Written Testimony of Andrew F. Puzder,
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On the PPAC's Impact on Job Creation and Economic Growth
Before the House Energy and Commerce Committee's
Subcommittee on Oversight and Investigations

I.
Introduction

I want to thank Chairman Stearns and the other Committee members for giving me the opportunity to discuss the regulatory issues impacting CKE Restaurants, Inc. and American businesses in general. An open dialogue between legislators, regulators and the business community on these issues is essential to ensure our nation's economic success. No institution, individual or group of individuals is solely responsible for rebuilding our economy. Rather, it is our collective responsibility. I am committed to working with you to figure out ways to create a more business friendly and prosperous economic climate while addressing the important social policy issues facing our nation.

Today's labyrinth of State and Federal regulations controls every aspect of economic activity; suffocates America's entrepreneurial spirit, and creates uncertainty stifling growth and prosperity. Perhaps this is what led President Obama to sign Executive Order 13563 in January of 2011. As you all know, this executive order calls for improving regulation and regulatory review. In signing this Executive Order, President Obama clearly recognized that overregulation is a problem. The Executive Order's impact is less clear. Executive Order No. 13563 is available at: http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.

The topic of overregulation, of course, is not a new one. The Office of Advocacy of the US Small Business Administration stated in its 2010 Report that "[a] comprehensive list of regulatory influences that affect one's daily existence is indeed extensive and overwhelming to track or sum up." It noted that "[t]he cost of government regulation gets stirred into the indistinct mixture of countless economic forces that determine prices, costs, designs, locations, profits, losses, wages, dividends, and so forth." It concluded that "the cost of federal regulation in the United States increased to more than $1.75 trillion in 2008" or "14 percent of US national income." In other words, the cost of federal regulations alone exceeds our annual budget deficit.

While this is an astounding sum, the SBA Report notably deals *solely* with the costs of Federal regulations in place as of 2008 and fails to include Federal regulations or laws passed since 2008 such as the Dodd Frank Act or the Patient Protection and Affordable Care Act ("PPACA"). In addition, the Report fails to cover the costs of state regulations. Rather, it notes that "[r]egulatory agencies in the 50 American states have promulgated hundreds of thousands of regulations that are superimposed on federal regulations." SBA Report available at: https://docs.google.com/viewer?url=http://www.sba.gov/advo/research/rs371tot.pdf.

To make matters worse, State and Federal governments continue to add new regulations to the books at a dizzying pace. A recent *Investor's Business Daily* article states that "[t]he number of pages in the Federal Register — where all new rules must be published and which serves as proxy of regulatory activity — jumped 18% in 2010." According to this article, "[t]he Federal Register notes that more than 4,200 regulations are in the pipeline. That doesn't count impending clean air rules from the EPA, new derivative rules, or the FCC's net neutrality rule. Nor does that include recently announced fuel economy mandates or eventual ObamaCare and Dodd-Frank regulations." John Merline, *Regulation Business, Jobs Booming Under Obama*, Investor's Business Daily, (August 15, 2011), http://news.investors.com/Article/581555/201108151901/Regulatory-Agencies-Staffing-Up.htm.

On top of these new regulations, the old regulations never seem to go away. As such, the regulatory burden grows over time with very little thought given to whether some old rule that may either be obsolete or not cost effective should be removed from the books before imposing new burdens. President Obama's Executive Order on improving regulations has a section that calls on agencies "…to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order No. 13563, Section 6 (January 18, 2011), http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.

The restaurant industry provides an excellent example of an industry dealing with overregulation. Our Company consists of a large business (CKE which owns about 30% of our restaurants) and many small businesses (our franchisees which own about 70% of our restaurants). As such, we are sensitive to the needs of both large companies and small businesses. To assist in opening and operating our restaurants, we have an internal *11 page list* of the *57 different*

categories of regulations with which we must comply in opening and operating a simple quick service restaurant. This list alone can discourage job creating restaurant development. The rapidity with which legislators and bureaucrats are increasing the number of regulations with which we must comply adds to the various challenges our Company and our franchisees face.

I want to make something clear at the outset. I believe that our country needs government regulations to advance a number of social goals which the unfettered market will not accomplish on its own. My frustration is twofold.

First, many regulations are written in a way that imposes substantial costs that are unnecessary to achieve the regulation's goal. The menu labeling legislation, passed as part of the PPACA and which I discuss below, falls into this category. I can understand why Congress wants consumers to have nutritional information about the foods they consume. But why must that information be included on the menu boards of fast food restaurants at a cost of millions of dollars the industry could otherwise spend on building new restaurants and when restaurants could more effectively post such information separately far more economically and effectively? This is particularly true since virtually all of the research done to date has shown that posting caloric information fails to change consumers' food choices. What is the purpose of imposing costs on small businesses like restaurant franchisees when it returns nothing in terms of more effective consumer information?

Second, our system lacks any meaningful mechanism for tracking the cost of regulations as a whole and balancing that against the need for businesses to use their profits to expand, grow and thereby create jobs and prosperity. Regulations are a kind of tax. Just as taxes are necessary to raise the revenue government needs, so regulation is necessary to accomplish important goals the market will not accomplish on its own. But economic growth is also important both to individuals and government. Nonetheless, while most government officials recognize that raising taxes has a dampening effect on economic growth, there seems to be no similar acknowledgement with respect to the impact of regulatory costs.

We are daily confronted with a maze of Federal regulations ranging from the EPA's Clean Air Act regulations and universal waste disposal regulations and OSHA's various workplace regulations to laws and regulations as esoteric as the Employee Polygraph Protection Act and the Genetic Information Non-Discrimination Act.

Certainly, when viewed independently of their collective impact, there is usually a well-intentioned reason for each of these laws and each regulation the bureaucrats create to implement them. The danger lies in their overreaching, overlapping and often inconsistent nature, their continued existence despite changed circumstances that render them irrelevant, and the inability of government to simplify or rationalize compliance. These policies are creating structural impediments to opening and operating American businesses that all too often cause those in business to give up in frustration, reducing economic growth and dampening the entrepreneurial spirit so essential to our prosperity.

That is why I have been so vocal on this issue. I believe that, whatever a legislator's position on a proposed new regulatory statue, he or she should recognize that the regulation comes with a cost. Regulated businesses must spend money both to determine what the new law requires and then to comply with it. Recognizing this reality does not mean that Congress should decline to pass regulatory statutes. Rather, it means only that Congress should, on a bipartisan basis, be much more open to structuring such laws so as to maximize the benefits while minimizing any unnecessary burden. This is what businesspeople are really looking for: Not laissez faire government, but government that recognizes the contributions of business to economic growth and is sensitive to the difficulties which new regulations can create unless they are they are carefully tailored to meet both the legitimate needs of business and the social goal the regulations seek to accomplish.

I will focus on the PPACA's impact as this Subcommittee's jurisdiction covers the PPACA. The purpose of my testimony is (i) to describe our company and how we create jobs, (ii) to describe our long standing commitment to meaningful nutritional disclosure, (iii) to discuss the PPACA's proposed menu labeling requirements' ineffectiveness, burdens and unnecessary expense and (iv) to discuss the severe economic burdens the PPACA's mandatory health insurance provisions impose on American businesses and our company in particular.

As matters currently stand, the PPACA is creating significant concern in the American business community with respect to the increased costs and regulatory burdens it will undoubtedly impose. These costs and burdens are increasing the risks of new business ventures and discouraging investment. When entrepreneurs and businesses are unable to forecast with reasonable certainty that a venture will return a profit they will not invest, they will not grow and they will not create jobs. The predictable result is an uncertain and jobless recovery.

We respectfully request that Congress review the PPACA's provisions to determine which can be administered in a way that reduces costs for the businesses they impact. We further request that Congress review the PPACA's provisions to determine which provisions fail to accomplish anything productive and eliminate such provisions. If done effectively, this review would encourage job creation and prosperity as well as better government. As we all work to pull our nation out of the current economic malaise, why hurt American businesses if it gives you nothing in return?

II.
Company Description and Job Creation Impact

CKE Restaurants, Inc. is a quick service restaurant company that owns or franchises over 3,250 restaurants in 42 states and 25 foreign countries. We are headquartered in Carpinteria, California with regional headquarters in Anaheim California and St. Louis, Missouri. Carl N. Karcher, an Ohio native with an 8th grade education, and his wife Margaret, a California native, started our Company in 1941 with a hot dog cart in South Central Los Angeles.

We employ about 21,000 people in the United States. Our domestic franchisees employ approximately an additional 49,000 people. As such, we account for about 70,000 jobs in the United States.

We provide significant employment opportunities for minorities. Domestically, 64% of our Company employees are minorities. We also provide significant employment opportunities for women. Domestically, 63% of our employees are women. We are proud of the Company's diversity.

Our Company owns and operates 892 of our 3,243 restaurants. Our franchisees own and operate the remaining 2,351 restaurants of which 1,928 are in the United States. Our Company-owned restaurants average over $1.2 million in sales per year. Each restaurant employs about 25 people and has one General Manager. Our General Managers are 57% minorities and 66% women. They are 39 years old on average. However, their ages range from 18 to 71. Several of our Executive Vice Presidents and Senior Vice Presidents started as restaurant employees and learned the business as restaurant General Managers.

On average, a General Manager runs a $1.2 million business with 25 employees and significant contact with the public. He or she is in charge of a million-dollar-plus facility, a profit and loss statement and the success or failure of

a business. Our Company-owned restaurant General Managers earn an average salary of about $45,000 and can earn a salary of well over $50,000, plus a substantial performance-based bonus and benefits, including health insurance. For General Managers and above, the Company covers a portion of the cost (60%) of our employees' medical insurance and offers a number of alternative plans with 4 coverage options, ranging from employee to family coverage. Below the General Manager position, the Company offers an employee funded low cost limited medical benefits plan with 3 coverage options, ranging from employee to family coverage.

