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12 Attorneys for Plaintiff

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF ALAMEDA**

15  
16 BRIA WARE, an individual, on behalf of  
17 herself and on behalf of all persons similarly  
situated,

18 Plaintiff,

19 v.

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

22 Defendants.

Case No. 21CV002063

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL**

Date: October 17, 2023

Time: 3:00 p.m.

Judge: Hon. Brad Seligman

Dept.: 23

**FILED**  
ALAMEDA COUNTY

OCT 19 2023

CLERK OF THE SUPERIOR COURT  
By *[Signature]* Deputy

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

8 **I.**

9 **FINDINGS**

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

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

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

18 **Preliminary Approval of the Settlement**

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

23 **Notice to the Class**

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

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

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

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

7 **Fairness Of The Settlement**

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

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

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

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

19                   d.       No objections were received. One request for exclusion was received.  
20 The name of the Class Member who requested exclusion is Michael Kentrock.

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

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

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

3 **PAGA Civil Penalty Payment**

4                   10.       The Agreement provides for a payment of PAGA Civil Penalty Payment in  
5 the amount of \$50,000.00. The Court has reviewed the PAGA Civil Penalty Payment and finds and  
6 determines that the PAGA Civil Penalty Payment and the allocation of \$37,500.00 to LWDA and  
7 \$12,500.00 of the PAGA Civil Penalty Payment to Aggrieved Employees is fair and reasonable and  
8 complies with the requirements set forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

9 **Class Counsel Fees and Litigation Expenses**

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

17                  12.       The court approves Class Counsel Fees and Litigation Expenses of Three  
18 Hundred Forty-Seven Thousand, Two Hundred Fifty-One Dollars and Thirty-One Cents  
19 (\$347,251.31) comprised of attorneys' fees in the amount of Three Hundred Thirty-Two Thousand,  
20 Five Hundred Dollars and Zero Cents (\$332,500.00) and reimbursement of costs and expenses in  
21 the amount of Fourteen Thousand, Seven Hundred Fifty-One Dollars and Thirty-One Cents  
22 (\$14,751.31) is reasonable in light of the contingent nature of Class Counsel's fee, the hours worked  
23 by Class Counsel, and the results achieved by Class Counsel. The requested attorneys' fee award  
24 represents 1/4 of the common fund, which is reasonable, and is supported by Class Counsel's  
25 lodestar.

26 **Enhancement Award**

27                  13.       The Agreement provides for an Enhancement Award of up to Ten Thousand  
28 Dollars and Zero Cents (\$10,000.00) for Plaintiff, Bria Ware, subject to the Court's approval. The

1 Court finds that the amount of Three Thousand Dollars and Zero Cents (\$3,000.00) is reasonable in  
2 light of the risks and burdens undertaken by the Plaintiff in this class action litigation.

3 **Settlement Administration Costs**

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

8 **II.**

9 **ORDERS**

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

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

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

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

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

21 4. Defendant shall fund the Gross Fund Value on the Funding Date. In  
22 exchange the Class Members shall release the "Released Parties" from the "Released Class Claims"  
23 and the "PAGA Members" shall release the "Released Parties" from the "Released PAGA Claims."

24 a. The "Released Parties" means Defendant and each of their past,  
25 present and future agents, employees, servants, officers, directors, members, owners (whether direct  
26 or indirect), general partners, limited partners, trustees, representatives, shareholders, stockholders,  
27 mortgagees or ground lessors, attorneys, parents, subsidiaries, equity sponsors, related and/or  
28 affiliated companies/corporations and/or partnerships, divisions, assigns, predecessors, successors,

1 insurers, consultants, joint venturers, joint employers, temporary staffing agencies, contractors,  
2 affiliates, service providers, alter-egos, vendors, affiliated organizations, and any person and/or  
3 entity alleged to have joint liability, including but not limited to Shake Shack Inc., SSE Holdings,  
4 LLC and Shake Shack California LLC, and all of their respective past, present and future employees,  
5 directors, officers, members, owners, agents, representatives, payroll agencies, attorneys,  
6 stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns and any and all  
7 persons acting under, by, through or in concert with any of them (hereinafter referred to collectively  
8 as the “Released Parties”), and each and all of them.

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

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

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

1           5.       Class Counsel are awarded attorneys' fees in the amount of \$347,251.31  
2 comprised of attorneys' fees equal to one-fourth (1/4) of the Gross Fund Value, or Three Hundred  
3 Thirty-Two Thousand, Five Hundred Dollars and Zero Cents (\$332,500.00) and reimbursement of  
4 costs and expenses in the amount of Fourteen Thousand, Seven Hundred Fifty-One Dollars and  
5 Thirty-One Cents (\$14,751.31). Class Counsel shall not seek or obtain any other compensation or  
6 reimbursement from Defendants, Plaintiff, or members of the Class. **Ten per cent (10%) of the**  
7 **attorney's fees shall be withheld by the Settlement Administrator pending approval of the**  
8 **final distribution.**

9           6.       The payment of the Enhancement Award to the Plaintiff in the amount of  
10 \$3,000.00 is approved.

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

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

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

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

22           11.      The Court further finds and determines that Class Counsel satisfied California  
23 Labor Code § 2699(1)(2) by giving the LWDA notice of the proposed Settlement of claims arising  
24 under the Private Attorney General Act ("PAGA") on March 3, 2023, and again on September 21,  
25 2023.

26           12.      The Court orders Class Counsel to comply with California Labor Code §  
27 2699(1)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court's  
28 entry of this Order.



1           13.     The Agreement is not an admission by Defendant, nor is this Final Approval  
2 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by  
3 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,  
4 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an  
5 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering  
6 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not  
7 in any event be construed as, or deemed to be evidence of, an admission or concession with regard  
8 to the denials or defenses by Defendant and shall not be offered in evidence in any action or  
9 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose  
10 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and  
11 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,  
12 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and  
13 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the  
14 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim  
15 or issue preclusion or similar defense as to the claims being released by the Settlement.

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

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

25           16.     The Court sets a Case Management Conference RE: Settlement Compliance  
26 for **August 20, 2024**, at **3:00 PM**. A Declaration RE: Settlement Compliance and a proposed  
27 amended judgment shall be filed five (5) days prior to the hearing.  
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17. If the Settlement does not become final and effective in accordance with the terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment, and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

**IT IS SO ORDERED,**

DATED: 10/19, 2023

  
\_\_\_\_\_  
Hon. Brad Seligman  
JUDGE OF THE SUPERIOR COURT