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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – San Francisco

STEPHANIE OCHOA, *et al.*,
Plaintiffs,
vs.
MCDONALD’S CORP., *et al.*,
Defendants.

CASE NO. 3:14-cv-02098-JD

~~PROPOSED~~ ORDER (1) CERTIFYING SETTLEMENT CLASS, (2) GRANTING PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION PARTIAL SETTLEMENT AND PLAN OF ALLOCATION, (3) DIRECTING DISSEMINATION OF NOTICE TO THE CLASS; AND (4) SETTING DATES FOR FAIRNESS HEARING AND RELATED EVENTS

1 Plaintiffs Stephanie Ochoa, Ernestina Sandoval, Jasmine Hedgepeth and Yadira Rodriguez,
2 having filed a Motion for Preliminary Approval of Settlement with Smith Defendant and for
3 Preliminary Certification of Settlement Class, and the Court having reviewed that motion, the
4 accompanying memorandum of points and authorities in support of the motion and other
5 supporting documents, the parties' Settlement Agreement and the record in this case, and for good
6 cause shown, the Court hereby GRANTS plaintiffs' motion and ORDERS as follows:

7 **I. CLASS CERTIFICATION**

8 **a. Class Certified**

9 For purposes of settlement, the parties have proposed provisional certification of a single
10 settlement class under Federal Rule of Civil Procedure 23 comprising the following members: All
11 individuals currently or formerly employed as crew members at one or more of the franchised
12 McDonald's restaurants owned or operated by defendant The Edward J. Smith and Valerie S.
13 Smith Family Limited Partnership d/b/a/ McDonald's, a limited partnership ("Smith"), in
14 California, at any time between March 12, 2010 and the present.

15 **b. Findings Regarding Conditional Certification**

16 The Court hereby finds and concludes that the class satisfies all of the requirements for
17 certification under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

- 18 i. The class is sufficiently numerous (more than 700 current and former
19 employees) that joinder is impracticable.
- 20 ii. The members of the class share many common issues of fact and law,
21 including: (1) whether Smith's compensation system for crew members' wages and overtime
22 payments was legal and sufficient to timely pay all crew members for time worked; (2) whether
23 Smith had a classwide practice of failing to permit crew members to take all legally mandated meal
24 and rest breaks or to provide premium pay in lieu of a break; (3) whether Smith failed to provide
25 crew members with accurate, itemized wage statements, as required by the California Labor Code;
26 (4) whether Smith failed to maintain classwide records as required by the California Labor Code
27 and the relevant IWC Wage Order; (5) whether Smith willfully failed to timely pay full wages to
28 class members who quit or were discharged, as required by the California Labor Code; and

1 (6) whether Smith’s classwide practice of failing to maintain crew member uniforms or to
2 reimburse crew members for the necessary expenses of maintaining their own uniforms violated
3 the California Labor Code and the applicable IWC Wage Order.

4 iii. The named plaintiffs’ claims are typical because they arise out of the same
5 policies, practices, and course of conduct complained of by all class members.

6 iv. The named plaintiffs are adequate representatives of the class, because their
7 interests are co-extensive with those of the other class members and because they are represented
8 by skilled and experienced class counsel.

9 v. Questions of law or fact common to the class predominate over
10 individualized issues, and a class action is superior to other available methods for the fair and
11 efficient adjudication of this controversy.

12 Accordingly, for the purposes of approving this Settlement, the Court certifies the proposed
13 settlement class described in paragraph I.A above, under Rules 23(a), (b)(2), and (b)(3).

14 **II. APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL**

15 **a. Class Representatives**

16 For purposes of settlement, the Court finds and concludes that plaintiffs Stephanie Ochoa,
17 Ernestina Sandoval, Yadira Rodriguez, and Jasmine Hedgepeth have claims typical of class
18 members and are adequate representatives of the class. The Court hereby appoints Ms. Ochoa, Ms.
19 Sandoval, Ms. Rodriguez, and Ms. Hedgepeth to serve as Class Representatives.

20 **b. Class Counsel**

21 The Court finds and concludes that Altshuler Berzon LLP and Cohen Milstein Sellers &
22 Toll PLLC have extensive experience and expertise in prosecuting wage-and-hour class actions and
23 other employment law class actions. The Court appoints these firms as Class Counsel.

