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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 FOR THE COUNTY OF LOS ANGELES

24 LUIS BAUTISTA,
25 MARGARITA GUERRERO,
26 and those similarly situated;

27 Plaintiffs,

28 v.

29 CARL KARCHER ENTERPRISES, LLC,
30 CARL'S JR. RESTAURANTS, LLC;

31 Defendants.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 08 2017

Sherri R. Carter, Executive Officer/Clerk
By: M. Solo, Deputy
Moses Solo

BC 649777

Case No.

CLASS ACTION COMPLAINT FOR

(1) VIOLATION OF CALIFORNIA'S
CARTRIGHT ACT, CAL. BUS. &
PROF. CODE §§ 16720, ET SEQ.

(2) UNFAIR COMPETITION UNDER
CAL. BUS. & PROF. CODE §§ 17200,
ET SEQ.

(3) USE OF ILLEGAL COVENANTS
NOT TO COMPETE, CAL. BUS. &
PROF. CODE §§ 16600, ET SEQ.

INTRODUCTORY STATEMENT

1. Andrew Puzder, CEO of Carl Karcher Enterprises, LLC ("CKE"), has professed a deep faith in the "free market." Employees do not need the protection of government intervention in the labor market, Puzder says, because "free market capitalism" is the "only

1 system in the history of the world that produces enough economic growth to meaningfully reduce
2 poverty.”

3 2. But the market for CKE employees is not free. Together with its franchisees, CKE
4 has colluded to suppress the wages of the restaurant-based managers, from shift leader up, who
5 work at Carl’s Jr. restaurants in Los Angeles and around the world. CKE effects this scheme
6 through a “no hire” agreement that expressly prohibits franchisees from “employ[ing] or
7 seek[ing] to employ” any of the restaurant-based managers who work for other franchisees or for
8 CKE directly. This “no hire” agreement is a naked agreement in restraint of trade.

9 3. CKE might be able to prevent franchisees from competing for workers were it to
10 decide to *employ* all the thousands of shift leaders, assistant managers, and general managers
11 who work in CKE-branded restaurants. Employers, after all, can make decisions about whether
12 and when employees can be transferred between worksites. But to avoid being held responsible
13 for protecting these workers’ rights under federal and state employment and labor protections,
14 CKE and Puzder have gone out of their way to explain that their franchisees are not part of a
15 single entity that hires and fires its workers. Rather, each of these franchisees purportedly
16 competes over just about everything, including employees.

17 4. CKE and Puzder cannot have it both ways. They cannot eschew their
18 responsibilities under the labor and employment laws by embracing a “free market” model
19 constituted by independent, competing franchisees, while at the same time restraining free
20 competition to the detriment of the thousands of workers employed by CKE and its franchisees.
21 As Puzder has himself explained, “if employers are competing for the best employees, they will
22 pay more.” And yet, CKE has participated in an illegal scheme *not* to compete for the best
23 employees.

24 PARTIES

25 5. Plaintiff Luis Bautista is a “shift leader” employed by a Carl’s Jr. franchisee in
26 Los Angeles County, CA.

27 6. Plaintiff Margarita Guerrero was formerly a “shift leader” employed by a Carl’s
28 Jr. franchisee in Los Angeles, CA.

7. Plaintiffs have suffered reduced wages and worsened working conditions because of the restraint in Carl's Jr.'s agreements with franchisees prohibiting franchisees from "employ[ing] or seek[ing] to employ" anyone who works as a shift leader or higher at another CKE-branded restaurant (whether CKE-owned or franchisee-owned) or who has worked at such a restaurant in the prior two years.

8. CKE is a privately-held corporation owned by Roark Capital Group. CKE's principal place of business is in California, where it is incorporated.

9. CKE is the parent company of, among others, Carl's Jr. Restaurants, LLC ("CJR" or "Carl's Jr."). CJR has its principal place of business in California.

JURISDICTION & VENUE

10. This Court has subject matter jurisdiction over this action pursuant to California Business and Professions Code §§17203, 17204, and 17535 and Civil Code §1780. This Court has personal jurisdiction over the parties because Defendants have their principal places of business in California and because Defendants transact business in, and this action arose from transactions conducted in, this county.

