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15
 16 IN THE UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA – San Francisco

18 STEPHANIE OCHOA, *et al.*,
 Plaintiffs,

19 vs.

20 MCDONALD’S CORP., *et al.*,
 21 Defendants.

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

**PLAINTIFFS’ NOTICE OF MOTION AND
 MOTION FOR PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT WITH
 MCDONALD’S DEFENDANTS**

Judge: Hon. James Donato

Hearing Date / Time: Dec. 15, 2016 / 10:00 a.m.

Complaint Filed: March 12, 2014

Trial Date: Not set

1 PLEASE TAKE NOTICE that, at 10:00 a.m. on December 15, 2016, in Courtroom 11 of
2 the United States District Court for the Northern District of California, located at 450 Golden Gate
3 Avenue, San Francisco, California 94102, plaintiffs Stephanie Ochoa, Ernestina Sandoval, Yadira
4 Rodriguez, and Jasmine Hedgepeth will and hereby do move this Court for an order preliminarily
5 approving the class action settlement between plaintiffs, on their own behalf and on behalf of
6 members of the certified class, and defendants McDonald’s Corporation; McDonald’s U.S.A.,
7 L.L.C.; and McDonald’s Restaurants of California, Inc. (collectively, “McDonald’s”).

8 Pursuant to Federal Rule of Civil Procedure 23, plaintiffs request that this Court:

- 9 1. Grant preliminary approval of the class action settlement;
- 10 2. Approve the proposed form of notice and proposed method of notice to plaintiffs and
11 prospective class members in the class, including the proposed claim form;
- 12 3. Appoint CPT Group, Inc. as the claims administrator; and
- 13 4. Schedule a hearing on final approval of the settlement.

14 This motion is made on the grounds that the settlement between plaintiffs and McDonald’s
15 is the product of extended arms-length, good-faith negotiations, is fair and reasonable to the class,
16 and warrants preliminary approval for the reasons set forth in the accompanying Memorandum of
17 Points and Authorities.

18 Plaintiffs’ motion is based on this notice of motion and motion; the accompanying
19 Memorandum of Points and Authorities; the accompanying declaration of Barbara J. Chisholm; the
20 Settlement Agreement and exhibits, including the proposed Claim Form (for class members who
21 are not automatically eligible) and Class Notice; the Proposed Order; the Court record in this
22 action; all matters of which the Court may take notice; and such arguments as the Court permits at
23 the hearing on this Motion.

24

25 Date: October 28, 2016

Respectfully submitted,

26

By: s/Barbara J. Chisholm
Barbara J. Chisholm

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MICHAEL RUBIN
BARBARA J. CHISHOLM

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**PLAINTIFFS’ MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT OF
 MOTION FOR PRELIMINARY APPROVAL OF
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 MCDONALD’S DEFENDANTS**

Judge: Hon. James Donato

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1 **I. INTRODUCTION**

2 Plaintiffs request preliminary approval of their proposed class action settlement with
3 defendants McDonald's Corporation, McDonald's USA, LLC, and McDonald's Restaurants of
4 California, Inc. ("McDonald's").¹ To the knowledge of plaintiffs' counsel, this is the first class
5 action settlement between McDonald's and a certified class of crew members at franchisee-
6 operated restaurants anywhere in the country. The settlement provides significant monetary and
7 injunctive relief to class members, including 100% of the backpay, interest, and liquidated damages
8 that would have been recoverable at trial on the certified claims, plus a portion of class members'
9 potential recovery on claims that were *not* certified for trial. *See* Decl. of Barbara J. Chisholm
10 ("Chisholm Decl.") ¶¶16 & Ex. A (Settlement Agreement) ¶¶26-27. As a result of this settlement,
11 which is the product of lengthy, arms-length negotiations following extensive and hard-fought
12 litigation, substantial discovery, and numerous in-person and telephonic mediation sessions
13 conducted by Magistrate Judge Jacqueline Corley, all class members will promptly receive
14 significant economic and non-economic benefits without facing the risks and delays of one or more
15 trials and appeals. For all of these reasons, plaintiffs and their counsel believe that this settlement
16 is fair, adequate, and well within the range of reasonableness.

17 The proposed Class Notice, which will be translated into Spanish and will be mailed (and
18 emailed, where addresses are available) in English and Spanish to all class members whose contact
19 information is known to the parties (using information generated through the mailing of the Class
20 Certification Notice) or can be obtained through reasonable skip-tracing efforts, will provide class
21 members the best practicable notice and will allow each class member a fair opportunity to
22 evaluate the settlement, including by describing the terms of the settlement, individual class
23 members' estimated recovery, the scope of the releases, and an explanation of how to exercise their
24 settlement rights. The Class Notice and the full Settlement Agreement will also be available
25 online.

26
27 ¹ On August 31, 2016, the Court held a hearing on and orally granted final approval to plaintiffs'
28 settlement with The Edward J. Smith and Valerie S. Smith Family Limited Partnership ("Smith").
See Dkt. 363. The Court has not yet issued a written order confirming that ruling.

1 For the reasons set forth below, plaintiffs request that this Court grant preliminary approval
2 of the settlement, approve the Class Notice, and establish a schedule for final settlement approval.

3 **II. FACTS AND CASE HISTORY**

4 **A. The Litigation**

5 This is a wage and hour lawsuit brought on behalf of current and former McDonald's
6 employees at five Bay Area restaurants operated by defendant The Edward J. Smith and Valerie S.
7 Smith Family Limited Partnership ("Smith") and its family members under franchise agreements
8 with McDonald's. Plaintiffs filed their initial Complaint on March 12, 2014 and their First
9 Amended Complaint on October 1, 2014, alleging that McDonald's and Smith are jointly and
10 severally liable for a broad range of California Labor Code violations. *See* Dkt. 1, 40. The
11 Complaints asserted 13 claims for relief challenging a series of common policies and practices by
12 which defendants systematically underpaid class members by: (1) failing to pay all earned wages
13 through September 2013 because of a consistent error in converting employee time punch data to
14 payroll data; (2) failing to pay daily overtime to class members who work overnight shifts as a
15 result of legally incorrect parameters of defendants' automated timekeeping and payroll system; (3)
16 failing to provide meal periods and rest breaks in the time and manner required by California law;
17 (4) failing to reimburse crew members for the time and money needed to iron and clean their
18 McDonald's uniforms; and (5) failing to provide wage statements that accurately list all wages
19 earned and that identify McDonald's as an employer. Plaintiffs' lawsuit also raised the
20 overarching issue of whether McDonald's is a joint employer of crew members at Smith's
21 restaurants or is otherwise liable for the relief requested under California law. *See id.* Plaintiffs
22 sought damages and injunctive relief. *See* Fed. R. Civ. P. 23(b)(2), 23(b)(3).

23 After extensive discovery, plaintiffs filed Motions for Class Certification and for Partial
24 Summary Judgment (the latter of which was mooted by plaintiffs' settlement with Smith). *See*
25 Dkt. 70, 224. McDonald's also filed a Motion for Summary Judgment challenging plaintiffs'
26 theories of joint and derivative liability, which this Court granted in part and denied in part on
27 September 24, 2015, concluding that McDonald's was not liable as a joint employer with direct
28 control but allowing plaintiffs to proceed against McDonald's on an ostensible agency theory. Dkt.

1 129, 289. On July 7, 2016, the Court granted plaintiffs’ motion for class certification of their
2 miscalculated wages, overtime payments, and uniform maintenance payments claims. Dkt. 319.
3 McDonald’s sought appellate review of the Court’s class certification order and plaintiffs took a
4 conditional cross-appeal, but the Ninth Circuit motions panel had not acted on those requests as of
5 the date of the Settlement. Dkt. 322; Chisholm Decl. ¶¶20. The Court scheduled the trial in this
6 matter to begin December 5, 2016. Dkt. 334 & 336. On October 13, 2016, the Court vacated all
7 pending pretrial and trial deadlines. Dkt. 380.

8 **B. Discovery and Pre-Trial Proceedings**

9 The parties have conducted an enormous amount of discovery—including numerous
10 depositions and reams of written discovery—concerning the merits of plaintiffs’ claims, class
11 certification issues, and defendants’ liability under various legal theories. Since this case was filed
12 in March 2014, defendants have produced hundreds of thousands of pages of documents, including
13 payroll and time records for the plaintiff class. *See* Chisholm Decl. ¶5.

14 Pursuant to the Court’s pre-trial scheduling orders, the parties exchanged updated lists of
15 potential trial witnesses in August and September 2016. *Id.* ¶9. The parties also exchanged expert
16 reports and rebuttal expert reports. *Id.* ¶9.

17 **C. Settlement Discussions**

18 Plaintiffs and McDonald’s began settlement discussions in the fall of 2015 under the
19 direction of Magistrate Judge Jaqueline Corley. *Id.* ¶12. Mediation efforts spanned numerous
20 sessions with Magistrate Judge Corley—including on one occasion with two other franchisees who
21 were sued jointly with McDonald’s in the spring of 2014 by other aggrieved crew members. *See*
22 *id.* ¶12; Dkt. 243, 281. After the Court certified the class against McDonald’s and set the case for
23 trial in December 2016, the parties again met with Magistrate Judge Corley. Chisholm Decl. ¶12.
24 With Magistrate Judge Corley’s assistance, the parties were ultimately able to reach a mutually
25 agreeable settlement in early October 2016, which they memorialized in a written memorandum of
26 understanding. *Id.* ¶13.

27 //

28 //

1 **III. THE SETTLEMENT AGREEMENT**

2 The Settlement requires that McDonald's pay \$1.75 million to class members on a non-
3 reversionary basis, plus all costs of Class Notice and administration, plus court-awarded statutory
4 attorneys' fees and costs to plaintiffs' counsel up to a maximum amount of \$2 million (which is
5 less than half of the actual fees and costs plaintiffs' counsel have incurred). Chisholm Decl. ¶22;
6 *id.* Ex. A ¶¶24, 33.

7 To implement the Settlement, McDonald's will deposit \$3.75 million into a Qualified
8 Settlement Fund ("QSF") within 30 days after preliminary approval. *Id.* ¶24. Shortly after the
9 Effective Date, which will occur after final approval and the expiration of any possibility of appeal,
10 the Settlement Fund will be distributed as follows, subject to Court approval: (1) a non-
11 reversionary sum of \$1,750,000, supplemented by the interest earned on the \$3.75 million
12 deposited by McDonald's into the QSF, will be allocated among plaintiffs, members of the
13 certified class, and the California Labor and Workforce Development Agency ("LWDA"),
14 including (a) \$716,667 to Class Members for backpay, interest, and liquidated damages, (b)
15 \$350,000 to Class Members for wage statement penalties, (c) \$350,000 to Class Members for
16 waiting time penalties, (d) \$83,333 to Class Members for the employee portion of civil penalties
17 under the California Labor Code Private Attorneys General Act ("PAGA"), Cal. Labor Code §§
18 2698 *et seq.*, and (e) \$250,000 to the LWDA under PAGA for labor law enforcement and
19 education;² and (2) a payment of \$2,000,000 for plaintiffs' counsel's statutory attorneys' fees and
20 litigations expenses, which shall be supported by a separate motion and subject to Court approval.
21 *Id.* ¶¶25-27, 33.

22 Payments to class members will be calculated based principally upon the number of weeks
23 each class member worked during the class period (March 12, 2010 to November 5, 2016), with
24 former employees each receiving a separate, additional amount to compensate them on a per capita
25 basis for their waiting time penalties claims. *Id.* ¶26. The PAGA penalty payment of \$83,333 will

26 ² Under the settlement, these amounts will be adjusted proportionately to account for and distribute
27 any interest earned on the moneys in the Qualified Settlement Fund, and the payment of any
28 service awards, which plaintiffs intend to request in the amount of \$500 for each of the four named
plaintiffs (for a total of \$2,000).

1 be distributed on a pro rata basis for weeks worked after March 12, 2013 (the start of the PAGA
2 limitations period). *Id.* ¶31.