24 **III. PRELIMINARY APPROVAL OF SETTLEMENT**

25 The Settlement with defendant Smith is attached hereto as Exhibit A. The Settlement has
26 been revised to address concerns the Court raised regarding the scope of the release at the initial
27 Preliminary Approval hearing. The Court has reviewed the terms of the revised Settlement,
28 including the Plan of Allocation and the releases. The Court has also considered the declarations

1 of Michael Rubin and Valerie Smith in support of preliminary approval, and the Notice of
2 Submission of Revised Partial Settlement Agreement. Based on the Court's review of these papers
3 and its familiarity with the case, the Court finds and concludes that the Settlement (as revised) is
4 the result of arms-length negotiations between the parties conducted after class counsel adequately
5 investigated plaintiffs' claims and became familiar with the strengths and weaknesses of those
6 claims. The Court concludes that the proposed settlement satisfies all of the requirements for
7 preliminary settlement approval. The Settlement has no obvious defects and falls within the range
8 of possible approval as fair, adequate, and reasonable, such that notice to the class is appropriate.
9 Accordingly, the Settlement is hereby preliminarily approved.

10 **IV. APPROVAL OF AGREED-UPON INJUNCTIVE RELIEF**

11 Pursuant to ¶¶25-27 of the Settlement Agreement, Smith has agreed to implement the
12 following provisions, beginning no later than 10 days of preliminary approval, which this Court
13 hereby approves and orders:

- 14 a. Smith shall pay overtime premiums to any Plaintiff, Class Member, or future hourly
15 employee who works more than eight hours in any designated workday (such
16 designation to be made in advance in writing to the affected employee(s)) or, if no
17 workday is so designated, in any 24-hour period.
- 18 b. Smith shall review all time and payroll records at least once at the end of each pay
19 period, either manually or through re-programming of its timekeeping and payroll
20 software, and shall pay an additional one hour's wages to each Plaintiff, Class
21 Member, or future hourly employee for each day during that pay period on which
22 the time records (as may be adjusted in accordance with existing policy, upon
23 approval of the affected employee and a representative of Smith) reflect that such
24 Plaintiff, Class Member, or future hourly employee was not provided all full and
25 timely 30-minute meal periods as required by California law, and for each day
26 during that pay period on which the time records reflect that such Plaintiff, Class
27 Member, or future hourly employee was not provided all full and timely 10-minute
28 paid rest breaks as required by California law. For purposes of this paragraph, rest
breaks are not timely if they begin or end within 15 or fewer minutes of the
beginning or end of a shift, work period, meal period, or another rest break.
- c. Smith shall provide wage statements to Plaintiffs, Class Members, and future
employees that separately record regular hours and overtime hours each pay period,
the rate of pay, premium wages for missed, untimely, or short meal periods and rest
breaks, and any deductions taken from that pay.
- d. Smith shall provide a clean apron to each Plaintiff, Class Member, and future
employee at the start of such employee's shift if that employee is assigned to work
in the kitchen or other position where the employee's uniform would be exposed to
grease or smoke.

1 **V. APPROVAL OF THE CLASS NOTICE, CLAIM FORM, AND MANNER OF**
2 **DISTRIBUTION**

3 The parties have submitted for this Court's approval a proposed Class Notice and a
4 proposed Claim Form (for the class members who are required to submit a Claim Form to share in
5 the settlement). The proposed Class Notice and proposed Claim Form have been revised following
6 the initial Preliminary Approval hearing to address concerns raised by the Court concerning the
7 scope of the release and to conform to the terms of the revised Settlement. The parties have also
8 proposed a plan for disseminating these documents by mail to all class members, after the Court
9 grants preliminary approval of the Settlement. After carefully reviewing these documents and plan
10 of dissemination, the Court finds and concludes as follows:

11 **a. Best Notice Practicable**

12 The proposed Class Notice is the best notice practicable under the circumstances and will
13 allow class members a full and fair opportunity to consider the principal settlement terms.