11. Venue is proper in this Court pursuant to California Code of Civil Procedure §§395 and 395.5, and Business and Professions Code §§17203, 17204 and 17535 because Defendants transact business in this county, and Plaintiffs reside in this county.

STATEMENT OF FACTS

A. Background

1. The CKE “System”

12. CKE owns, operates, and franchises fast-food restaurant brands, including Carl's Jr., Hardee's, Green Burrito, and Red Burrito.

13. According to CKE, these brands have developed and own distinctive systems relating to the development, establishment, and operation of fast-services restaurants. For example, CJR owns and develops the “Carl’s Jr. System.”

14. There are somewhere between 3,400 and 3,800 restaurants operating within the CKE network.

1 15. As of the end of 2012, about 30% of those restaurants were operated by CKE.

2 16. Today, CKE likely operates somewhere between 10%-20% of CKE-branded
3 restaurants.

4 17. CKE restaurants appear in 42 states and over 10 countries, but there is a
5 particularly high density of CKE restaurants in Southern California, where CKE restaurants
6 generate the most revenue per site.

7 18. Over the past five years, the company has aggressively sought expansion in Texas
8 and the Southeast United States, because, according to Puzder, "California's nanny state laws tell
9 our general managers what they can do, how long they can do it, and when they can do it."

10 **2. Plaintiffs and the Putative Classes Work as "Restaurant-Based Managers" at**
11 **CKE Restaurants**

12 19. Each CKE restaurant has a "general manager" who oversees restaurant
13 operations.

14 20. Some restaurants also employ an "assistant manager" who assists the general
15 manager with strategic planning, staffing, and marketing.

16 21. Each restaurant also employs at least one and up to five "shift leaders" who,
17 among other things, "[m]onitor[] and maintain[] proper staffing levels and labor costs,"
18 "[e]ffectively train[] crew members," and serve as ... "[r]ole model[s] [to] set a positive example
19 for the entire team."

20 22. Here, shift leaders, assistant managers, and general managers are described as
21 "restaurant-based managers."

22 23. Shift leaders in particular are burdened with long hours, responsibilities on par
23 with general managers, and difficult working conditions.

24 24. Plaintiff Bautista was promoted from crew member to shift leader in 2015.

25 25. Prior to his promotion, Mr. Bautista had spent more than 3 years as crew member.

26 26. Plaintiff Bautista has substantial experience with the Carl's Jr. System.

27 27. When he was promoted to shift leader, his responsibilities significantly increased,
28 but his pay went up by less than \$2.00 per hour.

1 28. Mr. Bautista decided to accept the promotion to shift leader because he takes
2 pride in his work and was interested in taking on a leadership position.

3 29. While on duty as a shift leader, Mr. Bautista has been asked to supervise nearly
4 every aspect of the store's operation.

5 30. Along with supervising crew members, Mr. Bautista must perform their work for
6 them when they do not show up for work or when they cannot complete their work because they
7 have not received proper training in Carl's Jr.'s procedures.

8 31. Mr. Bautista generally works between 35 and 45 hours each week.

9 32. Mr. Bautista's hours are extraordinarily unpredictable. He is frequently called in
10 to work at the last minute, and must cancel plans with his family.

11 33. Mr. Bautista supervisors frequently berate him.

12 34. Plaintiff Guerrero worked as a shift leader for about a year, until late 2016.

13 35. Most days, Ms. Guerrero worked from 4 pm until midnight, but she was
14 frequently required to stay past midnight to fill in for people who did not show up to work.

15 36. As a shift leader, Ms. Guerrero was asked to perform every task in her restaurant
16 while also supervising crew members.

17 37. Her working conditions were atrocious.

18 38. Ms. Guerrero kept being promised that her pay would go up, but during the entire
19 time she worked as a shift leader, she was never paid more than she had been paid as a crew
20 member.

21 39. According to websites that compile and report salary information, CKE general
22 managers are paid around \$35,000-\$40,000 every year, assistant managers \$10.50 per hour, and
23 shift leaders around \$10 per hour or around \$25,000 per year when paid an annual salary as
24 opposed to an hourly wage.

