

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

IN RE: CALIFORNIA PIZZA
KITCHEN DATA BREACH
LITIGATION

This Document Relates To:
All Actions

Master File No. 8:21-cv-01928-DOC-KES

FINAL JUDGMENT AND ORDER
[68] [70]

CTRM: 10 A
JUDGE: Hon. David O. Carter

1 On June 30, 2022, the Court entered an order granting preliminary approval
2 (the “Preliminary Approval Order” (ECF No. 57)) to the May 2, 2022 Settlement
3 Agreement and Release (“Settlement Agreement”) between Plaintiffs Kansas Gilleo,
4 Sydney Rusen, Esteban Morales, Douglas Wallace, Brett Rigas, and Evencio Diaz
5 (“Plaintiffs”), individually and on behalf of the Settlement Class (defined below),
6 and Defendant California Pizza Kitchen, Inc. (“Defendant” or “CPK” and, together
7 with Plaintiffs, the “Parties”).

8 Commencing on July 29, 2022, pursuant to the notice requirements in the
9 Settlement Agreement and the Preliminary Approval Order, Epiq Class Action and
10 Claims Solutions, Inc. (“Epiq”), provided Notice¹ to Settlement Class members in
11 compliance with Section 12 of the Settlement Agreement and the Class Notice plan,
12 due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice:

- 13 (a) fully and accurately informed Settlement Class members about the
14 Consolidated Cases and the existence and terms of the Settlement
15 Agreement;
- 16 (b) advised Settlement Class members of their right to request exclusion
17 from the Settlement and provided sufficient information so that
18 Settlement Class members were able to decide whether to accept the
19 benefits offered, opt out and pursue their own remedies, or object to the
20 proposed settlement;
- 21 (c) provided procedures for Settlement Class members to file written
22 objections to the proposed settlement, to appear at the Final Approval
23 Hearing, and to state objections to the proposed settlement; and
- 24 (d) provided the time, date, and place of the Final Approval Hearing.

25 On November 7, 2022, the Court held a Final Approval Hearing to determine
26

27 ¹ Unless otherwise defined herein, all terms capitalized herein shall have the same
28 definitions ascribed to them as in the Settlement Agreement.

1 whether the proposed settlement is fair, reasonable and adequate and whether
2 judgment should be entered dismissing these Consolidated Cases with prejudice.
3 The Court held a second hearing on December 5, 2022. The Court reviewed (a)
4 Plaintiffs' Motion for Final Approval of Class Action Settlement and Plaintiffs'
5 Motion for an Award off Attorneys' Fees, Reimbursement of Costs and Expenses
6 and Service Awards (together, the "Motions") and all supporting materials,
7 including but not limited to the Settlement Agreement and the exhibits thereto; (b)
8 any objections filed with or presented to the Court; and (c) the Parties' responses to
9 any objections. The Court also considered the oral argument of counsel and any
10 objectors who appeared. Based on this review and the findings below, the Court
11 finds good cause to grant the Motions.

12 IT IS HEREBY ORDERED:

13 1. The Court has jurisdiction over the subject matter of this Litigation, all
14 claims raised therein, and all Parties thereto, including the Settlement Class.

15 2. The Settlement Agreement is fair, reasonable, adequate and in the best
16 interests of Settlement Class members. The Settlement Agreement was negotiated at
17 arm's-length, in good faith and without collusion, by capable and experienced
18 counsel with the assistance of an experienced third-party neutral, with full
19 knowledge of the facts, the law, and the risks inherent in litigating the Consolidated
20 Cases, and with the active involvement of the Parties. Moreover, the Settlement
21 Agreement confers substantial benefits on the Settlement Class members, is not
22 contrary to the public interest, and will provide the Parties with repose from
23 litigation. The Parties faced significant risks, expense, and/or uncertainty from
24 continued litigation of this matter, which further supports the Court's conclusion that
25 the settlement is fair, reasonable, adequate and in the best interests of the Settlement
26 Class members.

27 3. The Court grants final approval of the Settlement Agreement in full,
28

1 including but not limited to the releases therein and the procedures for effecting the
2 Settlement. All Settlement Class members who have not excluded themselves from
3 the Settlement Class are bound by this Final Judgment and Order.

4 4. The Parties shall carry out their respective obligations under the
5 Settlement Agreement in accordance with its terms. The relief provided for in the
6 Settlement Agreement shall be made available to the various Settlement Class
7 members submitting valid Claim Forms, pursuant to the terms and conditions in the
8 Settlement Agreement.