Our franchisees, who are generally small business owners and entrepreneurs themselves, often started out as General Managers in our restaurants or our competitors' restaurants. We have 227 franchisees nationwide. These franchisees exemplify the entrepreneurial spirit on which we built our Company and they instill that spirit in their over 49,000 employees and managers.

While we directly account for about 70,000 jobs in the United States, our Company's impact on the Nation's employment rate goes well beyond the number of people we directly employ. The hundreds of millions of dollars we spend on capital projects, services and supplies throughout the United States create thousands of jobs and generate broader economic growth.

For example, in the past six years and despite our Nation's economic problems, our Company and franchisees have built over 300 new restaurants in the United States. Every time we build a restaurant, we make a substantial investment in the community where that restaurant is located (well over $1 million). We use local contractors on the project and we create, on average, 25 new jobs including a new General Manager position. When we add about 8 new restaurants, we add a District Manager.

We also spend millions of dollars domestically each year all of which enhances our Nation's economic strength. Last year alone, our Company spent approximately $60 million on capital expenditures nationwide. Over the past five years, our Company spent $588 million on capital expenditures. These expenditures represent investments in our business and include new unit construction, remodels, property improvements, and infrastructure improvements. All of these expenditures create jobs and economic growth. Our franchisees' capital expenditures significantly increase these numbers.

In addition to our capital expenditures, last year we spent $30 million on restaurant repairs and maintenance. This would include amounts we pay to small businesses for projects such as landscaping, air conditioning repair, window cleaning, and asphalt and parking lot repairs. Our franchisees' repairs and maintenance expense again significantly increases these numbers.

We also spend millions of dollars on media advertising to television stations, radio stations, newspapers and other media outlets nationally. Last year alone, we spent $175 million. All of these expenditures create jobs and growth.

We support our nation's agricultural community with purchases of domestically produced or packed food and paper products. Last year, our food and paper expense was approximately $1 billion.

We also support numerous charitable organizations throughout the country. For example, this year we raised over $1 million for military families and veterans through our Stars for Troops program. We donated these monies to Homes for our Troops and USA Cares. Over the past 6 years, our Carl's Jr. and Hardee's, Company and Franchise restaurants raised over $4.1 million through our Pink Star program. We donated these monies to the National Breast Cancer Foundation for regional grants to hospitals in Los Angeles and St. Louis. In California, Carl's Jr. has pledged $1 million to Cottage Hospital in Santa Barbara. In North Carolina, Hardee's donated $1 million to build the Children's Oncology Center at Duke Hospital. In St. Louis, Hardee's donated $250,000 to the Rankin Jordan Pediatric Rehabilitation Center.

In addition to these examples, our Company and our franchisees support a host of other worthy causes through corporate and individual contributions and our restaurants routinely raise monies or contribute to the support of their communities' schools, civic organizations and sports teams.

In summary, our Company and franchisees employ about 70,000 people nationwide, provide meaningful management positions and experiences for a broad range of people, and expend hundreds of millions of dollars for job creating capital projects, media and to our suppliers. We also pay millions of dollars in taxes and support deserving charitable organizations.

III.
We Have an Historical Commitment to Health Conscious Consumers and Meaningful Disclosure of Nutritional Information

We accomplish the foregoing while providing a variety of low cost, high quality food items at convenient locations for all segments of the economy, from the very poor to the well to do. These products include Black Angus Beef Hamburgers, Turkey Burgers, whole muscle skinless Chicken Breast Sandwiches, Hand Breaded Chicken Tenders and Chicken Sandwiches, Salads, hand scooped Milk Shakes and Malts, and a number of breakfast items, among others. We are dedicated to offering our customers premium quality products and service at a level unparalleled in the quick service segment.

We sell big, juicy delicious hamburgers and French fries, as well as a variety of other products. We are not shy about our menu items. They are all high quality products that provide important nutrients to our customers -- and they taste great.

People can eat at our restaurants every day, and maintain a diet of which any physician would thoroughly approve, with no more knowledge or prudence than they would need to eat well at home. Moreover, they can afford to do so. We are very proud that, even in these difficult economic times, our restaurants offer families the opportunity to enjoy a pleasant experience eating out at a restaurant with a friendly atmosphere and well trained staff. Many of our customers are lower income parents who can afford to take their children to breakfast, lunch or dinner at our restaurants – with a menu the whole family can enjoy – who simply would be unable to pay two or three times as much at a higher end restaurant.

It is our job to offer great tasting, high quality, healthy products that our customers want to eat and we take great pride in doing so. For example, in 2011, we worked with editors of *Men's Health* magazine and the *Eat This, Not That* line of books to create a line of Turkey Burgers at Carl's Jr. and Hardee's. Just last week *Health.com* did a piece on "The Best and Worst Burgers" and our Turkey Burger was singled out as "Best Turkey Burger." Amanda MacMillan, *The Best and Worst Burgers* (Health.com, 2/6/12), http://www.health.com/health/gallery/0,,20504336,00.html. CKE also earned the Turkey on the Menu (TOM) Award in the fast food category from the National Turkey Federation for introducing a variety of charbroiled turkey burgers and offering healthier options to consumers.

Put simply, we believe it is our corporate responsibility to provide consumers full nutritional information about our products. *We have absolutely no objection to disclosing nutritional information to our customers and we have done so for years and prior to any government compulsion.* We believe there should be free choice and individual responsibility with respect to decisions regarding what people choose to eat. We believe the products we sell are healthful and, if consumers want different menu items, or more choices of products that have fewer calories, we are happy to serve them.

A.
We post the caloric and fat content of our products in our restaurants and have done so for a number of years

A poster such as the one below hangs at eye level in every Carl's Jr. and Hardee's restaurant. Although difficult to read in the photo below, the actual poster in the restaurants is framed, 20 inches tall by 16 inches wide and very legible. It simply cannot be missed by any of our customers interested in the information. *For each of our products it discloses serving size, calories, calories from fat, total fat, saturated fat, natural trans fat, artificial trans fat, cholesterol, sodium, total carbohydrates, dietary fibers, sugars and protein.* We have had the modern versions of these posters in our Carl's Jr. restaurants since 2003 and in our Hardee's restaurants since 2005. Our best recollection is that we originally put nutritional disclosure posters in our Carl's Jr. restaurants in the mid-1990s. At Carl's Jr. we also make this information available in pamphlet form at the restaurants as you can see to the right of the posters in the photos below. We have done so for many years and before any government entities compelled us to do so. We simply believe such information should be available for consumers who wish to see it.