25 **3. CKE's Model Is Designed to Encourage Franchisee Competition**

26 40. Puzder has explained that CKE franchisees are given wide latitude to compete
27 with each other and with brand competitors:
28

1 Among other things, our franchisees choose their restaurant's location, determine
2 how much they will pay for the location, invest their own capital in facilities and
3 equipment, choose the prices they charge for products and manage every aspect of
4 their restaurants day to day operations . . . Our franchisees are not a division,
5 subsidiary or alter ego of CKE, but are truly independent small businessmen and
6 businesswomen who know how to drive their own business.

7 41. This competition purportedly extends to employment matters. During a recent
8 congressional hearing, when attempting to explain why CKE does not "jointly employ"
9 franchisee employees, Puzder explained that "[w]ith respect to employees, the franchisees
10 independently choose the people they hire, the wages and benefits they pay, the training such
11 employees undergo, the specific labor practices they utilize, the method by which those
12 employees are monitored and evaluated and the circumstances under which they are promoted,
13 disciplined or fired."

14 42. CKE's public disclosures and agreements with CKE franchisees further
15 emphasize that CKE franchisees operate separately from each other and from CKE.

16 43. The Carl's Jr.'s "Franchise Disclosure Document" provides that franchisees "shall
17 not hold [themselves] out as agent, legal representative, partner, subsidiary, [or] joint venturer"
18 of Carl's Jr. or CKE.

19 44. The Franchise Disclosure Document also states that franchisees "will not receive
20 any exclusive territory under the Commitment Agreement or the License Agreement," and that
21 they may "face competition from other franchisees, from outlets that we own and/or operate, or
22 from other channels of distribution or competitive brands that we control."

23 45. CJR also explains that no matter where a franchised restaurant is located, there is
24 no restriction on its "ability to solicit customers," nor are there any restrictions on CJR's ability
25 to solicit customers.

26 46. Notwithstanding the "no hire" agreement, franchisees claim publicly that they
27 have complete hiring discretion. One CKE franchisee recently remarked in a *Wall Street Journal*
28 column that he "cho[oses] whom to hire."

B. The “No Hire” Agreement

47. While CKE franchisees and CKE-operated restaurants are supposed to compete with each other for employees, they have instead agreed not to solicit or hire restaurant-based managers, including shift leaders, from other CKE restaurants or franchisees.

48. The standard language in CKE’s franchise agreements with all its franchisees includes an express “no hire” provision that prohibits franchisees from hiring certain employees of CKE and other CKE franchisees.

49. For example, Carl’s Jr.’s Franchise Disclosure Document discloses a “Preliminary Agreement” that must be signed by anyone who wishes to be considered by CKE for a franchise opportunity.

50. The “Preliminary Agreement” states: “Applicant and Other Individuals agree that they will not discuss salaries with [Carl’s Jr.] personnel and that they will not knowingly employ or seek to employ any person then employed by [Carl’s Jr.] or any franchisee of [Carl’s Jr.] as a shift leader or higher, or otherwise directly or indirectly induce such person to leave his or her employment without [Carl’s Jr.’s] prior written consent.”

51. As late as 2012, CKE’s standard franchise agreement, which franchisees sign upon entering a franchise relationship with CKE, similarly prohibited franchisees from soliciting or hiring anyone employed as a shift leader or higher by CKE or a CKE franchisee.

52. The relevant provision, from a CJR franchisee agreement, states:

(1) Franchisee acknowledges and agrees that: (a) pursuant to this Agreement, Franchisee will have access to valuable trade secrets, specialized training and other confidential information from CKE and/or its affiliates regarding the development, operation, product preparation and sale, market and operations research, advertising and marketing plans and strategies, purchasing, sales and marketing methods and techniques of CKE and its affiliates and the System; (b) the know-how regarding the System and the opportunities, associations and experience acquired by Franchisee pursuant to this Agreement are of substantial value; (c) in developing the System, CKE and its affiliates have made substantial investments of time, effort, and money; (d) CKE would be unable adequately to protect the System and its trade secrets and confidential and proprietary information against unauthorized use or disclosure and would be unable adequately to encourage a free exchange of ideas and information among operators of Carl’s Jr. Restaurants if franchisees or developers were permitted to engage in the activities described in Section 17C.(2)(a) and (b) or to hold interests in the businesses described in Section 17.C.(2)(c) and (3); (e) all restaurants operating in a quick-service format are substantial and direct competitors of the

1 System; and (f) the restrictions on Franchisee's right to hold interests in, or
2 perform services for, the businesses described in Section 17.C.(2)(c) and (3) will
not unduly limit its activities.