14 The Class Notice fairly, plainly, accurately, and reasonably provides class members: (1)
15 appropriate information about the nature of this action, the definition of the class, the identity of
16 class counsel, and the essential terms of the Settlement, including the Plan of Allocation and the
17 procedure for obtaining their settlement shares; (2) appropriate information about plaintiffs' and
18 class counsel's forthcoming applications for service payments, attorneys' fees, and expenses; (3)
19 appropriate information about the procedures for final approval of the Settlement and the class
20 members' rights to appear through counsel if they wish; (4) appropriate information about how to
21 object to or elect not to participate in the Settlement, if a class member wishes to do so; and (5)
22 appropriate instructions as to how to obtain additional information regarding this action and the
23 Settlement. Similarly, the Settlement Agreement and proposed Claim Form (for those class
24 members required to file a claim form) allow class members a full and fair opportunity to submit a
25 claim for proceeds under the Settlement, where necessary. The Class Notice fairly, accurately, and
26 reasonably informs class members how to submit a Claim Form, if one is required, and that for
27 those class members required to submit a Claim Form, that the failure to complete and submit such
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1 a Claim Form in the manner and time specified will constitute a waiver of any right to obtain any
2 share of the proceeds under the relevant settlement.

3 **b. Approval of Notice, Claim Form, and Plan of Distribution**

4 The proposed plan for disseminating the Class Notice is reasonably calculated to reach all
5 individuals who would be bound by the Settlement. The Claims Administrator will distribute the
6 Class Notice, to all class members by first-class mail to their last known address (including any
7 updated addresses that may be discovered through reasonable methods). The Claims Administrator
8 will also track non-delivered notice materials and take reasonable steps to re-send them to the
9 correct, current addresses. The Settlement Agreement provides that only individuals who receive
10 notice of the Settlement before the deadline for opting out, and who do not opt out, will be bound
11 by the Settlement and its releases.

12 The Court finds and concludes that the proposed plans for disseminating the Class Notice
13 will provide the best notice practicable and satisfies the notice requirements of Rule 23(e) and all
14 other legal and due process requirements. The Court hereby orders as follows:

15 i. The form of the Class Notice and Claim Form is approved.
16 ii. The manner of distributing the Class Notice to the class is approved.
17 iii. Promptly following the entry of this order, the Claims Administrator shall
18 prepare final versions of the Class Notice and Claim Form, incorporating into them the relevant
19 dates and deadlines set forth in this Order.

20 iv. Except as otherwise specified herein, the Court for purposes of this Order
21 adopts all defined terms set forth in the Settlement.

22 v. No later than ten (10) business days after entry of this Order, Smith shall
23 provide to the Claims Administrator, in electronic form, the Putative Class List described in
24 ¶III.16.b of the Settlement Agreement.

25 vi. No later than ten (10) business days after receipt of the Putative Class List
26 from Smith, the Claims Administrator shall mail the Class Notice to all class members and shall
27 email the Class Notice to all class members whose email addresses are known, in accordance with
28 ¶III.16.d of the Settlement Agreement.

1 vii. The Class Notice shall inform the class members that, as provided in the
2 Settlement Agreement, the deadline for submitting any objection to the Settlement or for opting out
3 of the Settlement shall be sixty (60) calendar days after the postmark date of the mailing of Class
4 Notice and Claim Form, and that the deadline for submitting a Claim Form (where necessary) shall
5 be seventy-five (75) calendar days after such postmark date.

6 viii. For any notice that is returned by the post office as undeliverable, the Claims
7 Administrator shall use standard procedures to obtain forwarding addresses, including: (1)
8 processing the class list through the United States Postal Service's National Change of Address
9 database; (2) performing address searches using public and proprietary electronic resources as are
10 available to the Claims Administrator that lawfully collect address data from various sources such
11 as utility records, property tax records, motor vehicle registration records, and credit bureaus; and
12 (3) calling last-known telephone numbers (and telephone numbers updated through public and
13 proprietary databases). The Claims Administrator will forward the notice to the new address
14 within ten (10) calendar days of receipt of the undeliverable notice, restarting the time period for
15 the recipient to submit a claim, object, or opt out of the Settlement from the postmark date of the
16 new notice.