3 In addition to the monetary payments, the Settlement provides for the following injunctive
4 relief:

- 5 1. Within one month of preliminary approval of the Settlement, McDonald's shall develop
6 and present to Plaintiffs' counsel for review and comment a training deck that
7 McDonald's, within one month after final approval of the Settlement, shall make
8 available and offer to Smith that McDonald's present to all Smith owners, supervisors,
9 store managers, department managers, and shift managers. The training deck shall
10 provide training on the following topics with respect to whatever ISP or e*Restaurant
11 software is in use by Smith for scheduling and timekeeping purposes at the time of the
12 training (hereinafter "Software"):
- 13 a. How Software currently calculates and flags whether an employee's time punches
14 reflect the number, length, and timing of meal periods and rest breaks that would
15 satisfy the parameters set by Smith, including but not limited to any parameters
16 established by Plaintiffs' settlement with Smith;
 - 17 b. Instructions on how the franchisee can change or customize the Labor Law settings
18 in Software;
 - 19 c. Information explaining how the franchisee could identify shifts on which an
20 employee's time punches reflect that a meal period was provided after five hours of
21 work, shifts on which an employee's time punches reflect that a meal period or rest
22 break has been combined with (or taken shortly before or after) another meal period
23 or rest break, and shifts on which an employee's time punches reflect a rest break
24 shortly before (e.g., within 10 minutes) of the end of the shift; and
 - 25 d. Information explaining how Smith could determine whether to pay an employee a
26 premium wage because the employee's time punches reflect a shift that is missing a
27 required meal period or rest break or reflect an untimely meal period or rest break.
- 28 2. McDonald's shall provide the training deck described above to Plaintiffs' counsel for
review and comment before providing the training to Smith. McDonald's shall review
and accept Plaintiffs' counsels' reasonable, good faith requests for modification or
clarification of the training deck.
3. Nothing in this agreement shall preclude McDonald's from making clear in this or any
other training to Smith owners, supervisors, store managers, department managers, and
shift managers that McDonald's does not directly, indirectly, or through an agent
employ the workers in the Smith restaurants, and that Smith's use of Software for
scheduling and timekeeping purposes is optional, and not required by McDonald's.
4. After such training has taken place, McDonald's will report to Plaintiffs' counsel the
names, positions, and date of training for each Smith owner, supervisor, store manager,
department manager, shift manager, and other Smith employee or agent who attends the
training described above, to the extent McDonald's has such information.

1 *Id.* ¶¶18-22. This is in addition to the Court-supervised injunctive relief previously agreed to by
2 Smith.

3 Before the deadline for class members to object or opt out, class counsel will file a motion
4 for statutory attorneys' fees and expenses, with a total amount not to exceed \$2,000,000. *Id.* ¶33.
5 The fees and costs that class counsel have already incurred are more than twice as great as the
6 amount for which they intend to seek Court approval, with plaintiffs' litigation expenses alone
7 totaling more than \$270,000. Chisholm Decl. ¶22. Before the final approval hearing, plaintiffs
8 will also apply to the Court for an award of \$500 to each of the four named plaintiffs for the
9 considerable services they rendered to the class, and for which they are providing broader releases.
10 *Id.* Ex. A ¶34; *see also* Chisholm Decl. ¶16; *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 958-59
11 (9th Cir. 2009).

12 The Settlement provides that the Putative Class List will be prepared within 10 days after
13 preliminary approval and will include any updated contact information obtained through
14 administration of the settlement with Smith or as a result of the September 6, 2016 Class Notice
15 mailing. Chisholm Decl., Ex. A ¶10(b). The Claims Administrator will mail personalized notices
16 of the Settlement to all class members within 10 days of receiving the Putative Class List. *Id.*
17 ¶10(d). Each Notice will explain the principal Settlement terms, including the deadlines for opting
18 out and objecting, which class members must submit claim forms (those not on the class list or who
19 do not receive a mailed notice), and how class members may challenge information regarding their
20 dates of employment. *Id.* ¶¶10(e), 38. The Claims Administrator will make Claim Forms available
21 to all class members, even those who need not file a Claim Form to receive their settlement share.
22 The deadline for opting out or objecting to the Settlement will be 60 days from the postmarked date
23 of Class Notice; the deadline for submitting a Claim Form or challenging dates of employment will
24 be 90 days from the postmarked date of Class Notice. *Id.* ¶10(e). All settlement documents will be
25 translated into Spanish, and English and Spanish versions will be mailed to Class Members. *Id.*
26 ¶1(g).

27 Upon the Effective Date, all Class Members who have not opted out will be deemed to have
28 released McDonald's from all claims that were or could have been asserted against them in the

1 First Amended Complaint based upon the facts alleged. *Id.* ¶40. If no objections are filed, the
 2 Effective Date will be the date of entry of judgment. *Id.* ¶1(k). If objections are filed and
 3 overruled and no appeal is taken, the Effective Date will be 30 days after the district court enters
 4 the Final Judgment. *Id.* If an appeal is taken from the district court’s overruling of objections to
 5 the settlement and/or from the Final Judgment (other than an appeal limited solely to a challenge to
 6 the denial or reduction in the amount of requested attorneys’ fees and litigation expenses), the
 7 Effective Date shall be 30 days after the appeal is withdrawn or after all appellate review thereof is
 8 exhausted and an appellate decision exhausting such review and affirming the Final Judgment
 9 becomes final. *Id.*

10 The Claims Administrator will distribute payments to class members within 14 days after
 11 the Effective Date. *Id.* ¶¶25-26. Any amounts uncashed 120 days after the date of distribution
 12 (including after re-mailing of checks to any forwarding or otherwise updated addresses) will be
 13 redistributed among all other class members in proportion to their initial settlement shares. *Id.* ¶31.
 14 If the total amount of remaining funds after redistributions does not exceed \$40,000, these funds
 15 will be donated as *cy pres* to Bay Area Legal Aid. *Id.* ¶39. The parties will work together in good
 16 faith to minimize costs of notice and administration and to promote efficiency amongst the
 17 settlements in this case. *Id.* ¶7.

18 **IV. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

19 The Court’s review of a class action settlement requires two steps. *See Nat’l Rural*
 20 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). First, the Court must
 21 decide whether to grant preliminary approval and order notice to the class to inform them of their
 22 rights and of their opportunity to be heard at a fairness hearing, where “arguments and evidence
 23 may be presented in support of and in opposition to the settlement.” *McNamara v. Bre-X Minerals*
 24 *Ltd.*, 214 F.R.D. 424, 426 (E.D. Tex. 2002); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d
 25 934, 945-47 (9th Cir. 2015); *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 525; 4 Newberg, §11.25
 26 (quoting Manual for Complex Litig., Third, at 237). Second, it must hold the final fairness hearing
 27 and assess if the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). A “strong
 28 judicial policy . . . favors settlements, particularly where complex class action litigation is

1 concerned.” *Class Plaintiffs*, 955 F.2d at 1276 (citations omitted).

2 **A. The Terms of Settlement Are Fair, Reasonable, and Adequate, and Are Well**
 3 **Within the Range of Possible Approval**

4 At the preliminary stage, a settlement will be found presumptively fair if it “appears to be
 5 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not
 6 improperly grant preferential treatment to class representatives or segments of the class, and falls
 7 within the range of possible approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,
 8 1079 (N.D. Cal. 2007) (quoting *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 157 F. Supp. 2d
 9 561, 570 n.12 (E.D. Pa. 2001)); *accord Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454-
 10 55 (E.D. Cal. 2013).

11 Given the many years of hard-fought, high-stakes litigation preceding the parties’
 12 agreement, which included full briefing and decisions on McDonald’s motion for summary
 13 judgment and plaintiffs’ motion for class certification, and extensive preparations for a jury trial
 14 scheduled to begin in December 2016, there can be no doubt that the parties negotiated the present
 15 settlement in good faith and at arm’s length. *See* Chisholm Decl. ¶¶6-10.

16 Substantial discovery, investigation, research, and litigation over the past two and a half
 17 years, including this Court’s decisions on summary judgment and class certification, enabled
 18 experienced class action counsel to assess the strengths and weaknesses of plaintiffs’ claims and
 19 the benefits of the settlement. Class counsel believe that the settlement is fair, reasonable,
 20 adequate, and in the best interest of the class members in light of all known facts and
 21 circumstances, including the risk of significant delay and the possible defenses to this litigation.
 22 *Id.* ¶14. Plaintiffs and their counsel believe that this is the first ever employment class action
 23 settlement with McDonald’s involving a certified class of crew members working in franchise-
 24 operated stores, and it is certainly by far the largest. *Id.* ¶15. The settlement provides that class
 25 members will receive more than 100% of the back pay, liquidated damages, and interest potentially
 26 available for the claims this Court previously certified, while also providing class members with a
 27 large portion of the corresponding penalties, as well as a portion of the back pay, liquidated
 28 damages, and interest associated with the *uncertified* claims (which plaintiffs would otherwise have

1 pursued on appeal, regardless of the outcome of trial). *Id.* ¶16. This monetary relief is in addition
2 to the more than \$500,000 in payments directly to the class (not counting attorneys' fees, costs, or
3 payments to the LWDA) provided by the class settlement with Smith.

4 This substantial recovery for the class is especially significant given the substantial risks
5 facing the class. Those risks include McDonald's pending Rule 23(f) petition to the U.S. Court of
6 Appeals for the Ninth Circuit, which sought to reverse this Court's class-certification ruling;
7 McDonald's motion seeking to strike plaintiffs' representative PAGA claims; the possibility of a
8 loss on the merits at trial, either as to plaintiffs' ostensible-agency theory of liability or on any of
9 the underlying substantive claims; and the possibility that a favorable judgment at trial might be
10 reversed on appeal. *Id.* ¶¶8, 20. Additionally, even if the class were to prevail on all claims at trial
11 and to fully preserve that judgment on appeal, the class members' ultimate recovery would be
12 delayed by years; under the Settlement the predominantly low-income and minimum-wage worker
13 class members will enjoy the benefit of an immediate, certain, and significant recovery. *Id.* ¶20.

14 This settlement also requires McDonald's to provide meaningful injunctive relief that
15 directly addresses plaintiffs' underlying legal claims, and which supplements and integrates with
16 the injunctive relief in plaintiffs' settlement with Smith that was approved by the Court earlier this
17 year. The new injunctive relief requires McDonald's to make training available to Smith on the
18 use of McDonald's software and techniques for using the software to ensure compliance with
19 California's laws governing overtime, meal periods and rest breaks. *Id.* ¶19. It will benefit current
20 and future employees at the Smith-operated McDonald's restaurants by helping to ensure that the
21 meal-and-rest-break, overtime, and other wage-and-hour violations alleged in this lawsuit no
22 longer occur. *Id.* The relief will take effect 30 days after preliminary approval. *Id.*

23 In reaching this settlement, class counsel negotiated the amount of recovery for the Class
24 separately from the amount of the maximum award of fees and cost plaintiffs would request. *Id.*
25 ¶21. Class counsel will submit a separate motion in support of plaintiffs' request for an award of
26 statutory attorneys' fees and costs, and will explain why the requested award, which is less than
27 half of the fees and costs counsel has actually incurred, is reasonable.

1 For all of these reasons, the proposed settlement readily satisfies the standards for
2 preliminary approval.

3 **B. The Settlement Ensures Adequate Notice to Class Members**

4 Under Rule 23(e), the Court upon preliminary approval must “direct notice in a reasonable
5 manner to all class members who would be bound” by the proposed settlement. That notice must
6 be the “best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B).
7 Notice is satisfactory “if it generally describes the terms of the settlement in sufficient detail to
8 alert those with adverse viewpoints to investigate and to come forward and be heard” and provides
9 notice “that the court will exclude from the class any member who requests exclusion.” *Churchill*
10 *Village, LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *In re Online DVD-Rental Antitrust*
11 *Litig.*, 779 F.3d at 945-47; *see also* Fed. R. Civ. P. 23(c)(2)(B)(v). Such notice is reasonable if
12 mailed to each member of a settlement class “who can be identified through reasonable effort.”
13 *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974).