9 **OBJECTIONS AND REQUESTS FOR EXCLUSION**

10 5. One objection to the Settlement was submitted by Settlement Class
11 members. All persons who did not object to the Settlement in the manner set forth
12 in the Settlement Agreement are deemed to have waived any objections, including
13 but not limited to by appeal, collateral attack, or otherwise.

14 6. Four persons made valid and timely requests to be excluded from the
15 settlement and the Settlement Class (the “Opt-Out Members”). The Opt-Out
16 Members are not bound by the Settlement Agreement and this Final Judgment and
17 Order and shall not be entitled to any of the benefits afforded to Settlement Class
18 members under the Settlement Agreement.

19 **CERTIFICATION OF THE SETTLEMENT CLASSES**

20 7. Solely for purposes of the Settlement Agreement and this Final
21 Judgment and Order, the Court hereby certifies the following Settlement Class and
22 subclass:

23 **Settlement Class:**

24 All persons who were sent notice of the Data Security
25 Incident announced by Defendant on or about November
26 15, 2021.

27 **California Settlement Subclass:**

1 All persons residing in California who were sent notice of
2 the Data Security Incident announced by Defendant on or
3 about November 15, 2021.

4 Specifically excluded from the Settlement Class and California Settlement Subclass
5 are: (i) CPK's officers and directors at the time of the mediation and/or at the time
6 of the signing hereof; (ii) any entity in which CPK has a controlling interest; and (iii)
7 the affiliates, legal representatives, attorneys, successors, heirs, and assigns of CPK.
8 Also excluded from the Settlement Class are members of the judiciary to whom this
9 case is assigned, their families and members of their staff. The Settlement Class and
10 California Settlement Subclass are estimated to include 103,767 and 30,781
11 individuals, respectively.

12 8. The Court incorporates its preliminary conclusions in the Preliminary
13 Approval Order regarding the satisfaction of Federal Rules of Civil Procedure 23(a)
14 and 23(b). Because the Settlement Class and California Settlement Subclass are
15 certified solely for purposes of settlement, the Court need not address any issues of
16 manageability for litigation purposes.

17 9. The Court grants final approval to the appointment of Representative
18 Plaintiffs Kansas Gilleo, Sydney Rusen, Esteban Morales, Douglas Wallace, Brett
19 Rigas, and Evencio Diaz as the Class Representatives, and further appoints Sydney
20 Rusen, Esteban Morales, and Doug Wallace as Class Representatives of the
21 California Settlement Subclass, and concludes that they have fairly and adequately
22 represented the Settlement Classes and shall continue to do so.

23 10. The Court grants final approval to the appointment of Mason Barney of
24 Siri & Glimstad LLP; David Lietz of Milberg Coleman Bryson Phillips Grossman,
25 PLLC; Daniel O. Herrera Cafferty Clobes of Meriwether & Sprengel LLP; and
26 Rachele R. Byrd of Wolf Haldenstein Adler Freeman & Herz LLP as Class Counsel.
27 Class Counsel have fairly and adequately represented the Settlement Classes and
28

1 shall continue to do so.

2 **NOTICE TO THE CLASS**

3 11. The Court finds that the Class Notice plan provided for in the
4 Settlement Agreement and effectuated pursuant to the Preliminary Approval Order:
5 (i) was the best notice practicable under the circumstances; (ii) was reasonably
6 calculated to provide, and did provide due and sufficient notice to the Settlement
7 Class regarding the existence and nature of the Consolidated Cases, certification of
8 the Settlement Class for settlement purposes only, the existence and terms of the
9 Settlement Agreement, and the rights of Settlement Class members to exclude
10 themselves from the settlement, to object and appear at the Final Approval Hearing,
11 and to receive benefits under the Settlement Agreement; and (iii) satisfied the
12 requirements of the Federal Rules of Civil Procedure, the United States Constitution,
13 and all other applicable law.

14 **ATTORNEYS' FEES AND COSTS, SERVICE AWARDS**

15 12. Plaintiffs ask the Court for an award of \$800,000, citing a lodestar of
16 \$687,681.00 and total expenses of \$26,367.05. Plaintiffs' Supplement to Motion
17 (Dkt. 81). This award would constitute 36.3% of the total class benefit, which is
18 \$2,133,719. *Id.* at 4–5. Plaintiffs cite 1,028.10 total hours, which comes out to an
19 average hourly rate of \$668.88. Supplemental Declaration of Rachele R. Byrd (Dkt.
20 81-1) at ¶ 5.