17 ix. If a Claim Form, objection, or opt out form is timely submitted but is
18 deficient in one or more aspects, the Claims Administrator shall, within five (5) calendar days of
19 receipt of the deficient form, return the form to the class member with a letter explaining the
20 deficiencies and informing the class member that he or she shall have fourteen (14) calendar days
21 from the date of the deficiency notice to correct the deficiencies and resubmit the Claim Form.
22 This letter shall be translated into and mailed in English and Spanish.

23 x. Any resubmitted Claim Form must be postmarked within fourteen (14)
24 calendar days of the date of the deficiency letter to be considered timely, unless there is a showing
25 of good cause for additional time. The Claims Administrator shall notify Class Counsel and
26 Smith's counsel within five (5) calendar days of receipt of each deficient form. The Claims
27 Administrator has no obligation to provide a class member with a second notice of deficiency,
28 unless a different deficiency is later uncovered.

1 xi. The Claims Administrator shall take all other actions in furtherance of
2 claims administration as are specified in the Settlement Agreement.

3 **VI. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

4 **a. Final Approval Hearing**

5 The Court hereby schedules a hearing to determine whether to grant final approval of the
6 Settlement (the “Final Approval Hearing”) for July 20, 2016, at 10 a.m.

7 **b. Deadline to Elect Not to Participate in the Settlement**

8 i. Form of Election

9 Class members may exclude themselves from participating in the Settlement. Any opt-out
10 statement, to be valid, must state the name, telephone number, and current address of the class
11 member, the years the class member worked at a Smith-franchised restaurant, and the address to
12 which the class member’s Class Notice was mailed. The opt-out statement must include the
13 following language: “I, [NAME], voluntarily choose not to participate in the settlement of my
14 claims against my current or former employer The Edward J. Smith and Valerie S. Smith Family
15 Limited Partnership d/b/a/ McDonald’s (“Smith”) and hereby waive any rights I may have to
16 participate in the Settlement against Smith in the federal court lawsuit entitled *Ochoa et al. v.*
17 *McDonald’s Corp. et al.*, N. D. Cal. No. 3:14-cv-02098-JD.” The opt-out statement must be
18 personally signed by the class member who seeks to opt out. No opt-out request may be made on
19 behalf of a group of class members.

20 ii. Deadline for Submitting Election

21 Absent a showing of good cause and in accordance with the procedures set forth in the
22 Settlement Agreement, no opt-out statement shall be honored if it is postmarked more than sixty
23 (60) calendar days after the postmark date of the initial Class Notice mailed to class members or
24 any follow up notice mailed by the Claims Administrator to the class member who seeks to opt out.
25 Requests to opt out that do not include all required information or that are not submitted on a
26 timely basis, shall be deemed null, void, and ineffective. If a class member files both an opt-out
27 statement and a Claim Form, the opt-out statement shall be deemed invalid and the class member’s
28 Claim Form and release of claims shall be valid and controlling.

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c. Deadline for Filing Objections to Settlement

Any class member who does not timely opt out may object to the Settlement. The Class Notices shall provide that class members who wish to object to the Settlement must mail a written statement of objection subject to the provisions set forth below:

i. Any such objection must be filed with the Clerk of the Court and served on all counsel identified in the Class Notice no later than sixty (60) calendar days after the postmark date of the initial Class Notice mailed to class members or any follow up notice mailed by the Claims Administrator to the class member who seeks to object.

ii. The postmark date of the mailing shall be the exclusive means for determining whether an objection is timely. The objection must state the basis for the objection.

iii. Class members who fail to make objections in the manner specified shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, and, if they received notice of the Settlement before the deadline for opting out, the Settlement shall be fully binding upon them.

d. Deadline for Submitting Claim Forms

Absent a showing of good cause in accordance with the procedures set forth in the Settlement Agreement, no Claim Form shall be honored if postmarked more than seventy-five (75) calendar days after the date first mailed to the class members. Any class member who receives notice of the Settlement before the deadline for opting out, and who, without good cause, submits a Claim Form postmarked more than seventy-five (75) calendar days after the date the Claim Forms are mailed to class members shall be deemed to have waived irrevocably any right in or claim to a settlement share, but the Settlement shall nevertheless be fully binding on such class member subject to the terms set forth herein. The Claims Administrator shall notify Class Counsel and counsel for Smith within five (5) calendar days of receipt of each untimely Claim Form. The Claims Administrator shall accept Class Counsel's determination of whether good cause exists for honoring an untimely Claim Form.