14 Here, the form and manner of the class notices and claim forms have been negotiated and
15 agreed upon by all counsel and will be translated into Spanish and mailed (and emailed, where
16 available) in both English and Spanish. The class notices will inform class members of, among
17 other things: (1) the nature of this action and the essential terms of the settlement; (2) the allocation
18 of the settlement funds, including an estimate of each class member’s settlement share, the amounts
19 payable to the LWDA for PAGA claims, and the requests for class representative service payments
20 and for attorneys’ fees and expenses; (3) how to participate, opt out, or object to the settlement; (4)
21 this Court’s procedures for final approval; and (5) how to obtain additional information. The class
22 notices are written to be as clear as possible. The notices encourage class members to contact class
23 counsel with any questions, and designate a Spanish-speaking contact in class counsel’s offices.
24 *See* Newberg on Class Actions §8.17 (5th ed. 2013); *Gooch v. Life Investors Ins. Co. of Am.*, 672
25 F.3d 402, 423 (6th Cir. 2012). These are the same basic provisions that the Court previously
26 approved with respect to the Smith settlement.

27 The proposed delivery method and deadlines are also reasonable, and are similar to the
28 procedures approved for the Smith settlement. The Claims Administrator will send notices to class

1 members by first-class mail at addresses that have been updated through the administration of the
 2 Smith settlement and as a result of the September 6, 2016 mailing regarding certification of class
 3 claims against McDonald's. *See* Chisholm Decl. Ex. A ¶10(b), (d). If a class member's address
 4 has changed and no forwarding address is available, the Claims Administrator will use electronic
 5 search procedures to obtain a current address (just as it did with respect to previous class notice
 6 mailings for both the Smith settlement and the certification of claims against McDonald's). *Id.*
 7 ¶10(f). Class members will have 60 days to object to or opt out from the settlement, and will have
 8 90 days after the initial notice is mailed to file any required claim form or to contest dates of
 9 employment. *Id.* ¶¶11-13; *see also id.* ¶1(f) (claim form only required if class member did not
 10 receive notice at home address or is not on the class list).

11 The parties believe that these time periods are fair and reasonable, provide adequate time
 12 for the Claims Administrator to attempt delivery of any returned notices, and allow sufficient time
 13 for class members who may not receive notice by mail to submit claim forms and participate in the
 14 Settlement if they choose to do so.

15 **V. PROPOSED SCHEDULING ORDER**

16 The following schedule sets forth a proposed sequence for the relevant dates and deadlines
 17 assuming the Court preliminarily approves the Settlement.

19 Event	Time Limits According to Agreement
20 Deadline to provide Class List	10 calendar days after Preliminary Approval Order
21 Deadline to mail Class Notice	10 calendar days after receiving Class List
22 Deadline for filing fees motion	At least 28 days before opt-out deadline (within 32 days after Class Notice is mailed)
23 Deadline for opting out or filing objections	60 days after the Class Notice is mailed
24 Deadline for filing Claim Forms or challenging dates of employment	90 days after the Class Notice is mailed
25 Deadline for filing Motion for Named Plaintiffs' Service Awards	35 days prior to Final Approval Hearing
26 Deadline to file Motion for Final Approval	35 days prior to Final Approval Hearing
27 Final Approval Hearing	To be set by the Court, but no sooner than 120 days after the Preliminary Approval Order

1 **VI. CONCLUSION**

2 For the foregoing reasons, plaintiffs respectfully request that this Court: (1) grant
3 preliminary approval to the parties' settlement; (2) approve the distribution of the proposed class
4 notices and claims forms; (3) appoint CPT Group, Inc. as the claims administrator; and (4)
5 schedule a final approval hearing. A proposed order is submitted herewith.

6
7 Date: October 28, 2016

Respectfully submitted,

8 By: s/Barbara J. Chisholm
9 Barbara J. Chisholm

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11 BARBARA J. CHISHOLM
12 P. CASEY PITTS
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19 *Attorneys for Plaintiffs and the Class*

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Attorneys for Plaintiffs and the Class

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

**DECLARATION OF BARBARA J. CHISHOLM
IN SUPPORT OF PLAINTIFFS’ MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT WITH MCDONALD’S
DEFENDANTS**

Judge: Hon. James Donato

Hearing Date / Time: Dec. 15, 2016 / 10:00 a.m.

Complaint Filed: March 12, 2014
Trial Date: None

1 I, Barbara J. Chisholm, declare as follows:

2 1. I am a partner in the San Francisco law firm of Altshuler Berzon LLP, a member of the
3 State Bar of California, and counsel for plaintiffs and the certified class in this action. I make this
4 declaration of my own personal knowledge, and I am competent to testify to the matters set forth
5 herein.

6 2. This declaration is submitted in support of plaintiffs' Motion for Preliminary Approval
7 of Class Action Settlement with McDonald's Defendants. A true and correct copy of the
8 settlement agreement between plaintiffs and McDonald's Corporation, McDonald's U.S.A., L.L.C.,
9 and McDonald's Restaurants of California, Inc. ("McDonald's"), is attached hereto as Exhibit A
10 (hereinafter "Settlement Agreement"), along with a proposed Claim Form (Exhibit 1 to the
11 Settlement Agreement), Class Notice (Exhibit 2 to the Settlement Agreement), and proposed order
12 and judgment (Exhibit 3 to the Settlement Agreement).

13 ***Litigation History***

14 3. Plaintiffs filed this wage and hour lawsuit on behalf of current and former McDonald's
15 employees at five Bay Area restaurants operated by defendant The Edward J. Smith and Valerie S.
16 Smith Family Limited Partnership ("Smith") and Smith family members under franchise
17 agreements with McDonald's on March 12, 2014. Dkt. 1. Plaintiffs alleged that McDonald's and
18 Smith were jointly and severally liable for a broad range of California Labor Code violations
19 resulting in the systematic underpayment of class members, including (1) failing to pay all earned
20 wages through September 2013 because of a consistent error in converting employee time punch
21 data to payroll data; (2) failing to pay daily overtime to class members who work overnight shifts
22 as a result of legally incorrect parameters of defendants' automated timekeeping and payroll
23 system; (3) failing to provide meal periods and rest breaks in the time and manner required by
24 California law; (4) failing to reimburse crew members for the time and money needed to iron and
25 clean their McDonald's uniforms; and (5) failing to provide wage statements that accurately list all
26 wages earned and that identify McDonald's as an employer. Dkt. 1; Dkt. 40 (First Amended
27 Complaint, filed October 1, 2014). Plaintiffs asserted that McDonald's was liable for these
28 violations as the joint employer of crew members at Smith's restaurants, based on principles of

1 agency, and due to its own negligent acts. Dkt. 1, 40.

2 4. Following the filing of the lawsuit and its removal from California state court to the U.S.
3 District Court for the Northern District of California, the parties engaged in extensive written and
4 oral discovery regarding both whether this lawsuit should be certified as a class action and whether
5 McDonald's could be held liable for the wage-and-hour violations alleged in plaintiffs'
6 Complaints. As of July 2015, McDonald's had produced more than 30,000 pages of documents
7 relating to plaintiffs' joint employer theory of liability, and Smith produced more than 100,000
8 page of documents relating both to McDonald's liability as a joint employer of its crew members
9 and to the merits and the certifiability of plaintiffs' wage-and-hour claims. Smith's document
10 production included payroll and time records for all the putative class members. During this same
11 time period, the parties conducted depositions of the four named plaintiffs, seven McDonald's
12 witnesses, and three Smith witnesses.

13 5. Plaintiffs filed their motion for class certification on April 6, 2015. *See* Dkt. 70. After
14 full briefing, the Court heard oral argument on plaintiffs' motion for class certification on May 13,
15 2015 and took the motion under submission. *See* Dkt. 138. Based on Smith's acknowledgement in
16 its briefing and at the hearing that crew members' wages had systematically been miscalculated
17 through September 2013 because of a payroll conversion error, the Court ordered the parties to
18 attend a settlement conference with Magistrate Judge Jacqueline Scott Corley regarding plaintiffs'
19 miscalculated wages claim. *See* Dkt. 136.

20 6. On May 12, 2015, just before the hearing on plaintiffs' motion for class certification,
21 McDonald's filed a motion for summary judgment challenging plaintiffs' theories of joint and
22 derivative liability. *See* Dkt. 129. McDonald's filed a revised motion for summary judgment on
23 May 20, 2015. On September 25, 2015, the Court granted in part and denied in part McDonald's
24 motion, concluding that McDonald's was not liable as a joint employer with direct control over
25 class members but that plaintiffs could proceed against McDonald's on an ostensible agency
26
27
28

1 theory. Dkt. 289.¹

2 7. On July 7, 2016, the Court granted in part plaintiffs' motion for class certification,
3 holding that plaintiffs could pursue their miscalculated wages, overtime payments, and uniform
4 maintenance payments claims (and related derivative claims) on a classwide basis against
5 McDonald's on an ostensible agency theory. Dkt. 319.

6 8. After the Court issued its ruling on class certification, McDonald's filed a request for
7 review of that ruling by the United States Court of Appeals for the Ninth Circuit pursuant to Rule
8 23(f), Dkt. 322, and plaintiffs asked the Court, in the event the Ninth Circuit were to grant
9 McDonald's Rule 23(f) request, to certify the Court's summary judgment ruling for interlocutory
10 appeal as well. Dkt. 327. McDonald's also filed a motion to strike or dismiss plaintiffs'
11 representative PAGA claims. Dkt. 345.

12 9. While these requests were pending, the Court scheduled trial to begin December 5, 2016,
13 and McDonald's and plaintiffs began their trial preparations. Dkt. 334, 336.² McDonald's retained
14 new trial counsel, *see, e.g.*, Dkt. 326, and the parties conducted significant additional written and
15 oral discovery. *See, e.g.*, Dkt. 374 (Civil Minutes of September 13, 2016 telephone discovery
16 hearing regarding parties' requests to conduct additional depositions). McDonald's and plaintiffs
17 exchanged updated lists of potential trial witnesses in August and September 2016, and they
18 exchanged initial and rebuttal expert reports in September and October 2016.

19 *Settlement Negotiations*

20 10. The parties to this litigation have engaged in extensive, arm's-length negotiations with
21 the assistance of Magistrate Judge Corley.

22 11. From June through December 2015, Magistrate Judge Corley conducted five in-person
23 or telephone settlement conferences that included only plaintiffs and Smith. As a result of those
24 settlement negotiations, in December 2015, plaintiffs and Smith reached agreement upon the terms

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26 ¹ Plaintiffs filed a motion for partial summary judgment with respect to Smith's liability for certain
27 claims on June 29, 2015. Dkt. 224. That motion became moot when plaintiffs and Smith agreed to
28 settle all class claims against Smith.

² As noted in paragraph 11, Smith reached a class action settlement with plaintiffs in December
2015.

1 of a settlement that would resolve all class member claims against Smith. The Court granted
2 preliminary approval to the Smith settlement agreement in March 2016, *see* Dkt. 305, and granted
3 oral final approval on August 31, 2016, *see* Dkt. 363. The Court has not yet issued a written order
4 confirming its oral ruling.

5 12. Magistrate Judge Corley also conducted settlement conferences that were attended by
6 plaintiffs and McDonald's. Those included a July 2015 settlement conference including both
7 Smith and McDonald's; a September 2015 settlement conference including Smith, McDonald's,
8 and two other franchisees who had also been sued jointly with McDonald's in the spring of 2014
9 by crew members asserting class action wage-and-hour claims under California law; and a
10 settlement conference in September 2016 that was attended by only plaintiffs' counsel and
11 McDonald's.

12 13. With Magistrate Judge Corley's assistance, plaintiffs were ultimately able to reach a
13 mutually agreeable settlement in early October 2016, which they memorialized in a written
14 memorandum of understanding. That memorandum of understanding has been superseded by the
15 parties' signed settlement agreement, which is attached hereto to as Exhibit A.

16 ***Adequacy of the Proposed Class Action Settlement Agreement***

17 14. Based on both my professional experience and the extensive discovery and litigation of
18 plaintiffs' claims that my co-counsel and I conducted between March 2014 and October 2016,
19 including the Court's decisions on summary judgment and class certification, my co-counsel and I
20 are of the opinion that the proposed settlement agreement is fair, reasonable, and adequate, and in
21 the best interests of the class members in light of all known facts and circumstances, including the
22 risks of significant delay or lack of success should litigation of this matter occur in lieu of
23 settlement.