3 (2) Accordingly, Franchisee covenants and agrees that, except with
4 CKE's prior written consent, during the term of this Agreement, and for a period
of 2 years following its expiration, transfer, or termination, Franchisee shall not,
5 either directly or indirectly, for itself, or through, on behalf of, or in conjunction
with, any person, firm, partnership, corporation, or other entity:

6 (a) Divert or attempt to divert any business or customer, or potential
7 business or customer, of any Carl's Jr. Restaurant to any competitor, by direct or
indirect inducement or otherwise.

8 (b) *Knowingly employ or seek to employ any person then employed by*
9 *CKE or any franchisee of CKE as a shift leader or higher, or otherwise directly*
10 *or indirectly induce such person to leave his or her employment.* (emphasis
added)

11 **C. Circumstantial Evidence of a Horizontal Agreement among Competing Franchisees and CKE**

12 **1. Franchisee Awareness and Cooperation in Scheme**

13 53. One version of the "no hire" agreement is disclosed in CKE's Franchise
14 Disclosure Documents as part of the "Preliminary Agreement," which franchisees understand
15 that all other franchisees must sign.

16 54. Further, the terms of CKE franchise agreements expressly provide that CKE
17 would be unable to adequately protect the "System" if "franchisees or developers" violated the
18 terms of the "no hire" agreement.

19 55. Employment applications available online for Hardee's and Carl's Jr. restaurants
20 ask applicants whether they have worked for CKE or any of its franchisees and in what role. That
21 question is separate from another portion of the application that asks applicants to list their
22 relevant employment experience.

23 56. The "no hire" agreement embodies norms that are widely accepted across the fast-
24 food industry and familiar to franchisees. In advising new restaurant owners on how to hire their
25 first general manager, one industry expert instructs that "you have to be careful that you do not
26 earn a reputation for stealing other people's employees."

27 57. Consistent with the "no hire" agreement and industry practice, online reviews for
28 positions at Carl's Jr. and Hardee's Restaurants report that "[t]ransferring is near impossible if

1 the store you're at doesn't want to lose you" and "if you try to get a transfer, it can be difficult to
2 get one."

3 58. In Mr. Bautista's experience, it is common knowledge among shift leaders that
4 they cannot transfer between restaurants with different owners.

5 **2. The "No Hire" Agreement Is Against the Interests of Franchisees**

6 59. Restaurant-based managers are critical to the success of CKE franchisees.

7 60. As CKE's Chief Operating Officer reported to the U.S. House Committee on
8 Workforce Protections, "our General Managers each run a \$1.3 million business with 25
9 employees and significant contact with the public. They are in charge of a million-dollar facility,
10 a profit-and-loss statement, and the *success or failure of a business*." (emphasis added)

11 61. It is in the best interests of each CKE franchisee to recruit the most talented and
12 experienced restaurant-based management. Thus, if each franchisee were acting independently,
13 the "no hire" agreement would clearly contravene his or her self-interest. It would prevent the
14 franchisee from hiring for restaurant-based management roles the best employees with the most
15 experience working in the CKE "System" while allowing other franchisees to poach his or her
16 best workers for their own management positions.

17 62. By acting in unison, franchisees restrict their own ability to poach others'
18 employees, but they also protect themselves from having their own employees poached. This
19 allows franchisees to retain their best managers, most experienced in the CKE "System," without
20 having to increase their wages or improve their working conditions to prevent them from taking
21 their talent and experience with the "System" to another CKE franchisee.

22 **3. The Franchisees Collaborate Extensively**

23 63. The fast-food industry is characterized by substantial cooperation among
24 competitors on human resources and recruitment matters.