1 The Claims Administrator shall handle any timely but deficient Claim Forms in the manner
2 specified in the Settlement Agreement.

3 **e. Deadline for Submitting Motion Seeking Final Approval**

4 No later than twenty-eight (28) days before the Final Approval Hearing, plaintiffs shall file
5 a motion for final approval of the settlement. Two weeks or more before the final approval
6 hearing, the parties may file a reply brief responding to any filed objections.

7 **f. Deadline for Motion for Class Representative Service Payments**

8 No later than twenty-eight (28) days before the final approval hearing, plaintiffs may file a
9 motion for approval of their Class Representatives' service awards. Two weeks or more before the
10 final approval hearing, plaintiffs may file a reply brief responding to any filed opposition to the
11 Motion.

12 **g. Deadline for Motion for Class Counsel Attorneys' Fees and Costs**

13 No later than twenty-eight (28) days before the close of the 60-day period for submitting
14 requests for exclusion or objections, Class Counsel may file a motion for approval of their Class
15 Counsel attorneys' fees and costs payment. Such amount of time provides class members with
16 sufficient time to file any objection they might have to the application. *See In re Mercury*
17 *Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010). Two weeks or more before the
18 final approval hearing, Class Counsel may file a reply brief responding to any filed opposition to
19 the Motion.

20 **h. Schedule for Final Approval of Proposed Class Settlement**

21 Consistent with the rulings set forth above, the Court orders the following schedule for
22 providing notice to the members of the provisionally certified class and for the Court's
23 consideration of whether the proposed partial class settlement should be granted final approval:

Event	Time Limits According to Agreement
Defense counsel to provide class database to Claims Administrator	March 21, 2016 (within 10 calendar days after Preliminary Approval Order)
Claims Administrator to Mail Class Notice	March 31, 2016 (within 10 calendar days after receiving Class List)

1	Class Counsel to File Motion for Attorneys' Fees and Costs	May 3, 2016
2		(At least 28 days before opt-out deadline)
3	Deadline for submitting requests not to participate and objections	May 31, 2016
4		(60 days after the Class Notice is mailed)
5	Deadline for Filing Claim Forms	June 14, 2016
6		(75 days after the Class Notice is mailed)
7	Class Counsel to file Motion for Named Plaintiffs' Service Awards and Motion for Final Approval	June 22, 2016
8		(28 days prior to Final Approval Hearing)
9	Final Approval Hearing	July 20, 2016, at 10 a.m.
10		(No sooner than 120 days after the Preliminary Approval Order)

11 **VII. RELEASE OF CLAIMS**

12 If, at or after the Final Approval Hearing, this Court grants final approval to the Settlement,
13 Plaintiffs and every class member who receives notice of the Settlement before the deadline for
14 opting out and who does not file a timely and complete election to opt out of the Settlement shall,
15 pursuant to the Settlement Agreement, be adjudicated to have forever released and discharged all
16 claims as set forth in the Settlement Agreement. All class members who submit a valid Claim
17 Form shall be deemed to have opted in to the class action and shall thereby release their claims.


18 **VIII. APPOINTMENT OF CLAIMS ADMINISTRATOR**

19 CPT Group, Inc. is hereby appointed Claims Administrator to carry out the administrative
20 duties set forth in this Preliminary Approval Order and the Settlement. All costs and expenses of
21 printing and mailing the Class Notices and other costs of settlement administration shall be paid by
22 Smith, pursuant to the provisions of the Settlement Agreement.

23 The Court shall retain jurisdiction for the purposes of implementing the provisions of this
24 Order and reserves the right to enter additional orders to effectuate the fair and orderly
25 administration and consummation of the Settlement and to resolve any and all disputes that may
26 arise thereunder.

27 IT IS SO ORDERED.

28 Date: March 11, 2016



JAMES DONATO, United States District Judge