24 15. To the knowledge of my co-counsel and me, this is the first ever employment class
25 action with McDonald's involving a certified class of crew members working in franchise-operated
26 stores.

27 16. The settlement provides for a payment of \$1.75 million to be made to named plaintiffs,
28 members of the certified class, and the California Labor and Workforce Development Agency

1 (“LWDA”). My co-counsel and I, with the assistance of plaintiffs’ expert, calculated the potential
2 value of the back pay, liquidated damages, and interest potentially available for the certified class
3 claims in this lawsuit to be approximately \$676,000, and calculated the potential value of statutory
4 penalties associated with those certified claims to be approximately \$1,300,000. The settlement
5 ensures that the full amount of back pay, liquidated damages, and interest on certified claims is
6 paid to the class, as is an additional amount of approximately \$40,667 for uncertified claims. The
7 settlement also provides for recovery of approximately 52% of the statutory penalties associated
8 with the certified claims.

9 17. The monetary relief provided to class members by the settlement with McDonald’s is in
10 addition to the more than \$500,000 in payments directly to the class (not counting attorneys’ fees,
11 costs, or payments to the LWDA) provided by the separate settlement agreement between plaintiffs
12 and Smith.

13 18. McDonald’s has also agreed to pay all costs of Class Notice and settlement
14 administration, which will ensure that such costs do not diminish the value of each class member’s
15 claim.

16 19. In addition to this monetary relief, the settlement agreement requires McDonald’s to
17 provide meaningful injunctive relief that supplements and integrates with the injunctive relief
18 provided by the Smith settlement agreement, and which is designed to assist in preventing future
19 wage and hour violation. The settlement requires McDonald’s to make training available to Smith
20 on use of McDonald’s software and how it could be used to ensure compliance with California’s
21 laws governing overtime, meal periods and rest breaks. That relief, which will take effect 30 days
22 after preliminary approval of the settlement, will benefit current and future employees at the Smith-
23 operated McDonald’s restaurants by helping to ensure that the meal-and-rest-break, overtime, and
24 other wage-and-hour violations alleged in this lawsuit no longer occur.

25 20. Considered on its own, the monetary and injunctive relief provided by plaintiffs’
26 agreement with McDonald’s is fair, adequate, and reasonable. The adequacy of the settlement is
27 particularly apparent, however, when the significant risks facing the class should this lawsuit
28 continue are considered. The risks include McDonald’s pending Rule 23(f) petition, which asks

1 the Ninth Circuit to reverse the Court’s class certification ruling; McDonald’s pending motion to
2 strike plaintiffs’ representative PAGA claims; the possibility of a loss on the merits at trial, either
3 as to plaintiffs’ ostensible-agency theory of liability or on any of the underlying substantive claims;
4 and the possibility that a favorable judgment at trial might be reversed on appeal. Although I am
5 confident in the merits of the claims at issue in this lawsuit, the novel legal and factual issues
6 presented by those claims heighten the risk of a negative outcome at trial or on appeal. Even if
7 plaintiffs were to succeed at trial and on appeal, any recovery by class members would be delayed
8 by years. The settlement, by contrast, permits the predominantly low-income and minimum wage
9 worker class members to benefit from an immediate, certain, and significant recovery.

10 21. The settlement provides that McDonald’s will also pay up to \$2 million for plaintiffs’
11 statutory attorneys’ fees and costs.³ Plaintiffs’ counsel negotiated this amount separately from the
12 amount of the recovery for class members.

13 22. Class counsel will submit a separate motion in support of plaintiffs’ request for an
14 award of statutory attorneys’ fees and costs at the appropriate time in advance of final approval.
15 As that motion will explain in greater detail, the fees and costs plaintiffs will request fall well
16 below the actual fees and costs that plaintiffs’ counsel incurred in litigating this case over the last
17 2.5 years. Plaintiffs’ counsel have already incurred more than \$270,000 in costs, and the lodestar
18 value of the fees that they have already incurred exceeds \$3,730,000—i.e., more than twice the
19 amount in statutory fees plaintiffs intend to ask the Court to award.

20 23. Because the statutory fees and costs were negotiated separately from the class recovery
21 and are not tied to that recovery, the settlement agreement provides that, should this Court should
22

23 ³ The California Labor Code permits recovery of statutory attorneys’ fees and costs, separate and
24 apart from any damages or penalty award, for a variety of different claims. *See, e.g.*, Cal. Labor
25 Code §1194(a) (statutory fees and costs available in action to recover unpaid minimum wage or
26 overtime); Cal. Labor Code §2699(g) (statutory fees and costs available for PAGA claims); Cal.
27 Labor Code §2802(c) (statutory fees and costs available in action to recover unreimbursed
28 expenses); *see also* Cal. Civ. Code §1021.5 (permitting award of statutory attorneys’ fees in action
that “resulted in the enforcement of an important right affecting the public interest”). These
provisions ensure both that a plaintiff’s recovery is not reduced by the payment of attorneys’ fees
(which occurs where fees are paid out of the damages or penalties awarded, as where fees are
awarded on a “common fund” theory), and that plaintiffs who are paid less and thus have less
valuable wage-and-hour claims are nonetheless able to find attorneys willing to pursue their claims.

1 award less than \$2 million in statutory fees and costs, the difference will be returned to
2 McDonald's.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed this 28th day of October 2016, at San Francisco, California.

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/s/ Barbara J. Chisholm
Barbara J. Chisholm

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement” or “Settlement”) is made and entered into between plaintiffs and class representatives Stephanie Ochoa, Ernestina Sandoval, Yadira Rodriguez, and Jasmine Hedgepeth, on their own behalf, on behalf of the State of California, and on behalf of all members of the class certified by the Court in this Action, and defendants McDonald’s Corporation, McDonald’s U.S.A., LLC, and McDonald’s Restaurants of California, Inc., subject to the terms and conditions of this Agreement and to the approval of the United States District Court in *Ochoa, et al. v. McDonald’s Corp., et al.*, N.D. Cal. No. 3:14-cv-02098-JD.

I. DEFINITIONS

1. As used in this Agreement, the following terms shall have the following meanings:
 - a. Action. The “Action” means the civil action captioned *Ochoa, et al. v. McDonald’s Corp., et al.*, N.D. Cal. No. 3:14-cv-02098-JD (N.D. Cal.).
 - b. Agreement. “Agreement” means this Settlement Agreement and all exhibits attached hereto.
 - c. Claim Form. “Claim Form” means the proof of claim agreed to by the Parties and to be submitted for approval by the Court which shall be used by certain Class Members as described herein to file a claim under this Agreement. A copy of the Claim Form is attached hereto as Exhibit 1.
 - d. Claims Administrator. “Claims Administrator” means CPT Group, Inc. or another claims administrator agreed to by the Parties.
 - e. Class Counsel. “Class Counsel” means Altshuler Berzon LLP and Cohen Milstein Sellers & Toll PLLC.
 - f. Class Members. “Class Members” means the members of the class certified by

the Court as set forth in the Court's Order Re Class Certification, dated July 7, 2016 (ECF Docket No. 319), as subsequently clarified by the parties in ECF Docket Nos. 339 & 340 (clarifying that the date for the end of the class period is the date that requests to opt out are due from class members) and ECF Docket No. 364 (clarifying that the restaurants covered by the certified class include the Jackson Street restaurant before and after April 2014), excluding those persons who opt out of the Class by no later than November 5, 2016 pursuant to the class notice and opt-out procedure approved by the Court on August 11, 2016, or who timely opt out of the Settlement pursuant to the procedures herein. Absent agreement of the Parties, each person included on the class list used by the Claims Administrator to provide notice to the Class on or about September 6, 2016 (excluding those who timely opted out pursuant to the procedures approved by the Court on August 11, 2016) shall be deemed to be a Class Member; provided that, to the extent a person on the list was employed as a manager at some point during the Class Period, the work weeks that person worked as a manager (to the extent that time period can be determined) shall not be counted as weeks worked during the Class Period for purposes of this settlement, and that persons who have opted out of the Class pursuant to the class notice and opt-out procedure approved by the Court on August 11, 2016 shall not be Class Members. An individual who is not listed on the Class List, but who submits a valid Claim Form as provided for herein and identifies the time during which s/he was employed as a crew member, crew trainer, or maintenance worker paid on an hourly basis at any of the Restaurants during the Class Period, shall be deemed a Class Member.

g. Class Notice. "Class Notice" means the notice to Class Members that explains the

Agreement and the Class Members' rights and obligations, which shall be sent to all Class Members following preliminary approval of the Settlement, and which shall, *inter alia*, explain the procedures for determining the Class Member's settlement share, filing an objection to the Settlement, and opting out of the Settlement. The Class Notice shall be translated into Spanish, and both English and Spanish versions will be sent to all Class Members. The English version of the proposed Class Notice is attached hereto as Exhibit 2 and is subject to Court approval and revisions by the Court.

- h. Class Period. "Class Period" means the period from March 12, 2010 to November 5, 2016.
- i. Class Representatives. "Class Representatives" means plaintiffs Stephanie Ochoa, Ernestina Sandoval, Yadira Rodriguez, and Jasmine Hedgepeth.
- j. Court. "Court" means the United States District Court for the Northern District of California.
- k. Effective Date. If no timely objections are filed to the Settlement, the "Effective Date" of this Agreement shall be the date the Court enters the Final Judgment . If objections are filed and overruled and no appeal is taken from the Final Judgment , the "Effective Date" shall be 30 days after the district court enters the Final Judgment . If an appeal is taken from the district court's overruling of objections to the settlement and/or from the Final Judgment (other than an appeal limited solely to a challenge to the denial or reduction in the amount of requested attorneys' fees and litigation expenses), the "Effective Date" shall be 30 days after the appeal is withdrawn or after all appellate review thereof is exhausted and an appellate decision exhausting such review and affirming the Final Judgment

decision becomes final.

- l. Final Settlement Hearing. “Final Settlement Hearing” means the hearing following Class Notice at which the Court will consider whether the terms of this Agreement are fair and reasonable to the class as a whole.
- m. Final Judgment. “Final Judgment” means the order of final approval of the Settlement.
- n. McDonald’s. “McDonald’s” shall mean defendants McDonald’s Corporation, McDonald’s U.S.A., LLC, and McDonald’s Restaurants of California, Inc.
- o. Parties. “Parties” shall mean the parties to the Agreement, specifically, the Class Representatives, individually and on behalf of all Class Members, and McDonald’s.
- p. Preliminary Approval Order. “Preliminary Approval Order” means the order entered and filed by the Court that preliminarily approves the terms and conditions of this Agreement.
- q. Released Parties. “Released Parties” means defendants McDonald’s Corporation, McDonald’s U.S.A., L.L.C, and McDonald’s Restaurants of California, Inc., and their employees, directors, shareholders, officers, owners, and attorneys.
- r. Restaurants. “Restaurants” means the five franchised McDonald’s restaurants in California, located at: (1) 2301 MacDonalD Avenue, Richmond, CA 94804; (2) 4514 Telegraph Avenue, Oakland, CA 94607; (3) 6623 San Pablo Avenue, Oakland, CA 94608; (4) 800 Market Street, Oakland, CA 94607; and (5) 1330 Jackson Street, Oakland, CA 94612.
- s. Settled Claims. “Settled Claims” means any and all claims that were alleged in this action, arise out of or are related to the allegations and claims alleged in the

action, and/or could have been alleged based on the facts, matters, transactions, or occurrences alleged in the action.

- t. Settlement. “Settlement” shall refer to this Agreement to settle the claims as set forth and embodied in this Agreement.
- u. Smith. “Smith” means defendant The Edward J. Smith and Valerie S. Smith Limited Family Partnership.