Carl's Jr. Nutrition Information

	Serving Size (g)	Calories	Calories From Fat	Total Fat (g)	Saturated Fat (g)	Natural Trans Fat (g)	Artificial Trans Fat (g)	Cholesterol (mg)	Sodium (mg)	Total Carbohydrates (g)	Dietary Fiber (g)	Sugars (g)	Protein (g)
CHARBROILED BURGERS													
Famous Star® with Cheese	286	680	340	39	14	1	0	80	1220	57	3	12	28
Super Star® with Cheese	392	940	520	59	24	1.5	0	145	1580	59	3	13	48
Western Bacon Cheeseburger®	246	740	310	34	14	1	0	80	1500	74	4	15	33
Double Western Bacon Cheeseburger®	330	1000	480	54	24	1.5	0	145	1840	76	4	15	53
Teriyaki Burger™	316	630	260	29	11	0.5	0	65	1060	64	3	19	28
The Big Carl®	324	930	520	58	23	2	0	145	1390	55	3	12	47
The Original Six Dollar Burger®	391	910	470	54	21	2	0	125	2030	63	3	18	45
The Guacamole Bacon Six Dollar Burger®	418	1060	650	72	24	1.5	0	145	2290	55	4	11	49
The Western Bacon Six Dollar Burger®	336	1030	490	55	22	2	0	130	2440	81	4	16	53
The Low Carb Six Dollar Burger®	299	570	390	43	19	2	0	120	1390	9	1	5	38
The Portobello Mushroom Six Dollar Burger™	397	880	470	53	19	1.5	0	110	1760	56	5	10	47
Big Hamburger	216	490	160	18	8	0.5	0	50	1000	59	3	15	25
Kid's Hamburger	202	490	160	18	8	0.5	0	50	1000	57	3	14	25
Kid's Cheeseburger	219	550	210	23	11	1	0	65	1280	58	3	14	28
CHARBROILED TURKEY BURGERS													
Turkey Burger	268	490	200	23	4.5	0	0	80	960	45	3	10	29
Guacamole Turkey Burger	281	490	190	21	6	0	0	85	1120	43	3	9	33
Teriyaki Turkey Burger	320	470	120	14	5	0	0	80	1120	55	3	19	32
CHICKEN & OTHER CHOICES													
Charbroiled Chicken Club™ Sandwich	264	580	250	29	8	0	0	95	1280	45	2	10	36
Charbroiled Santa Fe Chicken™ Sandwich	267	640	320	36	8	0	0	95	1370	46	3	10	32
Charbroiled BBQ Chicken™ Sandwich	239	390	70	7	1.5	0	0	60	990	50	3	13	30
Hand-Breaded Chicken Fillet Sandwich	265	650	290	33	6	0	0	85	1530	58	3	9	33
Kid's Hand-Breaded Chicken Tenders™ (2 pieces)	98	220	110	12	2.5	0	0	45	770	10	1	0	19
Hand-Breaded Chicken Tenders™ (3 pieces)	148	340	170	19	3.5	0	0	70	1160	14	1	1	28
Hand-Breaded Chicken Tenders™ (5 pieces)	246	560	280	31	6	0	0	120	1930	24	2	1	47
Hand-Breaded Chicken Tenders™ (10pc box; 2, 5pc servings)	246	560	280	31	6	0	0	120	1930	24	2	1	47
Hand-Breaded Chicken Tenders™ (15pc box; 3, 5pc servings)	246	560	280	31	6	0	0	120	1930	24	2	1	47
Hand-Breaded Chicken Tenders™ (20pc box; 4, 5pc servings)	246	560	280	31	6	0	0	120	1930	24	2	1	47
Honey Mustard HB Chicken Tender™ Wrapper	118	320	170	18	6	0	0	40	760	22	1	2	16
Buttermilk Ranch HB Chicken Tender™ Wrapper	126	360	210	23	6	0	0	45	850	22	1	1	16
Sweet & Bold BBQ HB Chicken Tender™ Wrapper	124	290	120	13	5	0	0	40	910	26	1	4	16
Spicy Chicken Sandwich	177	460	220	26	5	0	0	35	1370	47	4	5	14
Chicken Stars™ (4 pieces)	61	170	90	10	2	0	0	20	360	12	1	0	8
Chicken Stars™ (6 pieces)	91	260	140	16	3.5	0	0	30	540	18	2	0	12
Chicken Stars™ (9 pieces)	137	390	210	23	5	0	0	45	810	26	3	0	18
Carl's Catch Fish Sandwich®	298	700	330	37	6	0	0	40	1300	73	5	9	21
Fish & Chips	271	710	340	38	6	0	0	25	1410	69	7	0	22
SIDES													
Natural-Cut Fries (Kids)	84	240	110	12	2	0	0	0	490	32	3	0	3
Natural-Cut Fries (Small)	106	310	130	15	2.5	0	0	0	610	40	4	0	3
Natural-Cut Fries (Medium)	150	430	190	21	4	0	0	0	870	56	5	0	5
Natural-Cut Fries (Large)	164	470	210	23	4	0	0	0	950	61	6	0	5
Chili Cheese Fries	320	820	420	46	14	1	0	60	1710	81	9	1	20
CrissCut® Fries	139	450	260	29	5	0	0	0	900	42	4	0	5
Onion Rings	128	530	250	28	4.5	0	0	0	590	61	3	6	8
Fried Zucchini	139	330	160	18	3	0	0	0	610	36	2	7	6
SALADS - WITHOUT DRESSINGS													
Cranberry Apple Walnut Grilled Chicken Salad	360	320	100	11	3.5	0	0	70	850	29	5	17	27
Original Grilled Chicken Salad	411	270	80	9	3	0	0	70	800	23	4	6	25
Green Burrito® Taco Salad	556	880	480	53	16	1	0	80	1780	67	12	8	36
Side Salad	136	120	50	5	1.5	0	0	5	250	13	2	2	4
SALAD DRESSINGS													
House Dressing	57	220	200	22	3.5	0	0	20	440	3	0	2	1
Blue Cheese Dressing	57	320	310	34	7	0	0	20	410	1	0	1	2
Low Fat Balsamic Vinaigrette	57	35	15	1.5	0	0	0	0	480	5	0	3	0
Raspberry Vinaigrette	43	160	110	12	2	0	0	0	150	12	0	11	0
BREAKFAST													
Breakfast Burger™	305	810	380	42	16	1	0	310	1480	69	4	15	39
Sourdough Breakfast Sandwich	200	450	190	21	8	0	0	270	1470	38	1	3	29
Steak & Egg Burrito	311	650	330	36	15	0	0	535	1730	42	2	3	41
Loaded Breakfast Burrito	312	780	430	48	17	0	0	510	1460	51	3	2	36
Big Country® Breakfast Burrito	306	750	400	44	14	0	0	495	1520	56	6	4	30
Bacon & Egg Burrito	210	560	290	32	12	0	0	500	1000	37	1	1	30
Sunrise Croissant®	176	590	390	44	17	0	0	285	810	28	1	4	20
French Toast Dips® - No Syrup (5 pieces)	130	460	190	21	4	0	0	0	570	60	3	16	9
Hash Brown Nuggets	108	350	210	23	4	0	0	0	440	32	3	0	3
Sausage, Egg & Cheese Biscuit	178	570	330	37	16	0	0	245	1360	38	2	3	20
Bacon, Egg & Cheese Biscuit	153	460	240	26	12	0	0	225	1130	37	2	2	17
Ham, Egg & Cheese Biscuit	179	450	210	23	11	0	0	230	1520	38	2	3	20
Monster Biscuit®	247	740	450	50	21	0	0	465	1750	39	2	3	32
Biscuit 'N' Gravy™	228	440	200	22	9	0	0	10	1320	50	3	3	9
Strawberry Biscuit	130	380	120	13	7	0	0	0	750	61	3	24	6
Made From Scratch Biscuit™	86	290	120	13	7	0	0	0	730	37	2	2	6
DESSERTS													
Chocolate Chip Cookie	71	370	170	19	10	0	0	30	350	48	2	27	3
Strawberry Swirl Cheesecake	99	290	140	16	9	0	0	55	230	32	0	21	6
Chocolate Cake	85	300	110	12	3	0	0	30	350	48	1	36	3
HAND-SCOOPED ICE CREAM SHAKES & MALTS™													
Vanilla Shake	397	700	310	34	23	0	0	100	260	86	0	74	14
Chocolate Shake	397	690	310	34	24	0	0	100	310	84	1	69	14
Strawberry Shake	397	690	310	34	23	0	0	100	260	83	0	73	14
OREO® Cookie Shake	397	720	340	38	25	0	0	100	370	79	1	63	15
Vanilla Malt	414	770	310	35	24	0	0	105	300	100	0	86	15
Chocolate Malt	414	760	320	35	24	0	0	105	360	98	1	80	16
Strawberry Malt	414	760	310	35	24	0	0	105	310	97	0	84	15
OREO® Cookie Malt	414	790	350	39	25	0	0	105	420	94	1	74	17

For additional information visit www.carlsjr.com.

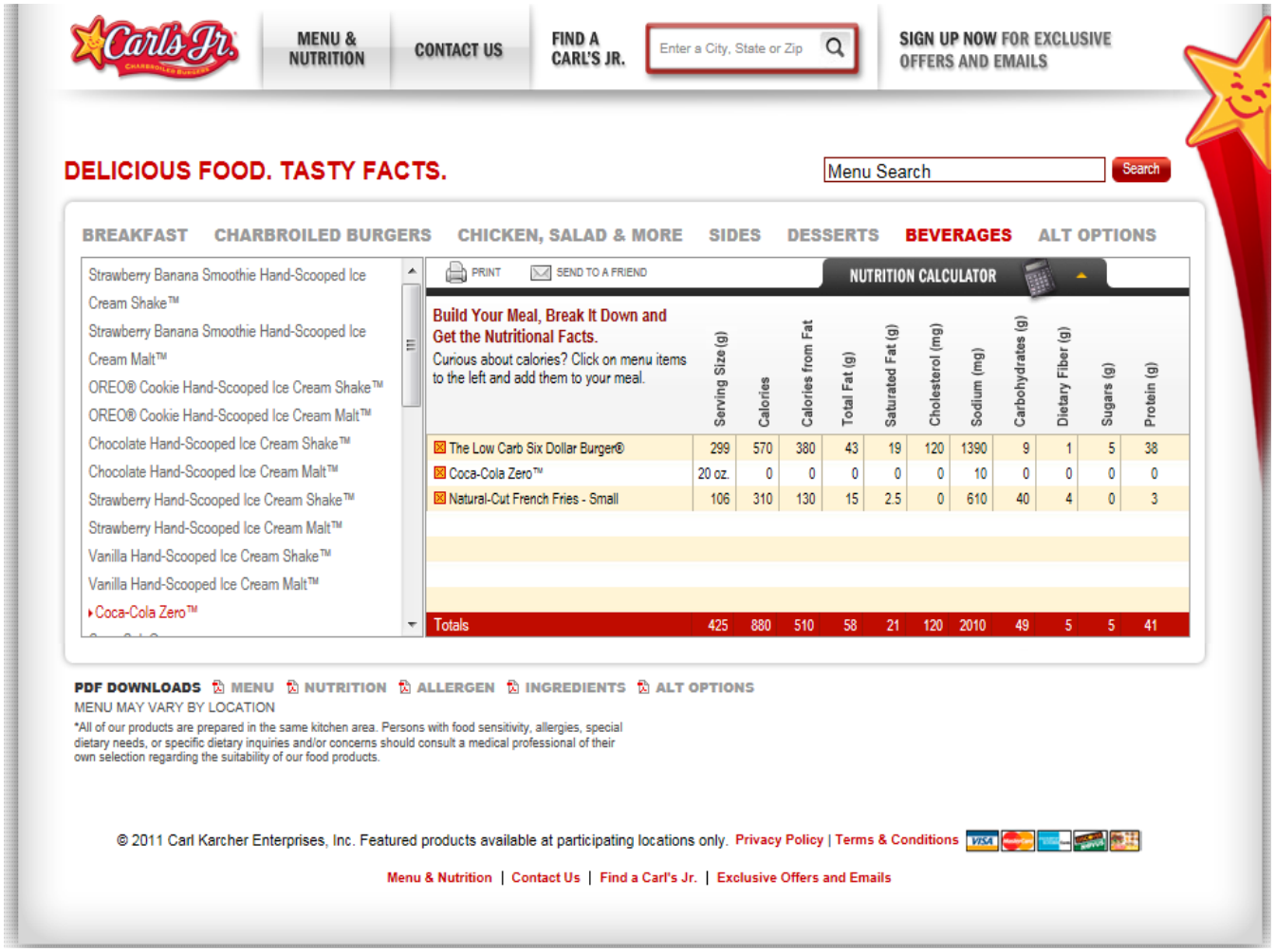
The information contained in this guide is based on standard U.S. product formulations. Variations may occur due to a variety of factors and circumstances including, but not limited to, differences in suppliers, ingredient substitutions, recipe revisions, product assembly and seasonal variances. Product participation may vary by location, and test products are not included. This information is current as of 6/15/11. The information in this guide is reported for informational purposes only by Carl Karcher Enterprises, Inc. Neither CKE, its franchisees, its suppliers and/or vendors, or its employees assume any responsibility for sensitivity or allergy to any food product or ingredient provided by or in our restaurants. We do not have an allergen-free cooking environment in our kitchen. All of our products are prepared in the same kitchen area. Anyone with any food sensitivity, allergies, special dietary needs, or specific dietary inquiries and/or concerns should consult a medical professional of their own selection regarding the suitability of our food products and/or ingredients, and should regularly review the information contained at www.carlsjr.com for content updates. The Dietary Guidelines for Americans recommend limiting saturated fat to 20 grams and sodium to 2,300 milligrams for a typical adult eating 2,000 calories daily. [illegible]