21 13. The Court awards Class Counsel \$800,000 in fees and reimbursement
22 of costs and expenses. The Court finds this amount to be fair and reasonable.
23 Payment shall be made pursuant to the procedures in Section 5(a) of the Settlement
24 Agreement.

25 14. The Court awards Service Awards of \$2,000 to each of Kansas Gilleo,
26 Sydney Rusen, Esteban Morales, Douglas Wallace, Brett Rigas, and Evencio Diaz.
27 The Court finds these amounts are justified by their service to the Settlement Class.
28

1 Payment shall be made from the Settlement Fund pursuant to the procedures in
2 Section 5(b) of the Settlement Agreement.

3 **RELEASE**

4 15. Each Settlement Class member, including the Class Representatives,
5 are: (1) deemed to have completely and unconditionally released, forever discharged
6 and acquitted Defendant and the other Released Parties from any and all of the
7 Released Claims (including unknown claims) as defined in the Settlement
8 Agreement; and (2) barred and permanently enjoined from asserting, instituting, or
9 prosecuting, either directly or indirectly, these claims. The full terms of the release
10 described in this paragraph are set forth in Section 9 of the Settlement Agreement
11 and are specifically approved and incorporated herein by this reference (the
12 “Release”). In addition, Class Representatives and settlement Class Members are
13 deemed to have waived (i) the provisions of California Civil Code § 1542, which
14 provides that a general release does not extend to claims that the creditor or releasing
15 party does not know or suspect to exist in his or her favor at the time of executing
16 the release and that, if known by him or her, would have materially affected his or
17 her settlement with the debtor or released party, and (ii) and all similar federal or
18 state laws, rules, or legal principles of any other jurisdiction similar, comparable, or
19 equivalent to California Civil Code § 1542.

20 16. The Settlement Agreement and this Final Judgment and Order apply to
21 all claims or causes of action settled under the Settlement Agreement, and binds
22 Class Representatives and all Settlement Class members who did not properly
23 request exclusion. The Settlement Agreement and this Final Judgment and Order
24 shall have maximum res judicata, collateral estoppel, and all other preclusive effect
25 in any and all causes of action, claims for relief, suits, demands, petitions, or any
26 other challenges or allegations that arise out of or relate to the subject matter of the
27 Consolidated Cases.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OTHER PROVISIONS

17. The Court directs the Parties and their counsel to implement and consummate the Settlement Agreement, and make available to Settlement Class members the relief provided for therein, in accordance with the Settlement Agreement’s terms and provisions.

18. The Settlement Agreement and this Final Judgment and Order, and all documents, supporting materials, representations, statements and proceedings relating to the settlement, are not, and shall not be construed as, used as, or deemed evidence of, any admission by or against Defendant of liability, fault, wrongdoing, or violation of any law, or of the validity or certifiability for litigation purposes of the Settlement Class or any claims that were or could have been asserted in the Consolidated Cases.

19. The Settlement Agreement and this Final Judgment and Order, and all documents, supporting materials, representations, statements and proceedings relating to the Settlement shall not be offered or received into evidence, and are not admissible into evidence, in any action or proceeding, except that the Settlement Agreement and this Final Judgment and Order may be filed in any action by any Defendant or the Settlement Class members seeking to enforce the Settlement Agreement or the Judgment and Order.

20. If the Effective Date does not occur for any reason, the Consolidated Cases will revert to the status that existed before the Settlement Agreement’s execution date, and the Parties shall be restored to their respective positions in the Consolidated Cases as if the Settlement Agreement had never been entered into. No term or draft of the Settlement Agreement, or any part of the Parties’ settlement discussions, negotiations, or documentation, will have any effect or be admissible in evidence for any purpose in the litigation.

21. Without affecting the finality of this Final Judgment and Order, the

1 Court will retain jurisdiction over these Consolidated Cases and the Parties with
2 respect to the interpretation, implementation and enforcement of the Settlement
3 Agreement for all purposes.

4 22. The Court hereby dismisses the Consolidated Cases in their entirety
5 with prejudice, and without fees or costs except as otherwise provided for herein.

6 ///

7 ///

8 NOW, THEREFORE, the Court hereby enters judgment in this matter
9 pursuant to Rule 58 of the Federal Rules of Civil Procedure.

10
11 DATED: February 22, 2023



12 HON. DAVID O. CARTER
13 UNITED STATES DISTRICT COURT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28