II. RECITALS

2. This class action was filed on March 12, 2014, and a First Amended Complaint was filed on October 1, 2014, asserting 13 claims for relief on behalf of plaintiffs and other current and former employees at the Restaurants, including *inter alia* claims for unpaid wages, minimum wages, overtime, failure to provide legally required meal periods and rest breaks, failure to pay all wages due to discharged and quitting employees, failure to maintain required records and provide accurate itemized wage statements, failure to indemnify employees for necessary business expenditures, negligence, unfair and unlawful business practices, PAGA penalties, and declaratory judgment. Plaintiffs’ First Amended Complaint named as defendants McDonald’s Corp., McDonald’s U.S.A., LLC, McDonald’s Restaurants of California, Inc., Smith, and Does 1 through 100, inclusive.
3. On April 6, 2015, plaintiffs filed a motion for class certification, ECF Docket No. 70, which the Court granted in part and denied in part on July 7, 2016, ECF Docket No. 319. On May 12, 2015, McDonald’s filed a motion for summary judgment, ECF Docket No. 129, which the Court granted in part and denied in part on September 25, 2015, ECF Docket No. 289. On or about September 6, 2016, pursuant to the Court’s order regarding class certification, CPT Group, Inc. provided notice of the Action and

instructions for opting out of the Class. The deadline for opting out of the Class is November 5, 2016.

4. Without admitting or conceding any liability or damages, McDonald's has entered into this Settlement to fully, finally, and forever resolve this litigation as to the claims between the Parties. McDonald's denies that it has violated any law, breached any agreement or obligation to the plaintiffs or the Class Members, or engaged in any wrongdoing with respect to the plaintiffs or the Class Members. The Parties agree that neither this Agreement nor any actions undertaken by McDonald's in satisfaction of the Agreement shall constitute, or be construed as, an admission of any liability or wrongdoing.
5. This Settlement was reached after extensive investigation, discovery, motion practice, formal mediation under the auspices of U.S. Magistrate Judge Jacqueline Scott Corley, and arms-length settlement negotiations between experienced counsel for the Parties. Class Representatives and Class Counsel have concluded that the terms of the Settlement are fair, reasonable, and adequate, that the Settlement represents a good-faith settlement under California law, and that settlement on the terms described herein is in the best interest of the Class Members in light of all known facts and circumstances.
6. To settle all claims brought against it by Plaintiffs and Class Members in the Action, McDonald's shall:
 - a. Pay One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) ("Class Payment") to be allocated among Plaintiffs, Class Members, and the California Labor and Workforce Development Agency ("LWDA") as set forth below;
 - b. Separately pay Class Counsel all court-approved attorneys' fees and costs, which

shall not exceed Two Million Dollars (\$2,000,000) (“Attorneys’ Fees and Costs”);
and

- c. Separately pay all costs of notice and claims administration, subject to the terms and conditions set forth below and such further terms and conditions as the Parties mutually agree.

The payments set forth in this paragraph shall be in addition to all payments that have been and shall be made by defendant Smith, including those made pursuant to the separate settlement agreement between Plaintiffs and Smith that the Court approved on August 31, 2016 (ECF Docket No. 363).

NOW THEREFORE, in consideration of the recitals listed above and the promises, releases, and warranties set forth below, and with the Parties’ intent to be legally bound and to acknowledge the sufficiency of the consideration and undertakings set forth herein, the Class Representatives, individually and on behalf of the Class Members and the State of California, on the one hand, and McDonald’s, on the other hand, agree that the Action shall be and is finally and fully compromised and settled as to the Released Parties, on the terms and conditions set forth herein:

III. PRELIMINARY APPROVAL, CLASS NOTICE, CLAIMS PROCESS, FINAL SETTLEMENT HEARING, AND EFFECTIVE DATE

7. Procedures. As part of this Agreement, the Parties agree to the following procedures for obtaining the Court’s preliminary approval of the Settlement, notifying Class Members, obtaining final Court approval of the Settlement, and administering the Settlement. The Parties shall cooperate in good faith in attempting to coordinate timelines and distribution schedules for this Settlement and the separate settlement with Smith in this Action, to minimize costs and promote the efficient administration of the settlements.
8. Preliminary Approval of Settlement and Request for Preliminary Approval Order.

Promptly after execution of this Agreement, Class Representatives shall file a motion requesting that the Court enter the Preliminary Approval Order preliminarily approving the proposed settlement, approving notice, and setting a date for the Final Settlement Hearing. McDonald's agrees not to oppose the motion for preliminary approval of the Settlement provided such motion and supporting papers are consistent with the terms of this Agreement. The requested Preliminary Approval Order shall:

- a. Preliminarily approve the proposed Settlement and this Agreement;
- b. Approve the plan for providing notice to Class Members under this Agreement, including the form of the Class Notice and the Claim Form (needed only from Class Members whose mail is undeliverable or who are not on the Class List);
- c. Approve the procedures for distribution of payments to Class Members under this Agreement;
- d. Approve the procedures for Class Members to object to the Settlement, opt out of the Settlement, and file Claim Forms, including by setting appropriate deadlines; and
- e. Schedule the Final Settlement Hearing for final approval of this Settlement and entry of Final Judgment.

Class Counsel shall provide a draft of any proposed Preliminary Approval Order at least two business days before the requested Preliminary Approval Order is submitted to the Court.

9. Notice of Settlement to Appropriate Government Officials. Pursuant to Cal. Labor Code § 2699(l)(2), Class Counsel shall notify the LWDA of the Settlement upon the filing of a motion for preliminary approval of the Settlement. Within ten (10) calendar days after the filing of a motion for preliminary approval of the Settlement with the

Court, the Claims Administrator shall provide appropriate notice of the Settlement to appropriate state and federal officials in conformance with the Class Action Fairness Act.

10. Class Notice. Notice of the Settlement shall be provided to Class Members. The Parties believe and agree that the following procedures for such notice provide the best practicable notice to Class Members.
 - a. The Claims Administrator shall be responsible for preparing, printing, and mailing to all Class Members an individualized version of the Class Notice approved by the Court and any such other materials as may be required to be distributed, all as approved and directed by the Court.
 - b. Not later than ten (10) business days after the Court's entry of an Order of Preliminary Approval, the Claims Administrator shall prepare, in electronic form, a spreadsheet (the "Class List") that contains the name, telephone number, last known mailing address and email address, and starting and ending employment dates during the Class Period (including multiple starting and ending employment dates if applicable) of every Class Member, and shall provide the Parties' counsel with a copy. The Claims Administrator shall not include social security numbers on the Class List provided to the Parties' counsel. The Claims Administrator shall include in the Class List any updated information generated pursuant to the class notice and opt-out procedure approved by the Court on August 11, 2016.
 - c. Based on the information in the Class List and allocation of the Class Payment set forth herein, the Claims Administrator shall promptly calculate an Estimated Settlement Amount for every Class Member, to be included in the individualized Notice to be sent to that Class Member, and shall prepare and email a spreadsheet

setting forth those calculations to Class Counsel and McDonald's counsel no fewer than two days before mailing the Class Notice to Class Members.

- d. No later than ten (10) business days after preparation of the information described in subsection (b) above, the Claims Administrator shall mail the Class Notice to every individual on the Class List whose address information is known. This mailing shall be sent by first-class U.S. mail, postage pre-paid. Any returned envelopes from the initial mailing with forwarding addresses shall be used by the Claims Administrator to re-mail the Class Notice. The Claims Administrator shall forward the Class Notice to the new address within five (5) calendar days of receipt of the forwarding address. No later than (10) business days after receipt of the Class List, the Claims Administrator shall also email a copy of the Class Notice to all Class Members whose email addresses are known. The Claims Administrator shall track and report all "bounce back" emails, but shall be under no obligation to search for different email addresses.
- e. Except as otherwise provided herein, the Class Notice:
 - i. Shall state that the deadline for submitting any objection to the Settlement or for opting out of the Settlement shall be sixty (60) calendar days after the postmark date of the initial mailing of Class Notice;
 - ii. Shall state the recipient's Estimated Settlement Amount, as calculated by the Claims Administrator;
 - iii. Shall inform the recipient of the need to provide updated contact information to the Claims Administrator until such time as all settlement funds have been distributed;

- iv. Shall include a summary of the release and waiver of claims against the Released Parties, and shall inform the recipient that any Class Member who does not timely opt out shall be deemed to have released all covered claims against the Released Parties;
 - v. Shall explain that a Class Member who is not identified on the Class List or whose Class Notice is returned to the Claims Administrator by the post office after mailing shall not be eligible to share in the settlement funds unless that individual submits a Claim Form to the Claims Administrator no later than ninety (90) calendar days after the postmark date of the Class Notice.
 - vi. Shall explain that no Claim Form will be required from any individual on the Class List to whom a Class Notice is sent and is not returned.
- f. For any Class Notice that is returned by the post office as undeliverable or addressee unknown, the Claims Administrator shall perform a skip trace that shall include: (1) processing the name and address through the United States Postal Service's National Change of Address database; (2) performing address searches using such public and proprietary electronic resources as are available to the Claims Administrator that lawfully collect address data from various sources such as utility records, property tax records, motor vehicle registration records, and credit bureaus; and (3) calling last-known telephone numbers (and telephone numbers updated through public and proprietary databases) to obtain accurate contact information. If the Claims Administrator is successful in locating an alternate subsequent address or addresses, the Claims Administrator shall forward

such Class Notice to the new address(es) within ten (10) calendar days of receipt of the undeliverable notice.

g. The Parties intend that all reasonable means be used to maximize the likelihood that all Class Members will receive the Class Notice.

h. In addition to the foregoing, the Parties may, but are not obligated to, supplement the mailed Class Notice with reasonable alternative forms of notice.

11. Objecting to the Settlement. Any Class Member may object to the Settlement. The Class Notice 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:

a. Any such objection must be filed with the clerk of the Court and served on counsel for the Parties identified in the Class Notice no later than sixty (60) calendar days after the postmark date of the initial mailing of Class Notice.

b. The postmark date of the mailing shall be the exclusive means for determining whether an objection is timely.

c. The objection must state the basis for the objection.

d. Class Members who fail to make objections in the time and 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 the Settlement shall be fully binding upon them (unless they validly opt out).

12. Claim Form Submission. Absent a showing of good cause, as determined by Class Counsel, no Claim Form shall be honored if postmarked more than ninety (90) days after the date the Class Notice is first mailed to Class Members. If a Claim Form is timely submitted but is deficient in one or more aspects, the Claims Administrator shall, within five (5) calendar days of receipt of the deficient form, notify the Parties'

counsel of receipt of the deficient form and shall return the form to the Class Member with a letter explaining the deficiencies and informing the Class Member that he or she shall have fourteen (14) calendar days from the date of the deficiency notice to correct the deficiencies and resubmit the Claim Form. This letter shall be provided in English and Spanish.

13. Opting Out of the Settlement.

- a. A Class Member may opt out of the Settlement by timely mailing a valid opt-out statement to the Claims Administrator. The procedures for opting out shall be the same procedures as set forth in the Court-approved notice mailed to the class on September 6, 2016, with the exception that the statement to be provided by the Class Member shall be: “I, [NAME], voluntarily choose not to participate in the settlement of the Certified Class Action against McDonald’s Corporation and McDonald’s USA, LLC, and hereby waive any rights I may have to participate in the settlement with McDonald’s Corporation, McDonald’s USA, LLC, and McDonald’s Restaurants of California, Inc. in the federal court lawsuit entitled *Ochoa v. McDonald’s Corp.*, N. D. Cal. No. 3:14-cv-02098-JD.”
- b. Absent a showing of good cause, as determined by the Claims Administrator after input from Class Counsel and McDonald’s, no opt-out statement shall be honored or valid if postmarked more than sixty (60) calendar days after the postmark date of the initial mailing of the Class Notice. Requests to opt out that do not include all required information shall be deemed null, void, and ineffective. If a Class Member files both an opt-out statement and a Claim Form, the opt-out statement shall be deemed invalid and the Class Member’s Claim Form and release of claims shall be valid and controlling.

c. Class Members who submit valid and timely requests to opt out of the Settlement shall not receive any payment pursuant to the Settlement, nor shall such Class Members be bound by the terms of the Settlement or the dismissal with prejudice of their claims against McDonald's pursuant to this Settlement.

14. Non-Interference with Claims Procedure and Settlement. The Parties and their counsel agree that they shall not seek to solicit or otherwise encourage Class Members to submit opt-out requests or objections to the Settlement or to appeal from preliminary or final approval of the Settlement.