B.

On our web site, consumers can check the fat and caloric content of our products and can even create a meal and check the total nutritional information for that meal with our Nutritional Calculator

Most of the examples below are from the Carl's Jr. web site http://www.carlsjr.com/menu. Hardee's has its own web site with the same features. http://www.hardees.com/.

This is an example of how our Nutrition Calculator works from our Carl's Jr. web site. In this example, the consumer selected a Six Dollar Burger low carb style with an order of small fries and a Coke Zero. The nutritional information for the meal appears in the red line entitled "Totals."



	Serving Size (g)	Calories	Calories from Fat	Total Fat (g)	Saturated Fat (g)	Cholesterol (mg)	Sodium (mg)	Carbohydrates (g)	Dietary Fiber (g)	Sugars (g)	Protein (g)
The Low Carb Six Dollar Burger®	299	570	380	43	19	120	1390	9	1	5	38
Coca-Cola Zero™	20 oz.	0	0	0	0	0	10	0	0	0	0
Natural-Cut French Fries - Small	106	310	130	15	2.5	0	610	40	4	0	3
Totals	425	880	510	58	21	120	2010	49	5	5	41

C.

We offer low fat, low calorie, low carbohydrate, vegetarian and gluten sensitive products and our web site has an Alternative Options Menu offering a number of items for our consumers.

http://www.carlsjr.com/system/pdf_menus/21/original/CJ_AlternativeOptionsMenu.pdf?1294692189.

Carl's Jr. CHARBROILED BURGERS

Alternative Options Menu

Order or modify many of our existing menu items to fit your diet needs.

LOW CARB IT.™

These products contain less than 15 grams of Carbs

The Low Carb Six Dollar Burger®
Just like The Original Six Dollar Burger®, but with dill pickles and a lettuce wrap instead of on a bun.

Low Carb Chicken Club™
The Charbroiled Chicken Club™ with a lettuce wrap instead of on a bun.

Original Grilled Chicken Salad
Order this salad with Blue Cheese Dressing and skip the croutons.

TRIM IT.™

These products contain 430 or fewer calories

Charbroiled BBQ Chicken™ Sandwich
Our original low fat menu item. Order it as is, or get it with a lettuce wrap as The Low Carb Charbroiled BBQ Chicken™ Sandwich.

Trim It Famous Star™
The Famous Star® with no mayo on a honey wheat bun.

Original Grilled Chicken Salad
Order this salad with Low-Fat Balsamic Vinaigrette.

VEG IT.™

No meat options

The Veg It Guacamole Six Dollar Burger™
The Guacamole Bacon Six Dollar Burger® without the meat patty or bacon.

Fried Zucchini
One of our signature side items.

Side Salad
An option for substitution of fries in a combo.

GLUTEN SENSITIVE*

*All of our products are prepared in the same kitchen area. Persons with food sensitivity, allergies, special dietary needs or specific dietary inquiries and/or concerns should consult a medical professional of their own selection regarding the suitability of our food products.

Low Carb Famous Star with Cheese™
The Famous Star® with Cheese, but in a lettuce wrap instead of on a bun.

The Low Carb Six Dollar Burger®
Just like The Original Six Dollar Burger®, but with dill pickles and a lettuce wrap instead of on a bun.

The Low Carb Guacamole Bacon Six Dollar Burger™
The Guacamole Bacon Six Dollar Burger® in a lettuce wrap instead of on a bun.

For more information, please visit www.carlsjr.com/menu/indulge. Revised April 2010.

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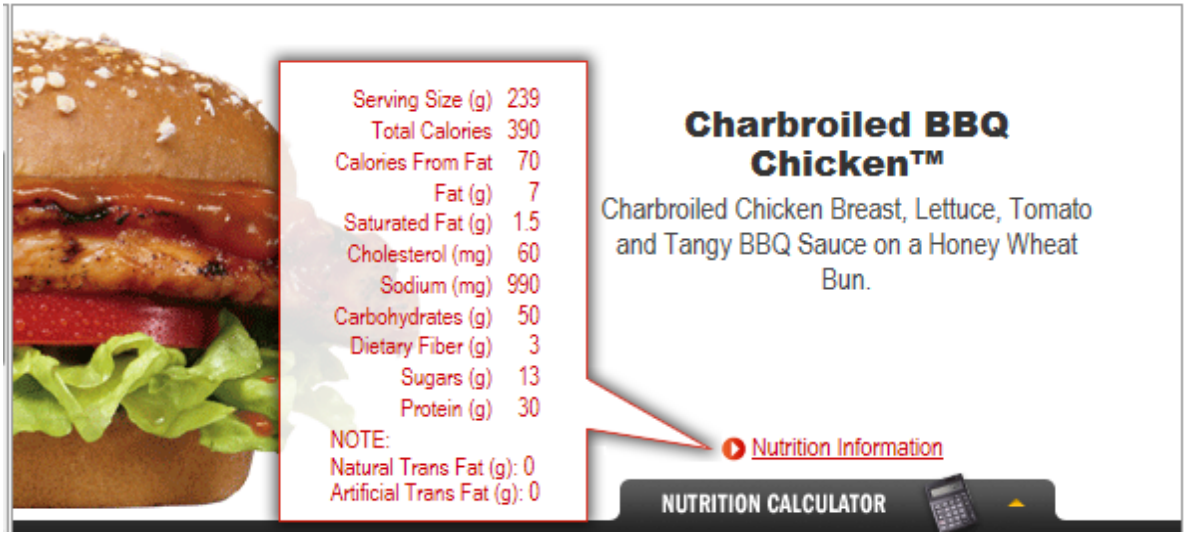
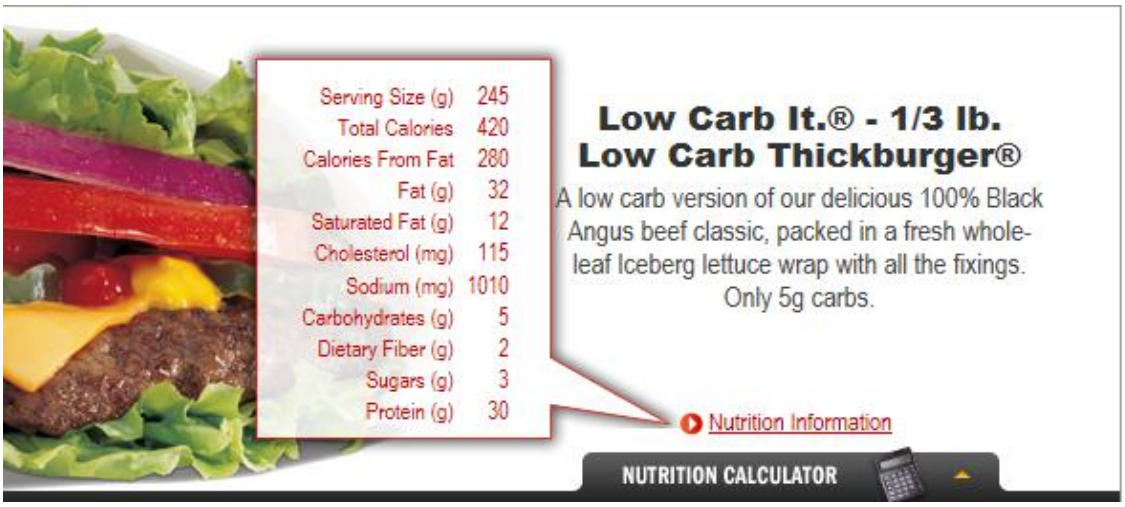
We believe our Alternative Options Menu is unique, particularly with respect to our Vegetarian and Gluten Sensitive options.

