you must mail in a Claim Form or submit a Claim Form by visiting www.burgersettlement.com. You can also request a Claim Form by calling **1-833-644-1593** toll free.

Your Claim Form must be submitted electronically at www.burgersettlement.com no later than **January 17, 2023**, or by mail postmarked no later than **January 17, 2023**, and mailed to: Smashburger Settlement, c/o Kroll Settlement Administration, P.O. Box 5324, New York, NY 10150-5324.

What are my other options? Do nothing: If you do nothing, you will not get any Settlement benefits and you will give up your right to sue or continue to sue Defendants for the claims in this case.

Exclude yourself: If you exclude yourself or remove yourself from the Class, you will not receive any Settlement benefits. You will keep your right to sue or continue to sue Defendants for the claims in this case. Requests for Exclusions must be postmarked by **December 19, 2022**.

Object: If you do not exclude yourself from the Settlement you may object to it or tell the Court what you don’t like about the Settlement. Objections must be filed with the Clerk of Court and a copy mailed to the Settlement Administrator by **December 19, 2022**. For more details about your rights and options and how to exclude yourself or object, go to www.burgersettlement.com.

What happens next? The Court will hold a hearing in this case on **January 30, 2023, at 8:30 a.m. PT** in Courtroom 10B at the First Street Courthouse, 350 W First Street, Los Angeles, CA 90012, to consider whether to approve the Settlement, Class Counsel’s Attorneys’ Fees and Expenses, and incentive awards to class representatives. Class Counsel’s fee motion will be posted to www.burgersettlement.com once filed. You or your attorney may ask to speak at the hearing at your own cost, but you don’t have to.

How do I get more information? This is only a summary. To view the full notice and important documents such as the Settlement Agreement, go to www.burgersettlement.com or contact the Settlement Administrator by writing to Smashburger Settlement, c/o Kroll Settlement Administration, P.O. Box 5324, New York, NY 10150-5324, or calling toll-free **1-833-644-1593**.

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK’S OFFICE

[Click here to stop future mailings.](#)

Exhibit B

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

IF YOU BOUGHT 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.

- This notice informs you of a proposed settlement in a class action lawsuit alleging that Defendants Smashburger IP Holder LLC and Smashburger Franchising LLC (“Defendants”) 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 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 receive a voucher that will entitle the bearer of the voucher, upon the purchase of 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 assert 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.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY JANUARY 17, 2023	This is the only way to receive a cash award or product voucher.
EXCLUDE YOURSELF BY DECEMBER 19, 2022	Exclude yourself by December 19, 2022 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.
OBJECT BY DECEMBER 19, 2022	You can write to the Court by December 19, 2022 about why you don’t like the settlement.
GO TO A HEARING	You can ask by December 19, 2022 to speak in Court about the fairness of the proposed settlement.
DO NOTHING	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.

QUESTIONS? VISIT WWW.BURGERSETTLEMENT.COM OR CALL 833-644-1593 TOLL FREE

Para una notificación en español, por favor llame o visite nuestro sitio web.

- 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.**

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....4

1. Why was this notice issued?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a settlement?

WHO IS PART OF THE SETTLEMENT?.....5

5. Who is included in the proposed settlement?
6. Are there exceptions to being included?
7. Which products are included?
8. What if I'm still not sure if I'm included?

THE SETTLEMENT BENEFITS – WHAT YOU CAN GET.....6

9. What does the settlement provide?
10. What can I get from the settlement?
11. What am I giving up if I stay in the Class?
12. When will I get my payment, if any?

HOW TO RECEIVE A PAYMENT.....11

13. How can I get a payment?
14. What is the claim process?
15. What if I do nothing?

EXCLUDING YOURSELF FROM THE SETTLEMENT.....12

16. How can I get out of the settlement?
17. If I exclude myself, can I still get a payment?
18. If I don't exclude myself, can I sue DEFENDANTS for the same thing later?

THE LAWYERS REPRESENTING THE CLASS.....13

19. Do I have a lawyer in this case?
20. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT.....14

21. How can I tell the Court if I do not like the settlement?
22. What is the difference between objecting and asking to be excluded?

THE COURT'S FAIRNESS HEARING.....16

23. When and where will the Court decide whether to approve the settlement?
24. Do I have to come to the hearing?
25. May I speak at the fairness hearing?