25 64. The restaurant industry's "premier talent acquisition and recruiting conference"
26 is—seemingly not ironically—called "Meeting of the Minds."

1 65. In 2012, the Vice President of Human Resources for one of the largest Hardee's
2 franchisees received the most prestigious award presented at the "Meeting of the Minds"
3 conference.

4 66. Collaboration among CKE franchisees is unusually extensive even as compared to
5 the fast-food industry broadly.

6 67. The focal points for this collaboration are established and powerful franchisee
7 associations: the Independent Hardee's Franchisee Association ("IHFA") for Hardee's
8 franchisees and the Star Franchise Association ("Star") for Carl's Jr. franchisees.

9 68. Both associations explain, using identical language, that their goals are to
10 "communicat[e] in a recognized and unified voice from the franchisee to the franchisor,"
11 "[s]erv[e] as a resource for the franchisee community," and to "protect[] and enhance[] the
12 economic investments of the franchisees."

13 69. They explain that they accomplish these goals, at least in part, by "[d]eveloping
14 purchasing efficiencies," and "[f]ormalizing lines of communication among the franchisees."

15 70. Franchisee associations are not uncommon in the fast-food industry, but the IHFA
16 and Star are particularly powerful and cooperative. A recent report explained that CKE has the
17 "best franchisee associations in the industry in the way they engage with each other and the
18 company."

19 71. Each association dedicates a substantial amount of its efforts to employment
20 matters. For example, the IHFA has a "Human Resources & Training Committee" that, among
21 other things, "[s]eek[s] out and provide[s] tools, programs and incentives which would assist
22 members in the recruitment, retention and development of all employees."

23 72. Puzder and CKE work closely with these associations to reduce restaurant costs
24 and increase profits.

25 73. Based on a report for the conference of the International Franchise Association,
26 "[Puzder] and other senior executives of the franchisor of Hardee's and Carl's Jr. regularly meet
27 with the Board of Directors of the Independent Hardee's Franchisee Association, Inc. These
28 meetings provide an opportunity to discuss matters of mutual concern . . ."

1 74. Puzder has himself explained that these franchisee associations are critical to
2 CKE: “The first thing we did at Hardee’s when our company took over was that we encouraged
3 them to set up a franchisee association. . . . I know lot of franchisors do not like that. But if you
4 have a franchisee association, you have a group of somewhere between five and ten franchisees
5 who represent the entire franchisee community. Then you can effectively communicate with the
6 franchisees.”

7 **4. CKE Employs the “No Hire” Agreement to Benefit Itself as Horizontal**
8 **Competitor of Franchisees**

9 75. Puzder has explained that while franchisors are sometimes at odds with their
10 franchisees, the relationship between CKE and its franchisees is characterized by a unique degree
11 of cooperation precisely because CKE has its own “skin in the [quick-service] restaurant
12 business.”

13 76. In 2012, Puzder said, “[w]e own 30 percent of the restaurants [in the chain], so we
14 know what it is to run restaurants. We want the restaurants to be profitable. . . . We are running it
15 for profitable sales. . . . [O]ur theory is that if the franchisees make money, then we all make
16 money.”

17 77. In that same interview Puzder explained that he does not “run[] the network” to
18 increase “top-line sales”—the total revenue generated by sales—even though CKE’s royalties as
19 the franchisor are calculated as a percentage of top-line sales. Rather, he is interested in
20 increasing franchisee’s overall profits, which also take into account costs, including labor costs.

21 78. CKE’s Chief Operating Officer, who is among other things responsible for
22 managing CKE’s company-owned restaurants, himself owns seven Hardee’s restaurants in the
23 Indianapolis area.

24 79. Recently, when testifying in opposition of the U.S. Department of Labor’s
25 overtime rule, 29 CFR Part 541, the COO emphasized the deleterious effects that the rule would
26 purportedly have on his restaurants and CKE-owned restaurants because of the importance of
27 minimizing labor costs for restaurant profitability.
28

1 80. Consistent with Puzder’s philosophy and CKE’s structure, the “no hire”
2 agreement suppresses wages and working conditions to ensure that “franchisees make money.”

