

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Minutes

Date: August 3, 2016

Judge: Hon. James Donato

FTR Time: 2:29-2:59

Case No. **C-14-02098-JD**

Case Name **Ochoa *et al.* v. McDonald's Corp *et al.***

Attorney(s) for Plaintiff(s): Matthew Murray/Barbara Chisholm/Joseph Sellers

Attorney(s) for Defendant(s): Jonathan Bunge/Lawrence C. DiNardo/Fred Alvarez

Deputy Clerk: Lisa Clark

PROCEEDINGS

Case Management Conference - Held

RESULT OF CONFERENCE

The Court sets a jury trial for **December 5, 2016, at 9:00 am**. The parties are directed to the Court's Standing Order for Civil Jury Trials, which governs the pretrial procedures unless modified in these minutes. The parties are reminded that the trial date will not be vacated unless they jointly advise the Court that they have entered into a binding settlement agreement, even if subject to Court approval for a class. **The trial date will not be vacated for settlements "in principle" or similar reasons.**

The Court will stay the case if the Rule 23(f) petition for interlocutory review is granted by the Ninth Circuit. Defendants should not respond to plaintiffs' conditional motion for an interlocutory appeal unless directed to by the Court.

The Court sets a pretrial conference for **November 17, 2016, at 10:00 am**. Jury instructions and all other pretrial issues will be resolved at the conference. The parties should adhere as closely as possible to the Ninth Circuit's Manual of Model Civil Jury Instructions and California model jury instructions, and avoid proposing any custom instructions unless absolutely necessary.

The Court discusses anticipated expert testimony with the parties. The parties state their intention to call a damages expert each and possibly one additional expert each on the uniform cleaning issue. In light of that, the Court sets this schedule for Daubert motions and expert discovery:

| Event | Deadline |
|-----------------------------|--------------------|
| Expert disclosures | September 16, 2016 |
| Rebuttal expert disclosures | September 30, 2016 |
| Expert discovery cut-off | October 14, 2016 |
| Daubert motions | October 21, 2016 |
| Daubert response briefs | October 31, 2016 |
| Daubert reply briefs | November 7, 2016 |

Trial days are from 9:00 am to 2:00 pm, Monday through Thursday. There will be two fifteen-minute breaks per day, but no lunch break. Each party will be allowed up to thirty minutes for opening statement, twelve hours for a case-in-chief, and up to one hour for closing argument. The Court understands that translation time for Spanish language witnesses may require some additional trial time but the parties should plan for now on the twelve-hour case-in-chief allotment.

The Court will empanel eleven jurors. The parties will each present a five-minute “mini-opening” at the outset of voir dire. The Court will conduct the voir dire based on questions submitted by the parties and the Court’s own standard background questions. Jury selection will use the strike and replace method described by the Court. If a potential juror is passed over for challenge by either party, that juror is deemed seated and may not be challenged later.

The Court strongly encourages the parties to agree to participate in our Cameras in Courts pilot program. Counsel for plaintiffs consented at the conference. Defendants will advise the Court of their position by August 10, 2016.

Trial will not be bifurcated. For the PAGA claims, the Court sets a briefing schedule to resolve defendants’ contention that plaintiffs cannot proceed with a PAGA representative action on claims for meal period and rest break violations. Defendants’ deadline to file a Rule 12(f) motion is August 12, 2016. Plaintiff’s response deadline is August 26, 2016. Defendants’ reply deadline is September 2, 2016. Each side gets 8 pages for their main briefs, and defendants get 5 pages for a reply.

At plaintiffs’ request, Cohen Milstein Sellers & Toll PLLC is appointed co-class counsel. Altshuler Berzon LLP is lead class counsel.

The Parties will be referred to Magistrate Judge Jacqueline Scott Corley for another settlement conference.

A pretrial scheduling order will issue.