United States Senate
WASHINGTON, DC 20510

March 2, 2017

Andrew Puzder
CEO
CKE Restaurants
6307 Carpinteria Avenue, Suite A
Carpinteria, CA 93013

Dear Mr. Puzder,

We write regarding recent reports that President Donald J. Trump and his administration may refuse to defend the Department of Labor's new overtime rule in court, effectively blocking protections that will expand overtime pay for 4.2 million workers, lead to the creation of at least 120,000 new jobs, and increase workers' pay by a cumulative $1.2 billion a year.[1]

As you know, the Department of Labor ("DOL") implements the Fair Labor Standards Act ("FLSA"), which requires employers to pay eligible employees one-and-a-half times their regular rate of pay for hours worked above 40 hours a week.[2] Thanks to the FLSA, 75 million hourly-wage American workers currently qualify for overtime pay.[3] Some salaried employees also qualify for overtime—though the FLSA includes a "white collar exemption": salaried workers whose earnings are above a salary threshold and who "primarily perform executive, administrative, or professional duties" are exempt from overtime pay.[4] In May 2016, DOL updated its rules for this "white collar exemption," increasing the annual salary threshold from $23,660 to $47,476.[5]

On November 22, 2016, just days before this new overtime rule was set to go into effect, a federal district court enjoined its enforcement—leaving millions of salaried workers, and their employers, in limbo.[6] And in January, only a week after President Trump took office, the

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[1] Allen Smith, "Justice Department Obtains Pause in Overtime Case litigation," *Society for Human Resource Management* (January 27, 2017) (online at https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/reply-brief-extension-overtime-case.aspx); Economic Policy Institute, "Facts on the updated overtime rule" (May 17, 2016) (online at http://www.epi.org/publication/facts-on-the-updated-overtime-rule/); U.S. Department of Labor, "Final Rule: Overtime—Questions and Answers" (online at https://www.dol.gov/WHD/overtime/final2016/faq.htm#G14); United States Department of Labor, *Overtime Final Rule: Summary of the Economic Impact Study* (online at https://www.dol.gov/whd/overtime/final2016/overtimeFinalRule.pdf).
[2] U.S. Department of Labor, "Overtime Pay" (online at https://www.dol.gov/general/topic/wages/overtimepay).
[3] Jared Bernstein and Ross Eisenbrey, "New inflation-adjusted salary test would bring needed clarity to FLSA overtime rules," *Economic Policy Institute* (March 13, 2014) (online at http://www.epi.org/publication/inflation-adjusted-salary-test-bring-needed/).
[4] U.S. Department of Labor, "Final Rule: Overtime—Questions and Answers" (online at https://www.dol.gov/WHD/overtime/final2016/faq.htm#G14).
[5] United States Department of Labor, "Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees" (May 2016) (online at https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.pdf).
[6] Laura Robertson, "New Overtime Regulations Put on Hold—U.S. Federal Court Judge Enjoins Implementation of FLSA Regulations," *National Law Review* (November 22, 2016) (online at

Department of Justice declined to submit a brief to the 5th U.S. Circuit Court of Appeals in support of the rule, requesting a 30-day extension instead.[7] It is unclear whether President Trump will support the overtime rule. In December 2016, he nominated you to serve as his Secretary of Labor. You are a staunch opponent of the overtime rule.[8] After you withdrew your name from consideration for Secretary of Labor, the President nominated Alexander Acosta for the position. Mr. Acosta's position on the overtime rule is unclear.[9]

We are deeply troubled at the prospect of President Trump—who campaigned on promises to stand up for American workers—turning his back on the millions of Americans who stand to benefit from the overtime rule. DOL estimates that 4.2 million salaried workers will become newly eligible for overtime pay as a result of the expanded salary threshold.[10] The rule is also expected to raise overall wages by $1.2 billion each year and "pave the way for about [120,000] new hires."[11]

In addition to robbing American workers of hard-earned raises, rolling back the overtime rule would harm companies that have already spent time and money implementing the rule. According to the Retail Industry Leaders Association—whose members include Wal-Mart, Walgreens, Target, and Best Buy—the deadline to implement the overtime rule was "actually sort of artificial, [because] a lot of…retailers and a lot of employers across the country have been already complying with this or preparing to comply with this well before that deadline."[12] Significant changes to the rule going forward would result in increased legal fees, compliance costs, and time spent implementing those changes.

