

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IAFREEDRE MCCLAIN, MONTRELL)	
DAVIS, and others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION FILE
)	NO. 3:18-cv-00419-FDW-DCK
)	
MORNING STAR, LLC a/k/a MORNING)	
STAR NC, LLC, d/b/a HARDEE’S,)	
)	
Defendant.)	

E.P. and S.F., individually and on behalf of)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION FILE
)	NO. 3:18-cv-00483-FDW-DCK
)	
CKE RESTAURANTS HOLDINGS, INC., a)	
Delaware Corporation; HARDEE’S FOOD)	
SYSTEMS LLC, a North Carolina)	
Corporation; HARDEE’S RESTAURANTS)	
LLC, a Delaware Corporation; and)	
MORNING STAR, LLC a/k/a MORNING)	
STAR NC, LLC, a Florida Corporation,)	
)	
Defendants.)	

THIS MATTER is before the Court on Plaintiffs’ Motion to Remand (Doc. No. 8); Defendant’s Motion to Dismiss the Class Allegations (Doc. No. 16); and several joint motions filed by the parties: (1) a Joint Motion to Consolidate (Doc. No. 21) this case with E.P. and S.F. vs. CKE Restaurants Holdings, Inc., Hardee’s Food Systems, LLC, Hardee’s Restaurants LLC, and Morning Star, LLC a/k/a Morning Star NC, LLC, Civil Action File No. 3:18-cv-00483-FDW-

DCK; (2) a Joint Motion for Discovery (Doc. No. 22); and (3) a Joint Motion for Preliminary Approval of Class Settlement (Doc. No. 23).

Turning first to the Motion to Remand, the Court DENIES the motion for the reasons stated in this Court's orders on the same arguments in the companion case of E.P. and S.F. vs. CKE Restaurants Holdings, Inc., Hardee's Food Systems, LLC, Hardee's Restaurants LLC, and Morning Star, LLC a/k/a Morning Star NC, LLC, Civil Action File No. 3:18-cv-00483-FDW-DCK (See Docs. Nos. 27, 29). See also Standard Fire Ins. Co. v. Knowles, 568 U.S. 588, 594–96, 133 S. Ct. 1345, 1349–51, 185 L. Ed. 2d 439 (2013) (noting a non-binding stipulation to an amount in controversy does not necessarily resolve the amount-in-controversy question because a plaintiff cannot yet bind the rest of an absent class).

As to the Motion to Consolidate, for the reasons stated in the motion, to which all relevant parties consent, the Court hereby orders that the Motion is GRANTED. This case shall be consolidated with Civil Action No. 3:18-cv-00483-FDW-DCK case for all purposes, including pre-trial motions, discovery and trial.

The Court also GRANTS the parties' Joint Motion for Discovery (Doc. No. 22). The Court certifies below, for preliminary purposes only, the following class (the "Class"):

All individuals who were (a) potentially exposed to the Hepatitis A Virus ("HAV") at the Hardee's Restaurant, 2604 Little Rock Road, Charlotte, North Carolina ("Charlotte Hardee's"), between June 13, 2018, and June 23, 2018 ("Potential Exposure Period"), and (b) who, as a result of such potential exposure to HAV, obtained preventive medical treatment, including the administration of IG, HAV vaccine shots, or blood tests within 14 days after their exposure, and in no event any later than July 7, 2018.

Excluded from the Class are (1) all persons, if any, who developed HAV infections as a result of consuming food or beverage at the Charlotte Hardee's during the Potential Exposure Period, (2) anyone receiving their first IG shot, HAV vaccine, or blood test after July 7, 2018, and (3) employees at the Charlotte Hardee's during the Potential Exposure Period.