3 81. CKE is committed to the scheme both as a franchisor (with a vertical relationship
4 to competing franchisees) and as a proprietor of CKE-branded restaurants (with a horizontal
5 relationship to competing franchisees).

6 **5. The No Hire Agreement Does Not Have a Legitimate Purpose as a Vertical**
7 **Restraint**

8 82. The “no hire” agreement does not serve the interests of ensuring that CKE
9 restaurants produce a quality product.

10 83. The “no hire” agreement does not serve employees because it does not incentivize
11 franchisees to invest in higher wages and working conditions.

12 84. The “no hire” agreement does not serve fast-food customers because it does not
13 incentivize CKE franchisees to invest in training workers to improve the CKE brand. That is
14 because CKE itself provides the bulk of training for restaurant-based managers, generally
15 without any charge to franchisees.

16 85. For example, CKE requires franchisees to send restaurant-based managers to
17 CKE’s Franchise Management Training Program (FMTP)—that training is free for franchisees
18 for their general manager and three other employees hired for certain designated positions.

19 86. The minimum length of the FMTP is 8 consecutive weeks. Additionally, CKE
20 requires that each franchisee send its “General Manager and 2 Shift Leader . . . [to] an additional
21 2 weeks of Shift Control Training.”

22 87. Franchisees also rely on CKE for training and development of restaurant-based
23 managers throughout their employment for the franchisee. For example, CKE provides a uniform
24 training system across all branches through its “Learning Management System (LMS).” The only
25 investment that franchisees must make into training shift leaders through LMS is a “small”
26 monthly fee in exchange to have CKE’s “training kiosks” installed in their restaurants.

1 88. CKE franchisees have further relied on CKE's implementation of new policies for
2 employees, including the "QSC" system, which Puzder has credited with improving employee
3 morale and decreasing turnover at CKE restaurants.

4 **D. CKE's Conscious Commitment to the Scheme**

5 89. CKE is consciously committed to the horizontal scheme among restaurant
6 operators not to solicit or hire each other's employees.

7 90. Puzder has trumpeted the free market as the most reliable catalyst of wage
8 growth. During a recent interview he explained that there is only "[o]ne system in the history of
9 the world that produces enough economic growth to meaningfully reduce poverty . . . , and that's
10 free market capitalism."

11 91. In part to avoid joint employer liability for CKE, Puzder has characterized the
12 CKE network of franchisees as operating independently.

13 92. Further, in a speech last month at the Restaurant Finance and Development
14 Conference, Puzder argued that "[i]f employers are competing for the best employees, they will
15 pay more."

16 93. But at least with respect to the employment of restaurant-based managers, CKE's
17 franchisees do not operate like normal independent businesses because they have decided *not* to
18 compete for the best managers. By Puzder's own logic, this practice allows employers to pay
19 their employees less.

20 94. That goal is consistent with Puzder's philosophy for managing CKE, which he
21 says is not to increase royalties for CKE, but to increase franchisee profits.

22 95. Unlike CKE royalties, franchisee profits depend on *costs* to the franchisee.

1 **E. The Relevant Market is for CKE Restaurant-Based Managers**

2 **1. Applicants without CKE Experience Are Not a Reasonable Substitute for**
3 **Workers with CKE Experience**

4 96. Because of CKE's unique "System," applicants for management positions at
5 CKE restaurants who do not have prior experience working for CKE are not reasonable
6 substitutes for applicants who do have that experience.

7 97. Carl's Jr.'s 2014 "Shift Leader Qualifying Assessment" requires prospective shift
8 leaders to correctly answer 90 out of 100 questions about Carl's Jr.'s "System" on matters
9 ranging from food preparation, safety, and Carl's Jr.'s proprietary SuperStar Service®, which
10 involves various "enhancements to the customer experience."

11 98. Prospective general managers also must pass this assessment and be *certified* as a
12 shift leader before being selected as a "general manager in training."

13 99. During the "general manager in training" program, prospective general managers
14 work on site at the restaurant and must "[m]odel[] and encourage[] CKE shared values."