D.
Our traditional menu also offers a number of low fat and low calorie products and has done so for many years.

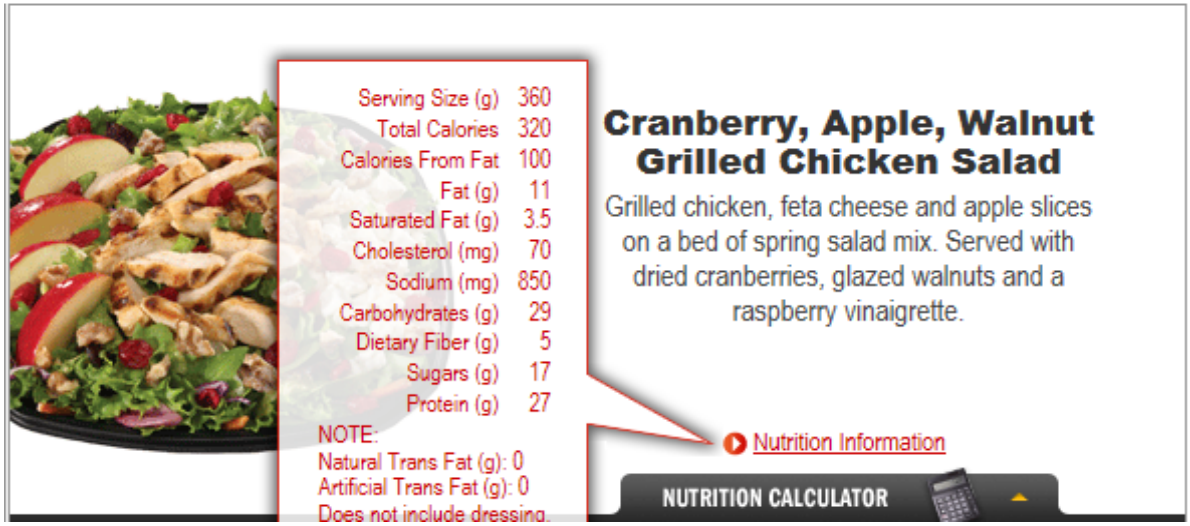
We have a line of whole-muscle, skinless chicken breast products which we char-broil and serve on honey wheat buns. Our Bar-B-Q Chicken Sandwich, for example, has 7 grams of fat. When consumers view our products on our web site, they have the option of getting full nutritional information by clicking on the "Nutritional information" option as in the pictures below.



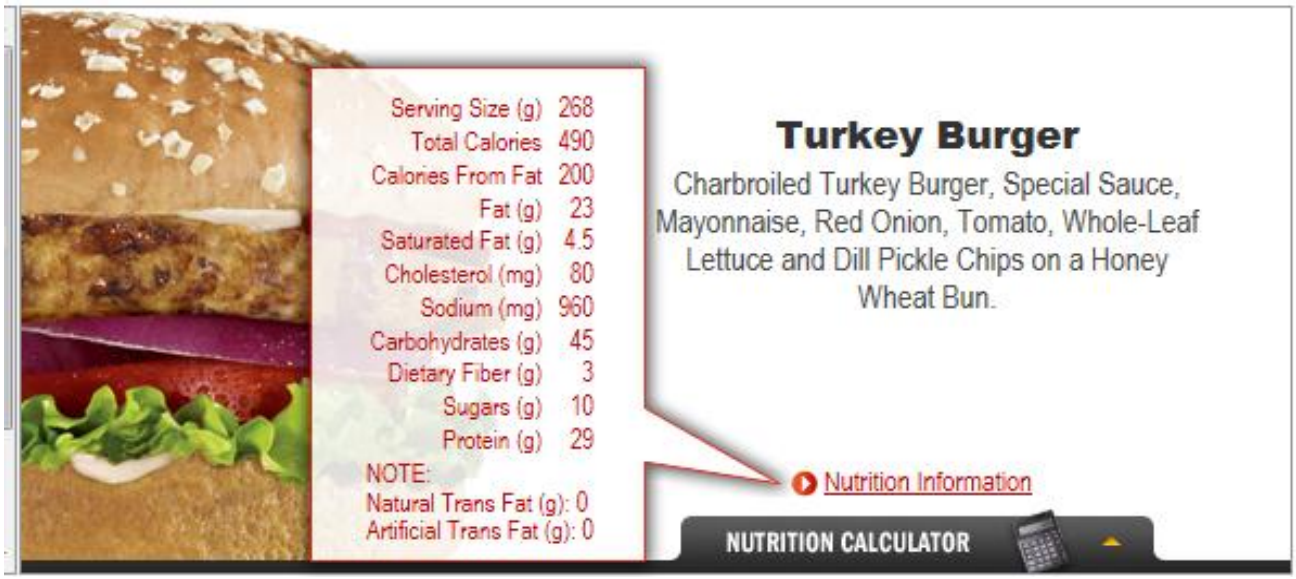
Customers can order any of our products on a honey wheat bun or low carb style as we use whole-leaf lettuce which can serve as the bun. This is the information for a Hardee's Thickburger low carb style.



We also have a variety of salads which customers can order with low-fat or non-fat dressings. We have had salads in our restaurants since at least the 1970s.



Last year, we added a line of Turkey Burgers to our menu each of which are less than 500 calories. In addition, consumers can order any of our burgers with a Turkey Burger patty.



We also have a number of healthful low fat, low calorie beverages including 1% fat milk, orange juice, Vitamin Water Zero, Dasani bottled water, and Coke Zero, among others.

In summary, we have numerous delicious products for health conscious consumers and you can easily determine the nutritional information for any of our products in the restaurant or on our web sites. You can eat low fat or low calorie items in our restaurants and we are happy to sell these products. We accomplished all of the forgoing effectively, economically and without government compulsion and without adding confusion to our menu boards.

IV.
The Impact of The Patient Protection and Affordable Care Act And Its Proposed Regulations on Our Ability to Avoid Layoffs, Create Jobs and Continue to Generate Economic Growth

As noted above, we reinvest the great majority of our cash flow in our business and in the economies of the states where we do business. We do so by creating meaningful employment and management level opportunities for a diverse group of people, while reinvesting the vast majority of our cash flow in building new restaurants, remodeling existing restaurants, keeping our existing facilities in good condition, and purchasing various commodities and services.

We accomplish all of this by running each restaurant as a profitable business and keeping our overall general and administrative expenses in check. Our business is relatively simple. We generate cash flow through our restaurants, pay our bills and then reinvest in our business. At the restaurant level, we simply take our revenues (essentially our sales) and reduce them by our food, labor and occupancy expenses. What remains is our restaurant level profit. All of our economic success - all of our ability to stimulate growth and jobs - stems from our restaurant level profit. Over the past few years, our industry and our Company have managed to grow despite being forced to deal with significant challenges, including declining consumer demand due to a weak economy, rapidly increasing commodity prices and increasing energy costs.

We are also facing the negative impact of certain legislation and proposed regulations. This is true for our Company, our industry and our nation's retail industries in general. While generally well intentioned and having worthy objectives, such legislation and regulation rarely attempts to balance the costs and benefits thereof, and have the potential to add to our costs at a time when we are already facing very significant economic obstacles. We respectfully note that, unless properly structured with input from all sides, even when legislation or regulation intends to achieve something positive – such as menu labeling or universal health care – there is always a tradeoff that may hurt the very people the proposal is intended to benefit.

We know the object of these proposals is not to impair our ability to reinvest in our business or to cause layoffs. Nonetheless, such legislation and regulation could leave us and our franchisees with no choice but to materially reduce our full time workforce and our capital spending which in turn, increases unemployment

and reduces economic growth. We hope that we can work with you to minimize the unintended negative effects of any such legislation and regulation.

In particular, the PPACA presents all American businesses with huge regulatory and economic hurdles that inhibit economic growth. My testimony will focus on the menu labeling portion of the PPACA (section 4205). It will then discuss the negative impact the PPACA's mandatory health insurance provisions will have on our Company's ability to grow and create jobs.

A.
Menu Labeling

Before discussing specific issues with respect to the PPACA's approach to menu labeling, it is important to re-emphasize that, as a company, we support nutritional disclosure. We believe our actions (as described above) before any requirements were in place clearly demonstrate that. However, we strongly oppose legislative measures which generate significant costs without any benefit and which particularly disadvantage one part of the restaurant industry. We should disclose nutritional information in a cost effective manner that is equitable and avoids giving a competitive advantage to any restaurant sector or interest group. It is in these respects that the PPACA's burdensome and expensive menu labeling provisions fail.

1. Menu Labeling Provisions Have Had and Will Have No Impact on Reducing Obesity. First, while preventing obesity was the rational for enacting the PPACA's menu labeling provisions, the research to date has all but universally disclosed that placing caloric content on menus fails to impact people's eating habits and has no impact on reducing obesity. Below we list a number of studies and articles discussing the impact of menu labeling on eating habits.

Calorie counts don't change most people's dining-out habits, experts say, *Washington Post*, 7/6/11, http://www.washingtonpost.com/local/calorie-counts-dont-change-most-peoples-dining-out-habits-experts-say/2011/06/30/gIQAhAqO1H_story.html.