The Court finds that the related records maintained by the Mecklenburg County Health Department are the best possible source for the information necessary to get adequate notice to as many potential class members as possible. The Court further finds that notice provided through use of those records is reasonably calculated under the circumstances to apprise members of the Class of the pendency of the lawsuit and of their right to object or to exclude themselves from the Class. The Court, having appointed The Notice Company, Inc. as the Class Claims Administrator, now orders as follows:

- (1) For the purpose of providing direct mail notice to the potential Class Members, the designated Claims Administrator, The Notice Company, Inc., is authorized to obtain from the Mecklenburg County Health Department (the "Health Department"), the names and last known addresses of all individuals who were potentially exposed to the Hepatitis A virus (HAV) at any time between June 13, 2018, and June 23, 2018, through (1) their potential exposure to an HAV infected employee of the Hardee's restaurant located at 2604 Little Rock Road, Charlotte, North Carolina 28214, and/or (2) their consumption of food or beverage that was prepared and sold at the Hardee's restaurant located at 2604 Little Rock Road, Charlotte, North Carolina 28214, and who accordingly received immune globulin ("IG") immunization shots or Hepatitis-A vaccinations provided by the Health Department. The following individuals are NOT

- members of the class and their information should NOT be disclosed: (1) anyone receiving an IG shot, HAV vaccine, or blood test after July 7, 2018; and (2) employees at the Hardee's restaurant located at 2604 Little Rock Road, Charlotte, North Carolina 28214.
- (2) The Health Department shall disclose to the designated Claims Administrator, The Notice Company, Inc., electronic files containing the names and last known addresses of all individuals who were potentially exposed to the Hepatitis A virus (HAV) at any time between June 13, 2018, and June 23, 2018, through (1) their potential exposure to an HAV infected employee of the Hardee's restaurant located at 2604 Little Rock Road, Charlotte, North Carolina 28214, and/or (2) their consumption of food or beverage that was prepared and sold at the Hardee's restaurant located at 2604 Little Rock Road, Charlotte, North Carolina 28214, and who accordingly received immune globulin ("IG") immunization shots or Hepatitis-A vaccinations provided by the Health Department. The following individuals are NOT members of the class and their information should NOT be disclosed: (1) anyone receiving an IG shot, HAV vaccine, or blood test after July 7, 2018; and (2) employees at the Hardee's restaurant located at 2604 Little Rock Road, Charlotte, North Carolina 28214.
- (3) This Order authorizes the Health Departments to disclose the name and address information referenced above, which may be deemed Protected Health Information under the privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). 45 C.F.R. § 164.512(e)(1)(i). The Health

Department is authorized to provide such information to The Notice Company, Inc., with such information to be provided in electronic format if available.

- (4) The parties to this action and The Notice Company, Inc. are expressly prohibited from using or disclosing the protected health information obtained pursuant to this order for any purpose other than this action. Further, The Notice Company, Inc. is ordered to destroy all protected health information received from the Health Department (including all copies made) within ten (10) days following the conclusion of this action. See 45 C.F. R. 164.512(e)(1)(v).

Finally, as to the parties' Joint Motion for Preliminary Approval of Class Settlement (Doc. No. 23), the Court also GRANTS that motion. The Court, having reviewed the parties' Joint Motion for Preliminary Approval of Class Settlement, finds and orders as follows:

1. Plaintiffs, Iafreedre McClain, Montrell Davis, E.P. and S.F., on behalf of themselves and all those similarly situated ("Plaintiffs"), and Defendants, CKE Restaurants Holdings, Inc., Hardee's Food Systems, LLC, Hardee's Restaurants, LLC, and Morning Star, LLC ("Defendants"), have entered into a Settlement Agreement, subject to Court approval, dated November 27, 2018,¹ including the documents and exhibits incorporated therein (together, the "Settlement Agreement," **Doc. No. 23-1**), to settle the above-captioned litigation (the "Litigation") and hereby file this Motion for Preliminary Approval of the Proposed Settlement (the "Motion for Preliminary Approval"). The Settlement Agreement sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the Litigation.

¹ The Court notes the parties' signatures ranged from November 16, 2018, through November 27, 2018. (Doc. No. 23-1, pp. 21-22).

2. Pursuant to Federal Rule of Civil Procedure 23, the Court certifies, for settlement purposes only, the following class (the “Class”):

All individuals who were (a) potentially exposed to the Hepatitis A Virus (“HAV”) at the Hardee’s Restaurant, 2604 Little Rock Road, Charlotte, North Carolina (“Charlotte Hardee’s”), between June 13, 2018, and June 23, 2018 (“Potential Exposure Period”), and (b) who, as a result of such potential exposure to HAV, obtained preventive medical treatment, including the administration of IG, HAV vaccine shots, or blood tests within 14 days after their exposure, and in no event any later than July 7, 2018.