15 100. While in theory someone could apply for a general manager position without any
16 prior experience with CKE, that process would be both burdensome and expensive, as the
17 restaurant hiring that general manager would have to pay him or her to complete the shift leader
18 certification, which he or she would already have completed in the course of becoming a shift
19 leader.

20 101. Further, CKE materials frequently suggest that franchisees should look to hire
21 restaurant-based managers from within the brand.

22 102. For example, in instructing franchisees on how to select district managers (who
23 oversee multiple restaurants) CKE observes:

24 Historically, our best Leaders are developed from within our restaurants. Look for
25 a great DMIT Candidate from your existing high performing General Managers.
26 They already understand our culture of Operation QSC, Six Dollar Service and
27 Operation Drive-Thru. They are your "keys" to building a great "leadership
28 bench" to meet your future needs.

103. In the same packet, CKE notes that a preferred prerequisite for district managers is
"a [m]inimum of six months experience as a Carl's Jr. General Manager."

1 **2. Employment with Non-CKE Brands Is Not a Reasonable Substitute for**
2 **Employment as a CKE Restaurant-Based Manager**

3 104. CKE restaurant-based managers are discouraged from leaving CKE for other
4 brands because Puzder and CKE management frequently tout restaurant-based management
5 positions as a pathway to upper management.

6 105. The qualifying assessment for shift leaders promises: “Crew today. Leader
7 tomorrow.”

8 106. Further, CKE describes the shift leader development program as follows: “Crew
9 members who demonstrate a desire and aptitude for advancement can enter our Shift Leader
10 Development Program to begin their careers in management.”

11 107. In Plaintiffs’ experience, if CKE restaurant-based managers were to move to a
12 competing brand, they would likely have to enter employment at a crew-member level.

13 **F. Plaintiff and the Putative Class Are Harmed by the “No Hire” Agreement**

14 108. Because of the “no hire” agreement Plaintiffs have suffered injury in the form of
15 reduced wages and worsened working conditions.

16 **CLASS ALLEGATIONS**

17 109. This action may properly be maintained as a class action pursuant to California
18 Code of Civil Procedure §382.

19 110. Plaintiffs file this lawsuit on behalf of the following class (“the Class”):

20 ALL CURRENT AND FORMER SHIFT LEADERS,
21 ASSISTANT MANAGERS, AND GENERAL MANAGERS OF
22 ALL CKE RESTAURANTS IN CALIFORNIA WHETHER
23 OWNED BY CKE OR A CKE FRANCHISEE

24 111. The Class is so numerous that joinder is impracticable. While Plaintiffs do not
25 know the precise number of class members, CKE restaurants usually have 2-4 shift leaders and 1
26 general manager, meaning that there are 3-5 restaurant-based managers at each CKE restaurant.

27 112. There are over 3,000 CKE restaurants worldwide, and most those restaurants are
28 branded by CJR.

 113. There are more CJR restaurants in California than in any other state.

114. There is at least one issue of law or fact common to the classes, and those questions predominate over any individual issues that Plaintiffs' claims might raise.

115. Plaintiffs' claims for relief are typical of the class.

116. Plaintiffs and their counsel would adequately represent the interests of the class.

COUNT I: VIOLATION OF CALIFORNIA'S CARTWRIGHT ACT,
CAL. BUS. & PROF. CODE §§ 16720, ET SEQ.
(Plaintiffs on Behalf of the Class against All Defendants)

117. Plaintiffs incorporate by reference all previous paragraphs of this Complaint.

118. Under the facts and circumstances of this action, Plaintiffs are not required to allege or prove a "relevant market." To the extent one is required, the relevant product market is for CJR restaurant-based managers.

119. Defendants illegally participated in an agreement among competitors not to hire or solicit restaurant-based managers from competitors.

120. Defendants perpetuated the scheme with the purpose of lowering costs to the benefit of franchisees and CKE as owner of a substantial number of CJR restaurants.

121. In the alternative, Defendants are also liable under a "quick look" analysis.

122. Plaintiffs and the class have been harmed.

123. Unless the illegal restraint is permanently enjoined, it will persist. Plaintiffs and the class are entitled to a permanent injunction that terminates the restraint.