We wanted to reach out to you in particular because your company has already taken steps to comply with the overtime rule's expanded salary threshold.[13] According to a CKE spokesman, CKE "did proceed with adjustments to salaries in preparation for the final rule, and that did not change after the preliminary injunction was issued."[14] We were glad to hear this, and we know that your employees are well-positioned to benefit from these changes.

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http://www.natlawreview.com/article/new-overtime-regulations-put-hold-us-federal-court-judge-enjoins-implementation-flsa).

[7] Allen Smith, "Justice Department Obtains Pause in Overtime Case litigation," *Society for Human Resource Management* (January 27, 2017) (online at https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/reply-brief-extension-overtime-case.aspx).

[8] Noam Scheiber, "Trump's Labor Pick, Andrew Puzder, Is Critic of Minimum Wage Increases," *New York Times* (December 8, 2016) (online at https://www.nytimes.com/2016/12/08/us/politics/andrew-puzder-labor-secretary-trump.html); Andrew Puzder, "Obama's Overtime Pay Boomerang," *Wall Street Journal* (March 25, 2014) (online at https://www.wsj.com/articles/SB10001424052702304256404579449811698734216).

[9] Jim Puzzanghera, "After Puzder debacle, Trump opts for a more conventional Labor nominee in Alexander Acosta," *Los Angeles Times* (February 16, 2016) (online at http://www.latimes.com/business/la-fi-trump-labor-acosta-20170216-story.html).

[10] U.S. Department of Labor, "Final Rule: Overtime—Questions and Answers" (online at https://www.dol.gov/WHD/overtime/final2016/faq.htm#G14).

[11] Corey Stern, "Goldman Sachs thinks new overtime pay rules could increase total employment—but do nothing for wage growth," *Business Insider* (July 7, 2015) (online at http://www.businessinsider.com/overtime-rules-will-affect-payrolls-more-than-pay-2015-7); U.S. Department of Labor, "Final Rule: Overtime—Questions and Answers" (online at https://www.dol.gov/WHD/overtime/final2016/faq.htm#G14).

[12] Ben Penn, "Retailers Follow Wal-Mart's Lead on Overtime Rule Compliance," *Bloomberg BNA* (October 28, 2016) (online at https://www.bna.com/retailers-follow-walmarts-n57982079272/).

[13] Marianne LeVine, "Overtime rule on hold, some employers yank raises," *Politico PRO* (January 3, 2017).

[14] Marianne LeVine, "Overtime rule on hold, some employers yank raises," *Politico PRO* (January 3, 2017)

Given the work your company has already done to comply with the overtime rule, we wanted to find out whether you will support any efforts by the Trump Administration to reverse the significant progress made by your company, and many companies nationwide. Please provide a response to the following questions no later than March 13, 2017.

1. Would you support efforts by the Trump Administration to block implementation of the overtime rule, or to refuse to defend it in court, potentially depriving workers of $1.2 billion annual increases in wages in 2017 alone?

2. What steps did you take in advance of December 1, 2016 to comply with the expected effective date of the overtime rule before it was enjoined?

3. If you have taken steps to comply with the overtime rule, do you plan on reversing those policies if the Trump Administration successfully weakens or blocks this rule?

4. If you have increased salaries or extended overtime benefits to your current employees as a result of the rule, will you extend these same benefits and salary increases to future employees?

5. How much money do you estimate that your company has already spent to implement this rule?

6. Has the November 22nd injunction on the overtime rule, as well as confusion over whether or not the Trump Administration will support it, created uncertainty for your company in the short- or long term?

Thank you for your attention to this matter. Please contact Brian Cohen of Senator Warren's staff (202-224-4543), Leticia Mederos of Senator Murray's staff (202-224-2621), or Nora Todd of Senator Brown's staff (202-224-2315) if you have any questions or concerns.

Sincerely,

Elizabeth Warren
United States Senator

Patty Murray
United States Senator

Sherrod Brown
United States Senator