Menu labels don't influence students' food choices, *Reuters*, 7/1/11, http://www.reuters.com/article/2011/07/01/us-menu-labels-idUSTRE7605GO20110701;

Posting point-of-purchase nutrition information in university canteens does not influence meal choice and nutrient intake, *The American Journal of Clinical Nutrition*, 6/15/11, http://www.ajcn.org/content/early/2011/06/15/ajcn.111.013417;

Menu labeling law doesn't register a blip at Taco Time, *Los Angeles Times, 1/14/11,* http://articles.latimes.com/2011/jan/14/news/la-heb-menu-labeling-20110114;

Calorie Disclosures Fail to Weight Whole Enchilada, *Wall Street Journal, 7/8/09,* http://online.wsj.com/article/SB124700756153408321.html;

Calorie Postings Don't Change Habits, Study Finds, *New York Times, 10/6/09,* http://www.nytimes.com/2009/10/06/nyregion/06calories.html?scp=1&sq=menu%20labelling&st=cse;

Study: NYC calorie postings don't change orders, *New York Post, 10/6/09,* http://www.nypost.com/p/news/local/study_nyc_calorie_postings_don_change_0N8ltUiGVwDvIkCa2OFvSN

Fast food doesn't make you fat, *Portfolio Magazine, 6/3/08,* http://www.portfolio.com/views/blogs/odd-numbers/2008/06/03/fast-food-doesnt-make-you-fat?addComment=true;

Too Much Information? ***Why menu labeling laws are bound to fail,*** *Reason Magazine, 6/25/08* http://reason.com/archives/2008/06/25/too-much-information;

Are Restaurants Really Supersizing America? *UC Berkley/Northwestern University Study, 12/30/07,* http://are.berkeley.edu/Papers/anderson08.pdf.

Exercise Info, Not Calorie Counts, Helps Teens Drop Sodas, *National Public Radio, Dec. 16, 2011* http://www.npr.org/blogs/thesalt/2011/12/16/143790349/exercise-info-not-calorie-counts-helps-teens-drop-sodas?ft=1&f=1001.

As stated in the July 6, 2011 *Washington Post* article cited above: "Evidence is mounting that calorie labels — promoted by some nutritionists and the restaurant industry to help stem the obesity crisis — do not steer most people to lower-calorie foods. Eating habits rarely change, according to several studies. Perversely, some diners see the labels yet consume more calories than usual. People who use the labels often don't need to. (Meaning: They are thin.)." http://www.washingtonpost.com/local/calorie-counts-dont-change-most-peoples-dining-out-habits-experts-say/2011/06/30/gIQAhAqO1H_story.html

Anecdotally, where we have already been required to add calorie disclosures to our menu boards, we have observed that such disclosure has, at best, a minimal impact on sales. More often, ironically, *consumers appear to believe fast food has more calories than is actually the case and, as a result, may consume higher calorie items once they see the actual caloric content*.

Again, providing nutritional information for consumers is a good idea. As noted above, it is something we are currently doing and have done for many years more effectively than the PPACA requires. However, in addition to being ineffective if not counter-productive, the PPACA's menu labeling provisions are economically burdensome and inequitable, discouraging both growth and job creation.

2. The Relevant Provision. The menu labeling provisions are located in Section 4205 of the PPACA which amends Section 403(q) (5) (a) of the Federal Food, Drug and Cosmetic Act (21 USC 343(q) (5) (A). The relevant provision requires that restaurants with menu boards "disclose in a clear and conspicuous manner:"

> In a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu board, including a drive-through menu board, the number of calories contained in the standard menu item, as usually prepared and offered for sale . . . .

21 USC 343 (q) (5) (H) (II) (aa).

3. Economic Impact. This provision will be very difficult and expensive to implement as we will have to place the information on our menu boards which means cluttering them even more than they are cluttered now and going through the expense of replacing all of our existing menu board s (assuming we are unable to find a more cost effective FDA approved alternative). We estimate that the cost to replace interior and drive-thru menu board panels at domestic Carl's Jr. and Hardee's restaurants would be $1.5 million ($1,473,560). This will be $1.5 million to accomplish something we are already doing less expensively and more effectively than the PPACA requires. Notably, as discussed below, the FDA estimates the costs at about $1,100 per restaurant and the Small Business Administration's ("SBA") Office of Advocacy reports that the National Council of Chain Restaurants (NCCR") estimated the cost at about $1,333 per restaurant. Using the FDA's number, the cost for our Company and franchised

Carl's Jr. and Hardee's restaurants would be about $2.1 million. Using the SBA's/ NCCR's estimate, our costs would be about $2.6 million. http://www.sba.gov/content/letter-dated-06282011-department-health-and-human-services-food-and-drug-administration.

To put this expense in perspective, last year, our company spent $4.5 million on job creating new restaurant development, building five new company owned restaurant (this does not include monies the franchisees spent to build franchised restaurants). Company and franchise restaurant development is how we create new jobs. Using our estimate of anticipated menu board replacement costs (which is lower than the FDA's or the SBA's estimates), $1.5 million is 33% of the $4.5 million our Company spent to build new Company owned restaurants for all of last year. The amount we and our franchisees would be forced to spend on new menu boards would support the opening of 1 to 1½ new restaurants and the creation of about 40 jobs in the restaurants and many more jobs outside of the restaurant.

We would obviously prefer to spend these monies building new restaurants and creating jobs rather than providing information we already provide more effectively, more comprehensively and more economically than the PPACA requires. ***As opposed to just disclosing caloric content, for each of our products, our nutritional information posters already disclose serving size, calories, calories from fat, total fat, saturated fat, natural trans fat, artificial trans fat, cholesterol, sodium, total carbohydrates, dietary fibers, sugars and protein.*** Our nutritional information posters are clearly marked and contain the facts about nutritional content so that customers can walk right up to them and read the information clearly. We firmly believe this is a far more effective communication of the information than lodging it on an already cluttered menu board that has to be read from five to ten feet away.

We are not alone in facing these increased costs. On June 28, 2011, the SBA's Office of Advocacy filed comments with the FDA suggesting that the FDA's underestimated the costs in the proposed rules for chain restaurant and vending machine nutritional labeling and that alternatives exist that would minimize the rules' impact. http://www.sba.gov/content/letter-dated-06282011-department-health-and-human-services-food-and-drug-administration. The SBA's comments noted that "The FDA's regulatory analysis estimated that the initial mean estimated cost of complying with the proposed [menu labeling] rule [for chain restaurants] would be $315.1 million, with an estimated mean ongoing cost of $44.2 million." *Id*. Obviously, the costs for our industry will be very significant.

Yet, even the FDA's $315 million cost estimate may be low. As stated in a recent article on this subject in the *American City Business Journals*:

> The Food and Drug Administration may have underestimated the cost of complying with proposed food and calorie labeling rules for chain restaurants and vending machines.
>
> That's according to the Small Business Administration's Office of Advocacy, which urged the FDA to reassess its cost estimates and consider less-expensive alternatives.
>
> The proposed rules, which were called for in the health care reform law, require chain restaurants and operators of 20 or more vending machines to disclose nutritional information about their food items. The FDA estimates the rules will apply to 278,600 restaurants and 10,800 vending machine operators.
>
> The rule will cost each restaurant around $1,100, according to the FDA, mainly for testing foods, preparing new menus and training employees. Industry groups, however, told the Office of Advocacy that their surveys of restaurants indicate the costs would be higher.

Calorie labeling rule could cost every restaurant $1,100, *American City Business Journals, July 8, 2011, http://www.bizjournals.com/portland/print-edition/2011/07/08/calorie-labeling-rule-could-cost-1100.html?page=all*.

a. Interior Menu Boards. The walls that currently contain our menu boards are generally ***partial*** walls as we provide a clear view into our kitchens so the public can observe our food preparation process. Just above the line of sight into our kitchens is generally where we place the menu boards. This enhances our food safety and our customers comfort level as they can observe the food being prepared and the cleanliness of the restaurant. One solution to adding caloric information to our menu boards would be to make the menu boards larger which would, of course, obscure the view into the kitchen. We would lose the benefits of consumers being able to view the food preparation process.

Of course, a simple, equally effective and more economical solution would have been to make the relevant information available prominently on a wall adjacent to the menu board. This would have allowed us to make the required disclosure in an effective manner without the added expense of replacing all of our menu board panels or needlessly cluttering them and rendering them confusing.

b. Drive-Thru Menu Board Labeling. Our drive thru menu boards are not amenable to menu labeling. They are simply too small and are designed for customer convenience and speed (which are generally the two reasons customers are in the drive thru to begin with). We are generally unable to make them larger as they are already as large as local zoning authorities allow us to make them. If we were allowed to make them larger, they would already be larger.

Last year, Senator Roy Blunt (R-Mo) sent a letter to the Department of Health and Human Services, Food and Drug Administration ("FDA") raising concerns about the drive-thru menu board labeling issue, as part of the FDA's public comment request for its draft Section 4205 menu labeling regulations. The FDA responded stating that it was considering whether the use of "stanchions (such as free standing boards, generally placed next to the drive through menu boards) would enable customers to use calorie information when they are making selections from a drive though menu board . . . ." While this would certainly be helpful, it is difficult to see why having something adjacent to the drive-thru menu board is acceptable but having something adjacent to the interior menu board is unacceptable. We are unable to estimate the added cost of the FDA's stanchions approach as we currently have no idea what the stanchions would look like or where we would place them. As is very typical of sweeping Federal regulation, no consideration is given to how such regulation conflicts with the requirements of literally hundreds of local jurisdictions that impose other constraints to meet other legitimate objectives.

So what it comes down to is this: The federal government has passed a law requiring us to build new signs, or buy new menu boards, and to put on those signs and menu boards information which we already provide even though it is unlikely to change eating habits, at a cost of over a million dollars that we will divert from and be unable to spend on expanding our business and creating jobs.

4. Chains with 20 or More Restaurants. The menu labeling law only applies to chains with 20 or more restaurants. 21 USC 343 (q) (5) (H) (i). In other words, if you own less than 20 restaurants, you are exempt from the law's menu labeling requirements. The purpose of this provision is to protect small businesses from the law's expense and negative business impact. This exemption shows that the authors of the legislation well knew that it would have a negative impact. Apart from that, it is naïve to make this distinction. First, it is simply inequitable to create a different unit cost structure for businesses above an arbitrary size threshold. Second, it is inconsistently applied, as this exemption is inapplicable to franchisees of chains that have more than 20 restaurants even if the individual franchisee owns less than 20 restaurants. In other words, small business operators who are independent get an advantage over chain restaurant franchisees even if the franchisee owns one restaurant. Our franchisees are also small business operators, and we submit that to the extent small business operators are deserving of special protection, all such operators similarly deserve protection.