15. Interim Reports by the Claims Administrator. No later than two (2) days prior to the deadline for filing a motion for final settlement approval, the Claims Administrator shall provide counsel for the Parties with a declaration setting forth: (a) its efforts to provide notice to the class and proof of mailing of the Class Notice and proof of mailing of appropriate notice of the Settlement to appropriate state and federal officials in conformance with the Class Action Fairness Act; (b) the total number of individuals on the Class List who were sent a Class Notice; (c) the total number of those individuals whose Class Notices were returned as undeliverable or addressee unknown; (d) the total number of those individuals whose Class Notices were subsequently sent to a corrected address; (e) the total number of Class Members who filed timely objections to the Settlement, along with the complete copies of all objections received, including the postmark dates for each objection; (f) the total number of individuals who requested a Claim Form; (g) the total number of individuals who submitted a Claim Form; (h) the total number of Class Members who submitted valid Claims Forms; (i) the total number of Class Members who submitted Claim Forms that were deficient, and how such deficiencies were resolved by the

Claims Administrator after conferring with counsel for the Parties; (j) the total number of Class Members who challenged the dates worked as reported on the Class Notice and the resolution of any such challenges; and (k) the total number of Class Members who filed valid requests to opt out, including complete copies of all such requests, and including the postmark dates for each. The Claims Administrator shall provide an updated declaration on these matters three (3) calendar days prior to the date of the Final Settlement Hearing if any changes or additions have occurred, and again the business day after the Effective Date of the Settlement or such other later date as the Court or the Parties may agree upon.

16. Final Settlement Hearing. After expiration of the deadlines for submitting objections, the Parties shall ask the Court to conduct a Final Settlement Hearing to determine final approval of the settlement and to enter the Final Judgment. Class Counsel will also seek an order determining the amounts properly payable for attorneys' fees and expenses and service payments, and any other matter as required herein.
17. Final Judgment. The Proposed Final Judgment to be submitted to the Court shall be in the form of Exhibit 3. The Parties shall not object to any final judgment that is substantially in the form of Exhibit 3.

IV. INJUNCTIVE RELIEF

18. The Parties recognize that Plaintiffs' settlement with Smith includes injunctive relief that establishes certain parameters regarding scheduling and/or timekeeping. The Parties recognize that Plaintiffs' settlement with Smith includes injunctive relief that establishes certain parameters regarding scheduling and/or timekeeping, and that McDonald's is not a party to the Smith settlement agreement and is not agreeing to be bound by the injunctive relief provisions of the Smith settlement agreement.

19. Within one month of preliminary approval of the Settlement, McDonald's shall develop and present to Plaintiffs' counsel for review and comment a training deck that McDonald's, within one month after final approval of the Settlement, shall make available and offer to Smith that McDonald's present to all Smith owners, supervisors, store managers, department managers, and shift managers. The training deck shall provide training on the following topics with respect to whatever ISP or e*Restaurant software is in use by Smith for scheduling and timekeeping purposes at the time of the training (hereinafter "Software"):

- a. How Software currently calculates and flags whether an employee's time punches reflect the number, length, and timing of meal periods and rest breaks that would satisfy the parameters set by Smith, including but not limited to any parameters established by Plaintiffs' settlement with Smith;
- b. Instructions on how Smith can change or customize the Labor Law settings in Software;
- c. Information explaining how Smith could identify shifts on which an employee's time punches reflect a meal period provided after five hours of work, shifts on which an employee's time punches reflect that a meal period or rest break has been combined with (or taken shortly before or after) another meal period or rest break, and shifts on which an employee's time punches reflect a rest break shortly before (e.g., within 10 minutes of) the end of the shift; and
- d. Information explaining how Smith could determine whether to pay an employee a premium wage because the employee's time punches reflect a shift that is missing a required meal period or rest break or reflect an untimely

meal period or rest break.

20. McDonald's shall provide the training deck described above to Plaintiffs' counsel for review and comment before providing the training to Smith. McDonald's shall review and accept Plaintiffs' counsel's reasonable, good faith requests for modification or clarification of the training deck.
21. Nothing in this agreement shall preclude McDonald's from making clear in this or any other training to Smith owners, supervisors, store managers, department managers, and shift managers that McDonald's does not directly, indirectly, or through an agent employ the workers in the Smith restaurants, and that Smith's use of Software for scheduling and timekeeping purposes is optional, and not required by McDonald's.
22. After such training has taken place, McDonald's will report to Plaintiffs' counsel the names, positions, and date of training for each Smith owner, supervisor, store manager, department manager, shift manager, and other Smith employee or agent who attends the training described above, to the extent McDonald's has such information.
23. Modification. Whenever possible, each provision and term of the injunctive relief provided herein shall be interpreted in such a manner as to be valid and enforceable; provided, however, that if any term or provision is determined to be or is rendered unenforceable after entry of final approval of the Settlement, all other terms and provisions shall remain unaffected, to the extent permitted by law. If the application of any term or provision to any specific person or circumstance should be determined to be invalid or unenforceable, the application of such term or provision to other persons or circumstances shall remain unaffected, to the extent permitted by law. Class Counsel and McDonald's counsel may jointly agree in writing to modify the terms of the injunctive relief provided herein, subject to Court approval.

V. SETTLEMENT FUNDS, CLAIMS PROCESSING, AND SETTLEMENT PAYMENT CALCULATION

24. Deposit of Funds into Joint Escrow. Within 30 days after the Court's preliminary approval of this settlement, McDonald's shall pay Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000) into an interest-bearing escrow account for purposes of funding the settlement. This account shall be established as a Qualified Settlement Fund by the Claims Administrator, and shall be subject to joint control by McDonald's Counsel and Class Counsel. In the event the Court denies final approval of the settlement or an appeal leaves the settlement unenforceable, the Parties shall be returned to the same positions as existed at the time of this Agreement, and all funds in the escrow account provided for in this paragraph shall be returned to McDonald's.
25. Class Payment from the Qualified Settlement Fund. Payments from the Qualified Settlement Fund for the purposes set forth in this Agreement shall be made within fourteen (14) days of the Effective Date.
26. Subject to Court approval, and subject to any Service Payments provided for in this Agreement and approved by the Court, the Class Payment shall be allocated for the following payments:
- a. \$716,667 to Class Members for backpay, interest, and liquidated damages, to be distributed to Class Members based on a fixed amount per week for every week worked during the Class Period;
 - b. \$350,000 to Class Members for wage statement penalties to be distributed to Class Members based on a fixed amount per week for every week worked starting one year before the filing of the complaint (*i.e.*, March 12, 2013) through the end of the Class Period;
 - c. \$350,000 to Class Members for waiting time penalties, to be distributed to Class

Members based on a fixed per capita amount for each Class Member whose final paycheck was dated between three years before the filing of the complaint (*i.e.*, on or after March 12, 2011) and the end of the Class Period, and who was no longer a current worker as of the end of the Class Period;

- d. \$83,333 to Class Members for the employee portion of civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Labor Code §§ 2698 *et seq.*, to be distributed to Class Members based on a fixed amount per week for every week worked starting one year before the filing of the complaint and plaintiffs’ notification letter to LWDA (*i.e.*, March 12, 2013) through the end of the Class Period; and
- e. \$250,000 to the California LWDA for the LWDA portion of penalties under PAGA.

Service payments to the named Plaintiffs, if approved by the Court, shall be made proportionally from each of the amounts stated above in subparagraphs (a) through (c) and shall not increase the total amounts that McDonald’s is required to pay under this agreement.

- 27. Any interest earned on the funds in the Qualified Settlement Fund created pursuant to this Agreement between the time of deposit and the time the Class Payment is paid to Class Members by the Claims Administrator shall be added to the total Class Payment and distributed proportionally among the payments provided for in subparagraphs (a) through (e) of paragraph 26.
- 28. No claims process shall be required of Plaintiffs or Class Members so long as their names are on the Class List and they have been sent a Class Notice that was not returned as undeliverable.

29. Checks shall be mailed by first class mail to the last known address of all Class Members. If any check is returned or not cashed, the Claims Administrator shall engage in reasonable skip tracing efforts.
30. Each check mailed to a Class Member shall plainly state on its face that the check must be cashed within 120 calendar days, and that any check uncashed after 120 calendar days will be invalid. If any check remains uncashed after forty-five (45) calendar days, the Claims Administrator shall send out a reminder postcard to the recipient. The Claims Administrator shall also provide counsel for the Parties with a list of all Class Members who have not cashed their checks. If any check remains uncashed after seventy-five (75) calendar days, the Claims Administrator shall call the recipient to remind him or her to cash the check. The Claims Administrator shall use skip-trace methods as necessary to obtain a working phone number for any such individual.
31. The amounts designated for all Class Members who do not cash their check and who cannot be located within 120 days after the date of distribution shall be redistributed on a pro rata basis to all other Class Members, subject to the cy pres provision of paragraph 39.
32. Class Members who do not cash their settlement checks within 120 calendar days after mailing by the Claims Administrator shall be deemed to have waived irrevocably any right in or claim to a settlement payment, but will still be bound by the Settlement. After all required distributions are made, the Claims Administrator may, with agreement by counsel for the Parties, make full or partial payment of the amount calculated to be due to any Class Member or Members who did not cash their settlement check(s) within 120 calendar days after mailing by the Claims

Administrator if sufficient funds from the Class Payment remain.

33. Application for Attorneys' Fees and Costs. Class Counsel intend to request that the Court approve an award of statutory attorneys' fees and costs pursuant to California law in an amount not to exceed \$2,000,000. No sooner than fourteen (14) days after the Effective Date, the Claims Administrator shall pay to Class Counsel the Attorneys' Fees and Costs awarded by the Court, including after any appeal, and shall return to McDonald's any portion of the \$2,000,000 paid into the Qualified Settlement Fund for attorneys' fees and costs that is not awarded by the Court. The Parties agree that regardless of any action taken by the Court or any appellate court with respect to attorneys' fees and expenses, the validity of the underlying Settlement shall not be affected.
34. Service Payments to Class Representatives. Class Counsel shall request that the Court approve service awards for distribution to Stephanie Ochoa, Ernestina Sandoval, Yadira Rodriguez, and Jasmine Hedgepeth in an amount not to exceed \$500 each. The Parties agree that regardless of any action taken by the Court with respect to such service awards, the validity of the underlying Settlement shall not be affected.
35. Claims Administration Costs. All costs and fees of the Claims Administrator shall be paid separately by McDonald's, in addition to all other payments required by this Settlement. All unresolved disputes relating to the Claims Administrator's performance of its duties shall be referred to the Court in this case, which shall have continuing jurisdiction over all terms and conditions of the Settlement until all payments and obligations contemplated by the Settlement have been fully satisfied and carried out. To the extent practicable and to reduce the expense of notice and claims administration, the Parties may agree to combine notice and/or claims

administration with the same process in the separate, court-approved settlement with defendant Smith, as long as combining such notice and/or claims administration does not cause any prejudice to Class Members.

36. Allocation of Each Settlement Payment and Tax Issues. Each payment of settlement funds to a Class Member, other than a service payment to a named Plaintiff, shall be allocated as follows: (1) twenty-four percent (24%) shall be allocated to wages (inclusive of payroll taxes, deductions, and contributions); (2) fourteen percent (14%) shall be allocated to interest; and (3) sixty-two percent (62%) shall be allocated to civil or statutory penalties or liquidated damages. Class counsel shall work with the Claims Administrator to determine appropriate tax withholding and tax reporting procedures. The Parties agree that McDonald's is not responsible for any tax obligations incurred by the Class Representatives, the Class Members, or Class Counsel as a result of this Settlement, and that McDonald's is not providing any tax advice to the Class Representatives, the Class Members, or Class Counsel.
37. Claims Processing. The Claims Administrator shall review all received Claim Forms and finalize the calculations of payments to be distributed to Class Members pursuant to this Settlement by reviewing the Class List as supplemented by the Claim Forms, and as updated by any verified challenges to Class Members' dates worked. No Claim Form will be accepted from any individual claiming to be a Class Member unless: (1) the individual is on the Class List; or (2) the individual submits documentation in conjunction with her or his Claim Form that the Claims Administrator concludes, and Class Counsel agree, is sufficient to establish that the individual is a Class Member.
38. Class Member Dates Worked and Challenges. The Class Notice shall be individualized and shall include a statement of the dates worked by the Class Member

receiving the notice, based on available records.