COUNT II: UNFAIR COMPETITION UNDER CALIFORNIA LAW
CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.
(Plaintiffs on Behalf of the Class against All Defendants)

124. Plaintiffs incorporate by reference all previous paragraphs of this Complaint.

125. Defendants illegally participated in an illegal agreement among competitors not to hire or solicit restaurant-based managers from competitors.

126. Defendants perpetuated the scheme with the purpose of lowering costs to the benefit of franchisees and CKE as owner of a substantial number of CJR restaurants.

127. That conduct is unfair, unlawful, or unconscionable under California law.

128. Plaintiffs and the Class have been harmed.

1 129. Unless the illegal restraint is permanently enjoined, it will persist. Plaintiffs and
2 the Class are entitled to a permanent injunction that terminates the restraint.

3 **COUNT III: USE OF ILLEGAL COVENANTS NOT TO COMPETE**
4 **CAL. BUS. & PROF. CODE §§ 16600, ET SEQ.**
(Plaintiffs on Behalf of the Class against All Defendants)

5 130. Plaintiffs incorporate by reference all previous paragraphs of this Complaint.

6 131. Defendants illegally participated in an agreement among competitors that
7 restrained employees from engaging in a lawful profession, trade, or business.

8 132. Defendants perpetuated the scheme with the purpose of lowering costs to the
9 benefit of franchisees and CKE as owner of a substantial number of CJR restaurants.

10 133. The illegal restraints were not intended to protect and were not limited to
11 protecting CJR's or CKE's legitimate proprietary interests.

12 134. Plaintiffs and the class have been harmed.

13 135. Unless the illegal restraint is permanently enjoined, it will persist. Plaintiffs and
14 the class are entitled to a permanent injunction that terminates the restraint.

15 **PRAYER FOR RELIEF**

16 136. Plaintiffs respectfully request that the Court:

- 17 a. Certify the Class defined above;
- 18 b. Declare that Defendants' conduct is illegal under the various protections cited
19 here;
- 20 c. Permanently enjoin Defendants from enforcing the illegal "no hire" term in its
21 franchise agreement with franchisees; and
- 22 d. Award Plaintiffs and the Class damages, restitution, attorney's fees and expenses;

23 **JURY DEMAND**

24 Plaintiffs hereby demand a trial by jury.

25 Dated: February 8, 2017

Respectfully submitted,

26 TOSTRUD LAW GROUP, P.C.

27 By: 
28 JON TOSTRUD

Attorneys for Plaintiff

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SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Carl Karcher Enterprises, LLC, Carl's Jr. Restaurants, LLC

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Luis Bautista and Margarita Guerrero, and those similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

FEB 08 2017

Sherri R. Carter, Executive Officer/Clerk

By: M. Soto, Deputy
Moses Soto

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Stanley Mosk Courthouse

111 N. Hill St.
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):

BC 649777

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jon A. Tostrud, Tostrud Law Group, PC., 1925 Century Park East, Ste. 2125, LA, CA. 90067 (310) 278-2600

DATE: February 8, 2017
(Fecha) **FEB 08 2017**

SHERRI R. CARTER

Clerk, by
(Secretario)

M. Soto

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - CLASS ACTION CASES**

Case Number _____

BC 6 4 9 7 7 7

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT
Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3 (c)).

	ASSIGNED JUDGE	DEPT.	ROOM
<input checked="" type="checkbox"/>	Judge Elihu M. Berle	323	1707
<input type="checkbox"/>	Judge William F. Highberger	322	1702
<input type="checkbox"/>	Judge John Shepard Wiley, Jr.	311	1408
<input type="checkbox"/>	Judge Kenneth Freeman	310	1412
<input type="checkbox"/>	Judge Ann Jones	308	1415
<input type="checkbox"/>	Judge Maren E. Nelson	307	1402
<input type="checkbox"/>	Judge Carolyn B. Kuhl	309	1409

Instructions for handling Class Action Civil Cases

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

APPLICATION

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

Given to the Plaintiff/Cross Complainant/Attorney of Record on _____ SHERRI R. CARTER, Executive Officer/Clerk

BY _____, Deputy Clerk