Someone could argue that franchisees have the advantage of affiliating with larger chains, but franchisees pay 4% of their revenues for this privilege. As such, they are already at a competitive disadvantage from a profit perspective, but they have made a business decision that the trade off was worthwhile. When making this decision, our franchisees did not contemplate an additional economic disadvantage such as the menu labeling law now creates. Whether one of our franchisees' restaurants is across the street from a "Joe's Burgers" or a "McDonald's" makes very little difference: A competitor is a competitor.

The International Franchise Association ("IFA") submitted comments to the FDA expressing these concerns on behalf of the chain restaurant industry. As the IFA stated:

> While the statute provides an exemption of the law's requirements for independent restaurants that have less than 20 locations, a small business owner that is a part of a franchise system will have to comply with the new regulations. The IFA is particularly concerned that the Proposed Rule and its requirements will create a competitive disadvantage between a single-unit franchise restaurant owner and local independent competitors.
>
> "These new requirements will dramatically increase costs for some small businesses that are in competition with similar independent restaurants that are not subject to the requirements of the new law," said Thorman [IFA Senior Vice President of Government Relations & Public Policy]. "We are asking the FDA to ensure these rules are implemented in a way that accommodates small business owners and provides consumers with important calorie information that is clear and concise."

FDA Should Consider Economic Burden of Menu Labeling on Franchise Restaurant Owners,
http://www.franchise.org/Franchise-News-Detail.aspx?id=54323. *See also,* **Calorie labeling rule could cost every restaurant $1,100,** *American City Business Journals, July 8, 2011, http://www.bizjournals.com/portland/print-edition/2011/07/08/calorie-labeling-rule-could-cost-1100.html?page=all*.

5. Conclusion. While the PPACA's menu labeling provisions may have been well intentioned, they were poorly thought out, will be both burdensome and expensive to implement and give an inequitable advantage to individuals who own less than 20 restaurants unless they are franchisees. We are already providing more nutritional information than the PPACA requires. We believe it is good

policy and good business to inform our customers in this way, even though experience has shown that such information does not change eating habits. The PPACA's menu labeling provisions are a perfect example of legislation that accomplishes very little while imposing costs that kill jobs and economic growth. Apart from the actual burden of this legislation, it has contributed to the sense – which is quite common among our franchisees – that their own government has no idea how businesses operate and no sensitivity whatsoever to the challenges they and their consumers are confronting in these difficult times.

As I have already stated, there is an increasing body of evidence that disclosure of caloric information as required by the new law has no impact on consumer buying decisions. This evidence would support repealing the law or postponing its implementation until there is greater certainty that it will have a beneficial effect. But we understand that many legislators who are committed to the idea of more consumer disclosure may be reluctant to take that step. For those legislators, a compromise is possible: Simply pass a "technical correction" to the law which makes clear that restaurants can post the required nutritional information on a wall inside the restaurant and adjacent to the menu board and that, if the restaurant provides complete nutritional information on its website, it is unnecessary to provide it in the drive thru lanes. This compromise would minimize the impact on franchisees, reduce the competitive disadvantage built into the law as currently written, and still require restaurant companies that– unlike Hardees and Carl's Jr. – currently fail to provide nutritional information to provide it.

Just as important, it would show restaurant owners around the country and business owners in general that Congress recognizes their contributions to job creation and economic growth. In the long run, this serves the interests of those in this body who are more open to business regulation because it will show that it really is possible to pass regulations in a way that minimizes the burdens on those who create jobs and opportunity in our country.

B.
Employer Mandates and Health Care Coverage

1. The Overall Impact on Employers and Job Creation. As noted above, our Company creates jobs by building new restaurants and working with our franchisees so they build new restaurants. Our restaurants create jobs both inside the store and also by spending hundreds of millions of dollars locally for

job-creating capital projects, media and advertising, and supplier products and services.

Last year, as a company, we spent $11.8 million on health care coverage for our employees (the total cost including employee contributions was $21 million) and $4.5 million building new restaurants. We have been working closely with Mercer Health and Benefits, LLC, our health care consultants, to identify the PPACA's potential financial impact on our company. Mercer estimates that when the PPACA is fully implemented we will have an additional $18 million per year of costs with the PPACA's regulations as they are today. ***This will put our total health care costs at $29.8 million, a 150% increase from what we spent last year.*** That money will have to come from somewhere. The most likely place to start is new restaurant construction. ***The $18 million increase in our health care coverage costs would completely consume the $4.5 million we spent on new restaurant construction last year, leaving nothing for growth and job creation.***

Another option to make up the gap between what we currently spend on health care and what we would spend under the PPACA would be to reduce our labor force. It is important to note that the PPACA explicitly makes labor more expensive. It is completely predictable that businesses such as ours will search for ways to take jobs out of our existing restaurants to reduce that expense. This is a basic law of economics that legislators would be well served to consider when crafting this kind of legislation. We would undoubtedly increase the number of part time employees; decrease the number of full time employees and attempt to automate positions (such as replacing cashier positions with ordering kiosks). These are not actions we want to take. They are actions the PPACA will all but compel us to take.

Finally, we could make up the gap between our current health care costs and the increased costs under the PPACA by reducing our capital spending on projects such as remodels and infrastructure. Eliminating these capital expenditures would be extremely difficult as they are essential to the continuing viability of our business. But under the PPACA, we would have little choice other than to reduce them, eliminating construction jobs and endangering the long term prospects of our business.

Our franchisees spent more on restaurant development last year as they built 41 new restaurants domestically. They spent more on health care coverage as they own 70% of our domestic restaurants and account for about 49,000 employees (about two and a half times as many employees as our Company). ***As health care***

costs increase, our Company will have to further reduce new unit construction and job creation.

When I encourage franchisees to build new restaurants, I often hear about the uncertainties they face in deciding whether to make the investment. They speak of uncertainty with respect to future tax rates, energy, labor and commodity costs among other things. However, they prominently mention their certainty that under the PPACA their health care costs are going to significantly increase. In fact, they express concern that they will be unable to keep their current restaurants open, let alone open new ones.

Ours is obviously not the only industry facing the daunting prospect of massive health care cost increases under the PPACA. The impact of this concern on American businesses is impeding growth and job creation. Businesses that are unable to forecast a profit from a new venture because of increased expense, or uncertainty about expense, will not invest. As noted in a recent analysis by the Heritage Foundation's James Sherk:

> Private-sector job creation initially recovered from the recession at a normal rate, leading to predictions last year of a "Recovery Summer." Since April 2010, however, net private-sector job creation has stalled. Within two months of the passage of Obamacare, the job market stopped improving. This suggests that businesses are not exaggerating when they tell pollsters that the new health care law is holding back hiring. The law significantly raises business costs and creates considerable uncertainty about the future.
>
> * * *
>
> The fact that improvements in the job market ground to a halt after Congress passed Obamacare does not prove that the health care law caused it—correlation cannot prove causation. However, the fact does lend strong weight to the voices of businesses who say that the law is preventing hiring.

James Sherk, *Recovery Stalled After Obamacare Passed* (Heritage Foundation 7/19/11) http://www.heritage.org/Research/Reports/2011/07/Economic-Recovery-Stalled-After-Obamacare-Passed.

In fact, some businesses that are marginally profitable may close when that profit margin disappears as a result of PPACA's costs. When private sector businesses fail or fail to invest, the economy slows and job creation either stagnates or vanishes. In our case, an $18 million increase in health care costs will significantly reduce our new unit growth and the associated job creation.

2. Specific Cost Drivers

Underlying these overall costs are PPACA's myriad provisions aimed at employer-sponsored health plans. These provisions will significantly impact the way we determine eligibility for and enroll employees in our health plans, the way we set our premium contributions, the design of our benefit plans, and how we deliver coverage and insure our employees. Administration and coverage of our benefits will change substantially between now and 2014. We are already expending significant time, effort and resources just to figure out how to comply.

a. During 2012 and 2013 reporting requirements come into effect, including W2 reporting of gross healthcare costs and Summary of Benefits and Coverage (SBCs). The law will reduce the contributions employees can make to their Flexible Spending Accounts, and the law will impose an additional 0.9% Medicare tax for "high income" households (we do not expect that employers will have to collect or report this tax).

b. Our biggest challenges come in 2014:

i. Communication to Employees about the Health Insurance Exchanges in all states in which we currently operate, and numerous other nuances about available state assistance. Unfortunately, the states are not uniformly creating exchanges, and we, our franchisees and other employers will have to keep track of myriad state approaches so as to comply with disclosure and other requirements. We have no idea when or even if the states in which we operate will have exchanges, how they will operate, or how employers will have to interact with them.

There are additional compliance challenges in light of HHS' December 2011 bulletin on "essential health benefits" (EHB), which gave states considerable leeway to set their own benchmarks rather than defining one, nationally uniform package.