- a. If a Class Member does not challenge the information set forth in the Class Notice, the Class Member need not do anything further and payment shall be made to that Class Member based on the statements of the dates worked and the terms of this Agreement.
 - b. If a Class Member wishes to challenge the dates worked as set forth in the Class Notice, that Class Member shall submit a written, signed challenge along with any supporting documents to the Claims Administrator at the address provided on the Class Notice within ninety (90) calendar days of the postmark date of the initial mailing of the Class Notice. No challenge shall be timely if postmarked more than ninety (90) calendar days after the date the Class Notice is first mailed to Class Members.
 - c. Within five (5) calendar days from the date the Claims Administrator receives notice of the challenge, the Claims Administrator shall send to Class Counsel and McDonald's counsel a copy of the documentation submitted in connection with that dispute. Within five (5) calendar days from the date counsel receive that documentation, Class Counsel and McDonald's counsel shall meet and confer and make one or more recommendations to the Claims Administrator, which shall thereafter make a final and binding determination without hearing or right to appeal and shall communicate that determination to the Class Member, Class Counsel, and McDonald's counsel.
39. Non-Reversionary Settlement and Remainder. There shall be no reversion from the Class Payment. Any uncashed or unclaimed settlement check amounts shall be redistributed to Class Members in proportion to their allotted shares from the Class

Payment. If the amount of such funds to be redistributed does not exceed \$40,000, subject to Court approval, such funds shall be donated as a *cy pres* recipient to Bay Area Legal Aid.

VI. RELEASED CLAIMS AND COVENANTS NOT TO SUE

40. Mutual Releases. Except as otherwise provided herein, in consideration for the promises set forth herein, each of the named Plaintiffs and each Class Member on the one hand and McDonald's on the other hand, for themselves and their respective agents, heirs, predecessors, successors, assigns, representatives and attorneys, do hereby mutually waive, release, acquit and forever discharge each other from any and all claims that were alleged in this action, arise out of or are related to the allegations and claims alleged in the action, and/or could have been alleged based on the facts, matters, transactions, or occurrences alleged in the action through the date of this Agreement. Without limiting the foregoing, it is understood and agreed by the named Plaintiffs and McDonald's that, as a condition of this Agreement, they each hereby expressly waive and relinquish any and all employment-related claims, rights, or benefits that they may have under California Civil Code §1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor."
41. Mutual Covenants Not To Sue. The Class Representatives covenant and agree and the Class Members shall be deemed to have covenanted and agreed, on their own behalf on behalf of their agents, heirs, predecessors, successors, assigns, representatives, and attorneys, and on behalf of all Class Members: (i) not to instigate, commence, maintain or prosecute against any Released Party any Settled Claims in any court of

law, tribunal or adjudicative body anywhere in the world at any time now and in the future; and (ii) that the foregoing covenants, agreements and releases shall be a complete defense to any such Settled Claims against any of the Released Parties. Likewise, McDonald's covenants and agrees on its own behalf and on behalf of its agents, heirs, predecessors, successors, assigns, representatives, and attorneys: (i) not to instigate, commence, maintain or prosecute against any Class Representative or Class Member any Settled Claims in any court of law, tribunal or adjudicative body anywhere in the world at any time now and in the future; and (ii) that the foregoing covenants, agreements and releases shall be a complete defense to any such Settled Claims against any Class Representative or Class Member.

VII. CONFIDENTIALITY

42. The Parties shall keep confidential all settlement communications regarding the negotiation and drafting of the Agreement. The Parties understand that the named Plaintiffs and Class Counsel reserve the right to report on this Settlement in their law firm websites and other public communications if and when the Settlement becomes a matter of public record but will limit any such communications about the Settlement to stating that the Parties reached a mutually acceptable resolution of the lawsuit, describing the terms of the Settlement, and/or providing their opinions about why the Settlement is fair, reasonable and/or significant based on the terms of the Settlement, the present status of the case, and the Court's prior rulings. McDonald's, named Plaintiffs and their respective counsel will not issue a press release or otherwise initiate contact with the media regarding the Settlement, but if asked about the Settlement by the media, McDonald's, named Plaintiffs and their counsel reserve the right to inform the media that the Parties reached a mutually acceptable resolution of

the lawsuit, to describe the terms of the Settlement, and/or to provide their opinions about why the Settlement is fair, reasonable and/or significant based on the terms of the Settlement, the present status of the case, and the Court's prior rulings. Nothing in this paragraph shall restrict Plaintiffs or Class Counsel from making any disclosures necessary to seek Court approval or to communicate with Class Members.

VIII. TERMINATION OR OTHER FAILURE OF SETTLEMENT

43. Automatic Voiding of Agreement if Settlement Not Finalized. In the event (i) the Court does not preliminarily approve the Settlement; (ii) the Court does not grant final approval to the proposed settlement in accordance with its terms; (iii) the Court does not enter a Final Judgment consistent with the terms of this Agreement; or (iv) the Effective Date does not occur or the Settlement does not become final for any other reason, the Settlement shall be null and void and the Parties agree that any order entered by the Court in furtherance of this Settlement should be treated as void *ab initio*. In such case, the Parties shall take all possible steps to return to the status quo as if the Parties had not entered into this Settlement. In such event, this Agreement, all negotiations, Court orders, and proceedings relating thereto shall be without prejudice to the rights of the Parties hereto, and all evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action, in any other litigation, or otherwise. Any funds used or to be used for the Settlement shall be returned to McDonald's, with the exception of amounts already paid by McDonald's or owing from McDonald's to the Claims Administrator for fees and costs actually incurred for services already performed.

IX. MISCELLANEOUS

44. No Admission of Liability or Wrongdoing. The Parties acknowledge that plaintiffs

contend McDonald's is legally responsible for having violated their rights under the California Labor Code, IWC Wage Order, and Unfair Competition Law; and the Parties further acknowledge that McDonald's expressly denies that it has violated any law, breached any agreement or obligation to the plaintiffs or the Class Members, or engaged in any wrongdoing with respect to the plaintiffs or the Class Members.

The Parties agree that neither this Agreement nor any actions undertaken by McDonald's in satisfaction of the Agreement shall constitute, or be construed as, an admission of any liability or wrongdoing. The Parties further agree and recognize that this Agreement shall not be admissible as evidence, offered as evidence, or cited or referred to by McDonald's or plaintiffs in any other action or proceeding, except in an action or proceeding brought to enforce its terms or by McDonald's in defense of any claims brought by the plaintiffs or any Class Members.

45. Binding Effect of Agreement on Class Members. Upon the Effective Date, all Class Members shall be bound by this Agreement, all Class Members' Settled Claims shall be dismissed with prejudice as against McDonald's, and all Settled Claims shall be released as against the Released Parties.
46. Binding upon Successors and Assigns. Except as provided herein, this Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto and the Released Parties as defined herein.
47. Good Faith Settlement. This Settlement has been negotiated and entered into between the Parties through arms-length negotiations, and it is made in good faith, including within the meaning of California Code of Civil Procedure §§877, *et seq.* and any comparable provisions provided under the laws of any state or territory of the United States, whether statutory or judicial decision, which is equivalent or similar to such

California code sections.

48. Amendment or Waiver Only in Writing. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. No rights hereunder may be waived except in writing.
49. Entire Agreement. This Agreement and any attached exhibits constitute the entire agreement between the Parties relating to the Settlement and the related transactions contemplated herein. All prior or contemporaneous agreements, understandings and statements, whether oral or written, and whether by a party or its counsel, are merged herein. No oral or written representations, warranties, or inducements have been made to any party concerning this Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.
50. Execution. This Agreement shall become enforceable in accordance with its terms upon its execution by: (a) the Class Representatives; (b) Class Counsel on behalf of the Class Representatives and the Class (approved as to form); (c) McDonald's; and (d) counsel for McDonald's (approved as to form).
51. Authorization to Execute Agreement and Effectuate Settlement and Agreement to Cooperate. Counsel for all Parties hereto warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their respective counsel shall cooperate with each other and use their best efforts to effect the implementation of this Agreement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement or on any supplemental

provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement. The person or persons signing this Agreement on behalf of McDonald's represents and warrants that he or she is authorized to sign this Agreement on behalf of McDonald's.

52. No Prior Assignment. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.
53. Governing Law. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of California, except to the extent that federal law requires federal law to govern.
54. Counterparts. This Agreement may be executed in one or more counterparts and by facsimile. All executed copies of this Agreement and photocopies thereof (including facsimile copies of signature pages) shall have the same force and effect and be as legally binding and enforceable as the original.
55. Exhibits. The terms of this Agreement include the terms set forth in the attached Exhibits 1, 2, and 3, which are incorporated by this reference as though fully set forth herein. The exhibits to this Agreement are an integral part of the Agreement.
56. Construction. The Parties have reached this Agreement through formal mediation followed by extensive arms-length negotiations. This Agreement has been drafted jointly by counsel for the Parties. Hence, in any construction or interpretation of this Agreement, the Agreement shall not be construed against either party as the principal drafter of the Agreement.

57. Retention of Jurisdiction. The Parties stipulate that the Court shall retain jurisdiction over the Parties to enforce the terms of this Agreement and all aspects of the Parties' settlement until performance in full of all terms of the Agreement.
58. No Signature Required by Class Members. Because the Class Members are so numerous, it is impossible or impractical to have each one execute this Agreement. The Class Notice shall advise such persons of the binding nature of the releases contained herein, and this Agreement shall have the same force and effect as if this Agreement were executed by each Class Member.
59. Titles and Captions of No Force. Paragraph titles or captions contained herein are inserted for convenience and ease of reference and do not define, limit, extend, or describe the scope of the terms of the Agreement and its provisions.
60. Mutual Cooperation. The Parties hereto agree to cooperate with each other to accomplish the terms of this Agreement, including but not limited to executing further documents and taking such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.
61. Invalid without Court Approval. This Agreement is subject to approval by the Court. In the event the Settlement is not approved, it shall be deemed null and void, of no force and effect, and the Parties represent, warrant, and covenant that in such event it shall not be admitted in the Action as evidence, or used as a basis for obtaining discovery in the Action.


IT IS SO STIPULATED AND AGREED.

Dated: 10, 26, 2016

By: Stephanie Ochoa
Stephanie Ochoa

Dated: 10/26, 2016

By:


Ernestina Sandoval

Dated: _____, 2016

By:

Yadira Rodriguez

Dated: _____, 2016

By:

Jasmine Hedgepeth

Dated: _____, 2016

By:

Altshuler Berzon LLP
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By:

Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By:

McDonald's U.S.A., L.L.C.

Dated: _____, 2016

By:

McDonald's Corp.

Dated: _____, 2016

By:

McDonald's Restaurants of California, Inc.

Dated: _____, 2016

By:

Quinn Emanuel Urquhart & Sullivan LLP
Counsel for McDonald's U.S.A., L.L.C.;
McDonald's Corp.; and McDonald's Restaurants
of California, Inc.
(Approved as to form only)

Dated: _____, 2016

By: _____
Ernestina Sandoval

Dated: 10/26, 2016

By: *Yadira Rodriguez*
Yadira Rodriguez

Dated: _____, 2016

By: _____
Jasmine Hedgepeth

Dated: _____, 2016

By: _____
Altshuler Berzon LLP
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
McDonald's U.S.A., L.L.C.

Dated: _____, 2016

By: _____
McDonald's Corp.

Dated: _____, 2016

By: _____
McDonald's Restaurants of California, Inc.

Dated: _____, 2016

By: _____
Quinn Emanuel Urquhart & Sullivan LLP
Counsel for McDonald's U.S.A., L.L.C.;
McDonald's Corp.; and McDonald's Restaurants
of California, Inc.
(Approved as to form only)

Dated: _____, 2016

By: _____
Ernestina Sandoval

Dated: _____, 2016

By: _____
Yadira Rodriguez

Dated: OCT 26, 2016

By:  _____
Jasmine Hedgepeth

Dated: _____, 2016

By: _____
Altshuler Berzon LLP
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
McDonald's U.S.A., L.L.C.