GETTING ADDITIONAL INFORMATION.....17

26. How can I get more information?

BASIC INFORMATION

1. Why was this notice issued?

This notice, given pursuant to an Order of the Court dated **September 19, 2022**, 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 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, or call the toll-free number, **833-644-1593**. You may also send questions to the Settlement Administrator at Smashburger Settlement, c/o Kroll Settlement Administration, PO Box 5324, New York, NY 10150-5324.

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* Question 14), as well as to pay for costs associated with the notice and administration of the Settlement, Attorneys’ Fees and Expenses (*see* Question 21), and a special service payment (or “Incentive Award”) to the Class Representatives (*see* Question 21).

The settlement agreement, called the “Stipulation of Settlement” or “Agreement,” available at 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 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 \$2.50, and a small fountain drink generally costs approximately \$3.09.

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 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 first responders, 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 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 **January 30, 2023** 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 and can also be obtained by calling **833-644-1593** 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. You may submit a claim by visiting www.burgersettlement.com. You can also request a claim form by calling **833-644-1593** 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 no later than **January 17, 2023**, or by mail postmarked no later than **January 17, 2023**, and mailed to:

Smashburger Settlement
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

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.

Lead Plaintiffs' 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 Lead Plaintiffs' Counsel and Defense Counsel, of the denial of the claim. If Lead Plaintiffs' 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, Lead Plaintiffs' 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. Lead Plaintiffs' 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 **January 30, 2023 at 8:30 a.m. PT** 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 **January 17, 2023**. (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 **December 19, 2022**. Send your request to:

Smashburger Settlement
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

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 **December 19, 2022**.

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 “Lead Plaintiffs’ Counsel.” You will not be charged for the services of these lawyers.

You may contact Lead Plaintiffs’ 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.

Lead Plaintiffs’ 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?

Lead Plaintiffs’ 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. Lead Plaintiffs’ 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.

Lead Plaintiffs’ 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 Lead

Plaintiffs' Counsel and Class Counsel in this case. Lead Plaintiffs' Counsel and Class Counsel's motion for these Attorneys' Fees and Expenses or Incentive Awards will be filed on or before **December 5, 2022** and posted at 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 Lead Plaintiffs' Counsel and Defense Counsel postmarked no later than **December 19, 2022**. 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 one or more of the Subject Products during the Class Period;
- (7) details of your 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 Lead Plaintiffs' Counsel identified and to Defense Counsel, and file said notice with the Court, no later than **December 19, 2022**, or as the Court may otherwise direct.

Objections and notices of intention to appear must be served:

Upon Settlement Administrator at:

Smashburger Settlement
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

Upon Lead Plaintiffs' 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
mfinkelstein@umbergzipser.com
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 **January 30, 2023 at 8:30 a.m. PT** 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 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. Lead Plaintiffs' 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 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 Lead Plaintiffs' Counsel no later than **December 19, 2022**.

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. You also may write with questions to the Settlement Administrator at Smashburger Settlement, c/o Kroll Settlement Administration, PO Box 5324, New York, NY 10150-5324 or call **833-644-1593** toll free.

PLEASE DO NOT CALL THE COURT

Exhibit C



311960000000

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 January 17, 2023 or submitted online at www.burgersettlement.com on or before January 17, 2023.

Please read the full notice of this settlement available at 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 submit this form no later than January 17, 2023 by mail, or file your Claim Form online no later than January 17, 2023:

ONLINE: www.burgersettlement.com

MAIL: Smashburger Settlement
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

PART ONE: CLAIMANT INFORMATION

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 OR CALL TOLL-FREE 1-833-644-1593



31196



CF



Page 1 of 3



311960000000

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.**

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

If you prefer to receive an electronic payment via ACH, Zelle, e-Mastercard, PayPal, or Venmo, please fill out your Claim Form online at www.burgersettlement.com.

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 between July 1, 2017 through May 31, 2019, up to a **maximum of \$20.00 per household without proof of purchase**. By completing this Claim Form and mailing it to the Settlement Administrator, you will receive payment via paper check.

PRODUCT VOUCHER OPTION: If you elect to receive a 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 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.

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

QUESTIONS? VISIT WWW.BURGERSETTLEMENT.COM OR CALL TOLL-FREE 1-833-644-1593



31196



CF



Page 2 of 3



311960000000

PART THREE: ATTESTATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America that I purchased the products and number 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 between July 1, 2017 and May 31, 2019.
3. Select only **one** of the settlement benefits (cash or voucher).
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 OR CALL TOLL-FREE 1-833-644-1593



31196



CF



Page 3 of 3