It's unclear whether HHS will give multi-state employers like CKE any flexibility or a uniform standard for purposes of complying with the law's prohibition of annual and lifetime dollar caps for EHBs.

ii. Automatic Enrollment of all eligible employees.

iii. The impact of the increased premium costs for all of the new eligible and enrolled employees. Other concerns in this regard are increasing costs of additional mandates, including "free" preventive care - which actually will result in higher premium costs, as well as costly new participant appeal and review rights that further burden employers.

c. Selected Unknowns. There are many aspects of the PPACA's requirements where the government has yet to issue further guidance. Until the government does so, in a timely and reliable manner, we are unable to plan effectively.

i. Auto Enrollment – FAQs released on February 9, 2012 indicate that this provision will not take place until after 2014. It is imperative that employers are given adequate time to comply with any regulations that are ultimately issued. These uncertainties hamper the employer's ability to plan strategically and effectively assess costs.

ii. Disclosures – there are roughly 16 new disclosures or notice requirements but the government has yet to issue full guidance on most items. The government is writing new guidelines with details down to the font size, style and length of the required documents. Despite reasoned and valid concerns from employers, regulators just recently refused to give employers additional time to prepare a new disclosure – essentially giving them at most six months to craft "summaries of benefits and coverage" that will likely confuse employees without giving them any new meaningful information. Regulators could have acknowledged, but chose to ignore, that employees eligible for employer-sponsored coverage already have access to meaningful and appropriate information, and that employers are already subject to significant disclosure obligations.

iii. Full Time vs. Part Time – The current known is that anyone over 30 hours will be considered Full Time and eligible for benefits. Recent announcements suggest that employers will have some rules of convenience for newly hired employees – giving employers with part-time or fluctuating workforces rules that are a bit more workable, but that still impose administrative burdens and potentially costly penalties on employers. Moreover, for full-time employees, employer

plans will have to meet still unknown minimum requirements for "value" and "affordability"– stymieing attempts to plan strategically. With further guidance we can better understand the full time equivalent rules and how we are to treat part-time employees. This is important so that we avoid penalties for not providing certain coverage, and so that we know who has to be automatically enrolled in one of our plans.

iv. Our part time employees currently have a Limited Medical Plan (sometimes referred to as a Mini-Med plan). The expectation is that in 2014 that option will become unavailable due to PPACA's provisions that prohibit annual benefit limits. Currently we are able to provide this benefit plan as we have filed for and obtained a waiver with HHS to allow us to provide this benefit through January 1, 2014. The waiver only allows us to avoid PPACA's annual dollar limit provisions – we must comply with all other applicable provisions.

V.
Conclusion

The foregoing is intended to provide a summary of the issues the PPACA has created and that we are currently working through. We anticipate that the PPACA's costs will be very substantial and its regulatory requirements burdensome. We strongly urge you to reconsider the menu labeling portion of the PPACA. We hope that at some point Members of Congress will set aside politics, and entrenched opinions, and carefully consider whether the benefit of PPACA as a whole is outweighed by the cost.

I want to conclude my testimony on a personal note. Like many people in this country, I come from a working class background. Through hard work and good fortune I was able to improve my position in life, and I am now able to provide opportunities to my children that I did not have. I fully recognize the important role government plays both in helping those who are unable to help themselves, and in providing a legal framework that enables the free market system to operate efficiently and with due regard for important goals like environmental quality and consumer health.

I want government to continue playing that role. But Congress must understand that laws have a real impact on real people who are working in real

businesses. We have to keep those businesses profitable and successful or we lose our jobs and endanger our future. That is not an easy task in the best of times. There has been one occasions in the last twenty years when CKE was close to bankruptcy. If our company were in that position now, it is entirely possible that the PPACA alone would force us over the edge.

I am personally at a stage in life where such an outcome would not substantially affect me or my family. But the vast majority of our employees are not in that position. There are millions of people like them in our country whose jobs depend on Congress being sensitive to the realities of small business in a way that is lacking in the PPACA.

The situation is so dire that some of our franchisees have lost confidence in our economy and want to sell their businesses. These small business owners are concerned about the economic viability of their businesses in the current regulatory climate. They are concerned that their government does not understand the difficulties they face and is unsympathetic to their plight. Rather than acting to assist them, the government seems to continually increase the number and complexity of the regulations governing their businesses thereby restricting their ability to grow and prosper.

Although we are working hard as a company with our elected representatives on both sides of the aisle to improve the business and regulatory climate, it is difficult to tell our franchisees that things are going to get better anytime soon. I understand that for many Members of Congress the PPACA was an important piece of legislation that advanced social policy goals they have pursued for many years. I encourage those Members to at least consider the compromise I have suggested with regard to the menu labeling portion of the bill. In the context of the overall bill, the burden imposed by the menu labeling section is small. But relief in that area would show that the Congress does recognize and place real value on the contributions of small business owners in our industry. That recognition would be far more meaningful than the actual relief which the compromise would provide, because it would create greater confidence within the business community that Congress cares about jobs and will in the future carefully balance its social agenda with our nation's economic needs.

ANDREW F. PUZDER, CHIEF EXECUTIVE OFFICER

CKE RESTAURANTS, INC.

Andrew F. Puzder is the CEO of CKE Restaurants, Inc. He is married, has six children and resides in Santa Barbara County, California. He earned a Juris Doctorate in 1978 from Washington University School of Law in St. Louis, Missouri where he served as Senior Editor on the Law Review. From 1978 through 1991, Puzder was a commercial trial lawyer in St. Louis Missouri. While practicing law in St. Louis, Puzder became the personal attorney for Carl Karcher, the founder of CKE and the Carl's Jr. quick-service restaurant chain. In 1991 Puzder relocated to Orange County, California, where he worked on Karcher's behalf with William P. Foley, the Chairman and CEO of Fidelity National Financial Inc, to reorganize Karcher's finances and CKE's corporate structure.

In 1994, Foley became Chairman and CEO of CKE and Karcher became Chairman Emeritus, retaining a significant ownership interest in the company he founded. In 1995, Puzder went on to become Executive Vice President and General Counsel for Fidelity, managing one of the largest corporate legal departments in the country. He also worked with Foley to create the Santa Barbara Restaurant Group, a conglomeration of restaurant chains. Puzder served as the company's CEO.

In 1997, Puzder was also named Executive Vice President and General Counsel for CKE. In 1997, CKE purchased Hardee's Food Systems, Inc which owned the Hardee's quick service restaurant brand. Hardee's was a distressed brand and CKE was burdened by over $700 million in debt following the acquisition. The company underperformed and its market capitalization dropped from over $1 billion to about $200 million. Faced with serious financial and operational issues, CKE's Board of Directors named Puzder as president and CEO of Hardee's Food Systems in June 2000 and named him president and CEO of CKE Restaurants, Inc. in September of that year. Puzder is credited with turning around both the Hardee's brand and CKE allowing the company first to avoid bankruptcy and then become profitable.

By the end of the last decade, consumers rated Hardee's and Carl's Jr. among the industry leaders with respect to taste and flavor of the food, quality of ingredients, friendliness and courtesy. Prior to Puzder taking over, Hardee's consumer ratings were at the bottom of the industry. CKE's annual revenues have consistently been in the $1.3 billion plus range and its earnings before interest, taxes and depreciation allowance (a common measure of cash flow known as "EBITDA") have consistently been over $160 million annually. By avoiding a bankruptcy, Puzder secured and protected the jobs of the approximately 70,000 people the Company and its franchisees employ as well as the businesses its franchisees own. The Company's employees are currently 63% minorities and 62% women. Its restaurant General Managers are 57% minorities and 63% women. After years of closing restaurants and reducing its restaurant count, over the last 6 years and despite the financial crisis, CKE and its franchisees have built over 300 new restaurants, creating jobs across a broad spectrum of the economy.

In July of 2010, the private equity firm Apollo Global Management acquired CKE in a transaction valued at approximately $1 billion. This transaction valued CKE's stock at $12.55

per share. It was under $3 per share at one point shortly after Puzder took over as CEO in 2000. Apollo retained CKE's management team, including Puzder who remains as CEO. The Company currently owns or franchises 3,243 restaurants in the US and 25 foreign countries. CKE has corporate offices in Santa Barbara County, California, Anaheim, California and St. Louis, Missouri.

In 2010, the International Foodservice Manufacturers Association awarded Puzder with the ***Food Service Operator of the Year Silver Plate Award*** in recognition of outstanding service and dedication to the foodservice industry. In 2009, Cleveland State University named Puzder ***Distinguished Alumni of the Year***. Also in 2009, Puzder was honored as ***Coach Arts Man of the Year***. Puzder earned the prestigious ***Golden Chain Award*** in 2008 from Nation's Restaurant News, in honor of his outstanding accomplishments and career achievements as a multi-unit foodservice executive. PR News and CommCore Consulting named Puzder 2005 ***Spokesperson of the Year*** for his work in representing the Carl's Jr. and Hardee's brands in television and radio. In 2011, he was appointed to serve on the ***National Advisory Board of Washington University School of Law***.

Puzder has been a vigorous advocate for economic growth and job creation. He recently co-wrote the book *Job Creation: How It Really Works and Why Government Doesn't Understand It* (Free Market Press 2010). Puzder believes that government can create jobs and increase its revenue by lightening the burden on business. He has spoken or met with Senator Diane Feinstein, Governor Jerry Brown of California and Lieutenant Governor Gavin Newsom as well as many other government officials, to suggest ways to reduce government regulation and create jobs in California.

The Associated Press recently called Puzder a "poster CEO for the regulatory reform effort." He has been a frequent lecturer at colleges and universities and a guest on business news programs including Your World w/ Neil Cavuto, The O'Reilly Factor with Bill O'Reilly, Mad Money with Jim Cramer, Fast Money, Power Lunch, Lou Dobbs Tonight and Squawk on the Street. On July 28, 2011, he testified before the House Committee on Oversight and Government Reform's Subcommittee on Health Care, District of Columbia, Census and National Archives with respect to the impact of the PPACA on job creators.