Excluded from the Class are (1) all persons, if any, who developed HAV infections as a result of consuming food or beverage at the Charlotte Hardee’s during the Potential Exposure Period, (2) anyone receiving their first IG shot, HAV vaccine, or blood test after July 7, 2018, and (3) employees at the Charlotte Hardee’s during the Potential Exposure Period.

3. The following Plaintiffs’ attorneys shall continue to act as counsel for the Class (“Class Counsel”):

Brett Dressler
SELLERS, AYERS, DORTCH & LYONS, PA
301 S. McDowell St., Ste. 410
Charlotte, NC 28204
Tel (704) 377-5050
Fax (704) 339-0172

William D. Marler
MARLER CLARK, LLP, PS
(Pro Hac Vice Admission Pending)
1012 First Avenue, Fifth Floor
Seattle, WA 98104
Tel (206) 346-1888
Fax (206) 346-1898

Daniel K. Bryson
Scott C. Harris
WHITFIELD BRYSON & MASON LLP
900 W. Morgan Street
Raleigh, NC 27603
Tel (919) 600-5000
Fax (919) 600-5035

Joseph G. Sauder
SAUDER SCHELKOPF LLC
555 Lancaster Avenue
Berwyn, Pennsylvania 19312
Telephone: 888.711.9975
Fax: 610-421-1326

4. The Court appoints as Settlement Administrator:

The Notice Company, Inc.
94 Station Street
Hingham, MA 02043
Tel (781) 740-1900
Fax (781) 740-0888
E-mail: class@notice.com

5. The Court preliminarily approves the settlement as sufficiently fair, reasonable and adequate to allow notice of the proposed settlement to be given to the members of the Class.

6. The Court approves the form of the proposed Notice of Settlement of Proposed Class Action (“Notice”), without material alteration.

7. The Court finds that the proposed notice of the settlement in the manner set forth in the Settlement Agreement meets the requirements of due process and federal law.

8. The Court further finds that the proposed notice is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; is the best practicable notice; and is reasonably calculated, under the circumstances, to apprise members of the Class of

the pendency of the Lawsuit and of their right to object or to exclude themselves from the proposed settlement.

9. The Court approves the form of the Class Action Claim Form (“Claim Form”) without material alteration.

10. That a Final Approval Hearing shall be held on at 10:00 a.m. on April 1, 2019, in Courtroom #1-1 of the Charles R. Jonas Building, 401 W. Trade Street, Charlotte, NC, 28202, before the undersigned, for the purpose of determining: (a) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; and (b) whether to issue a final judgment order.

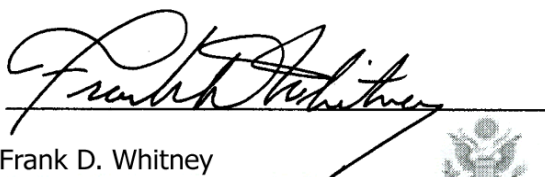
11. That all pretrial proceedings in the Litigation are stayed and suspended until further order of this Court.

IT IS THEREFORE ORDERED that Plaintiffs’ Motion to Remand (Doc. No. 8) is DENIED; the Parties’ Joint Motion to Consolidate (Doc. No. 21) is GRANTED; and the Parties’ Joint Motion for Preliminary Approval of Settlement (Doc. No. 23) is GRANTED. In addition, Defendant’s Motion to Dismiss the Class Allegations or Deny Class Certification (Doc. No. 16) is DENIED AS MOOT.

TAKE NOTICE that a Final Approval Hearing in this matter will take place at 10:00 a.m. on April 1, 2019, in Courtroom #1-1 of the Charles R. Jonas Federal Building, 401 W. Trade Street, Charlotte, North Carolina, 28202.

IT IS SO ORDERED.

Signed: December 12, 2018


Frank D. Whitney
Chief United States District Judge