Dated: _____, 2016

By: _____
McDonald's Corp.

Dated: _____, 2016

By: _____
McDonald's Restaurants of California, Inc.

Dated: _____, 2016

By: _____
Quinn Emanuel Urquhart & Sullivan LLP
Counsel for McDonald's U.S.A., L.L.C.;
McDonald's Corp.; and McDonald's Restaurants
of California, Inc.
(Approved as to form only)

Dated: _____, 2016

By: _____
Ernestina Sandoval


Dated: _____, 2016

By: _____
Yadira Rodriguez

Dated: _____, 2016

By: _____
Jasmine Hedgepeth

Dated: October 27, 2016

By:  _____
Altshuler Berzon LLP
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
McDonald's U.S.A., L.L.C.

Dated: _____, 2016

By: _____
McDonald's Corp.

Dated: _____, 2016

By: _____
McDonald's Restaurants of California, Inc.

Dated: _____, 2016

By: _____
Quinn Emanuel Urquhart & Sullivan LLP
Counsel for McDonald's U.S.A., L.L.C.;
McDonald's Corp.; and McDonald's Restaurants
of California, Inc.
(Approved as to form only)

Dated: _____, 2016

By: _____
Ernestina Sandoval

Dated: _____, 2016

By: _____
Yadira Rodriguez

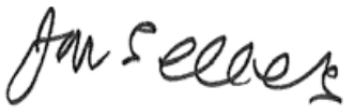
Dated: _____, 2016

By: _____
Jasmine Hedgepeth

Dated: _____, 2016

By: _____
Altshuler Berzon LLP
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: 10/27, 2016

By: 
Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
McDonald's U.S.A., L.L.C.

Dated: _____, 2016

By: _____
McDonald's Corp.

Dated: _____, 2016

By: _____
McDonald's Restaurants of California, Inc.

Dated: _____, 2016

By: _____
Quinn Emanuel Urquhart & Sullivan LLP
Counsel for McDonald's U.S.A., L.L.C.;
McDonald's Corp.; and McDonald's Restaurants
of California, Inc.
(Approved as to form only)

Dated: _____, 2016

By: _____
Ernestina Sandoval

Dated: _____, 2016

By: _____
Yadira Rodriguez

Dated: _____, 2016

By: _____
Jasmine Hedgepeth

Dated: _____, 2016

By: _____
Altshuler Berzon LLP
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: 10/27, 2016

By: Hal Merck (SV)
McDonald's U.S.A., L.L.C.

Dated: 10/27, 2016

By: Hal Merck
McDonald's Corp.

Dated: 10/27, 2016

By: Hal Merck
McDonald's Restaurants of California, Inc.

Dated: _____, 2016

By: _____
Quinn Emanuel Urquhart & Sullivan LLP
Counsel for McDonald's U.S.A., L.L.C.;
McDonald's Corp.; and McDonald's Restaurants
of California, Inc.
(Approved as to form only)

Dated: _____, 2016

By: _____
Ernestina Sandoval

Dated: _____, 2016

By: _____
Yadira Rodriguez

Dated: _____, 2016

By: _____
Jasmine Hedgepeth

Dated: _____, 2016

By: _____
Altshuler Berzon LLP
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives and the Class
(Approved as to form only)

Dated: _____, 2016

By: _____
McDonald's U.S.A., L.L.C.

Dated: _____, 2016

By: _____
McDonald's Corp.

Dated: _____, 2016

By: _____
McDonald's Restaurants of California, Inc.

Dated: _____, 2016


By:  _____
Quinn Emanuel Urquhart & Sullivan LLP
Counsel for McDonald's U.S.A., L.L.C.;
McDonald's Corp.; and McDonald's Restaurants
of California, Inc.
(Approved as to form only)

EXHIBIT 1

EXHIBIT 1

CLAIM FORM

Ochoa et al. v. McDonald's Corp. et al., N.D. Cal. No. 3:14-cv-02098 JD
- *Settlement with McDonald's Defendants Only* -

I. INSTRUCTIONS:

1. **You are not required to submit a claim form if you received the Notice of Class Settlement in the mail.** If you did not receive a copy of the Notice of Class Settlement in the mail, you **must** fill out this Claim Form to receive your share of the settlement with McDonald's. *In case of doubt, please fill out this Claim Form and submit it to the Claims Administrator no later than **DATE** to preserve your right to receive your share of the settlement.*
2. Please read this Claim Form, provide the information requested below, sign at the bottom, and mail the form to the Claims Administrator at the address below **no later than [REDACTED], 2017** to be eligible to receive your share of the settlement with McDonald's as set forth in the Class Notice that is available at [www.\[REDACTED\]](http://www.[REDACTED]).
3. More information concerning this lawsuit, this Claim Form, and your rights and options in the lawsuit is provided in the Class Notice.
4. **If you change your address or any of your other contact information before final distribution, please send the Claims Administrator your updated contact information.**
5. You may be required to provide proof of employment to be eligible to participate in the settlement. If the Claims Administrator requires proof of employment, or proof of your dates of employment, the Claims Administrator will contact you using the contact information you provide below.

IF A CLAIM FORM IS REQUIRED FROM YOU, YOU MUST TIMELY COMPLETE, SIGN, AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE [REDACTED], ADDRESSED AS FOLLOWS IN ORDER TO RECEIVE A MONETARY RECOVERY:

**CPT Group, Inc.
16630 Aston # A
Irvine, CA 92606**

IF YOU ARE REQUIRED TO TIMELY SUBMIT THIS CLAIM FORM TO SHARE IN THE SETTLEMENT BUT FAIL TO DO SO, YOU WILL NOT RECEIVE A SETTLEMENT PAYMENT, AND THE SETTLEMENT WITH MCDONALD'S AND RELEASE OF CLAIMS WILL BE BINDING ON YOU (UNLESS YOU HAVE TIMELY OPTED OUT OF THE CLASS OR THE SETTLEMENT).

It is strongly recommended that you obtain proof of timely mailing and keep it until receipt of payment pursuant to the terms of the settlement.

II. CERTIFICATION AND RELEASE OF CLAIMS IN SETTLEMENT OF LAWSUIT:

By providing the information below, I certify, understand, and agree to the following:

- I was employed at one or more of the five McDonald's restaurants in California located at: (1) 2301 MacDonald Avenue, Richmond, CA 94804; (2) 4514 Telegraph Avenue, Oakland, CA 94607; (3) 6623

San Pablo Avenue, Oakland, CA 94608; (4) 800 Market Street, Oakland, CA 94607; or (5) 1330 Jackson Street, Oakland, CA 94612, at any time between March 12, 2010 and November 5, 2016.

- I hereby request payment of my settlement share of the settlement with McDonald’s in *Ochoa et al. v. McDonald’s Corp. et al.*, N.D. Cal. No. 3:14-cv-02098 JD, as set forth in the Class Notice.
- I understand that I am represented by the plaintiffs’ attorneys and that if I have any questions concerning the lawsuit, the settlement, or this Claim Form, I may contact one of the plaintiffs’ attorneys listed on the Class Notice. I also understand that the complete terms of the Settlement Agreement, including definitions of terms and the release of claims that will bind me as a class member if I do not opt out of the lawsuit, are set forth in the Settlement Agreement on file with the Court and can be found at www._____.
- I understand that the settlement of the lawsuit with McDonald’s, as described in more detail in the Notice, is fully binding on me. I wish to participate in the settlement with McDonald’s by submitting this Claim Form for a settlement payment and by agreeing to the release of claims provided as part of the settlement.
- Upon the Effective Date of this settlement, as set forth in full in the Settlement Agreement, I fully, finally, and forever release, relinquish, and discharge all “Settled Claims” against the “Released Parties,” as those quoted terms are defined in the Settlement Agreement and the Class Notice.

I declare under penalty of perjury under the laws of the United States that I have read and understand this Claim Form, that the information supplied by me is true and correct, and that I accept and agree to the terms and conditions of the settlement of the lawsuit with McDonald’s as set forth in this Claim Form and the Settlement Agreement, including the release of claims I am providing.

Signed: _____
(Sign your name here)

Date: _____
(mm/dd/yyyy)

This Claim Form was signed in: _____, _____.
(City) (State)

Print Or Type Information Requested Below:

NAME (First, Middle, Last): _____

STREET ADDRESS: _____

CITY, STATE, ZIP CODE: _____

OTHER NAMES USED AT WORK (if any): _____

TELEPHONE NUMBERS: Home: _____ Cell: _____

EMAIL ADDRESS: _____

ADDRESS OF RESTAURANT WHERE EMPLOYED: _____

DATES OF EMPLOYMENT: _____

Optional: If you do not want back-up withholding taken from your settlement check, you may also fill out the following:

Taxpayer Identification Number Certification – Substitute IRS Form W-9

Enter your Social Security Number or Taxpayer Identification Number, if any: _____ - _____ - _____

Print name as shown on your income tax return if different from _____

First Name: _____ Last Name: _____

Under penalty of perjury, I certify that:

1. The taxpayer identification number shown on this form is my correct taxpayer identification number, and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

EXHIBIT 2

EXHIBIT 2

Notice of Settlement of Class Action

United States District Court for the Northern District of California
A federal court authorized this notice. This is not a solicitation from a lawyer.

RE: *Ochoa, et al. v. McDonald's Corp., et al., N.D. Cal. No. 3:14-cv-02098-JD*
CLASS ACTION SETTLEMENT WITH MCDONALD'S DEFENDANTS

TO: All current and former crew members, crew trainers, or maintenance workers paid on an hourly basis at any of the following McDonald's restaurants owned and/or operated by The Edward J. Smith and Valerie S. Smith Family Limited Partnership and/or Edward, Valerie, or Michael Smith between March 12, 2010 and November 5, 2016:
2301 MacDonald Avenue, Richmond, CA 94804
4514 Telegraph Avenue, Oakland, CA 94607
6623 San Pablo Avenue, Oakland, CA 94608
800 Market Street, Oakland, CA 94607
1330 Jackson Street, Oakland, CA 94612.

Our records show that, under the Settlement with McDonald's, you are entitled to compensation in the approximate amount of \$_____. Read this Class Notice to learn more about your rights.

*** This Notice discusses a settlement with the McDonald's defendants. ***
This settlement is separate and different from the prior settlement with defendant Smith.

If you received this Class Notice by mail you do not need to take any further steps to participate in this settlement. Unless you "opt out" as set forth below, you will automatically be mailed a settlement check after the Effective Date of the Settlement, if the settlement is approved by the Court.

If you did not receive this Class Notice by mail, you must complete the accompanying Claim Form and mail it to the Claims Administrator no later than [REDACTED], 2017 to be eligible for a share of the settlement. Claim Forms must be postmarked no later than [REDACTED] to be valid.

If you are not sure whether you received the Class Notice by mail, please complete the accompanying Claim Form and mail it to the Claims Administrator no later than [REDACTED], 2017.

If your mailing address has changed, or if any of your contact information changes before the final distribution, you are responsible for providing your updated information to the Claims Administrator.

I. Introduction

There is a proposed settlement of claims against McDonald's Corporation, McDonald's USA, LLC, and McDonald's Restaurants of California, Inc. ("McDonald's") in a lawsuit filed in the U.S. District Court for the Northern District of California. You are receiving this Class Notice because available records show that you are a member of a class of persons who worked as a crew member, crew trainer, or maintenance person at one of the McDonald's restaurants owned and operated by The Edward J. Smith and Valerie S. Smith Family Limited Partnership and/or Edward, Valerie, or Michael Smith ("Smith") at some time between March 12, 2010 and November 5, 2016.

This Class Notice advises you of your rights, and explains how you may:

1. Recover your share of the settlement money if the Court approves the settlement;
2. Dispute the calculation of your settlement share;
3. Object to the settlement; and/or
4. Exclude yourself ("opt out") from the settlement.

A final settlement hearing will be held at the federal courthouse in San Francisco on , 2017 to determine whether the settlement should be granted final approval.

If the Court grants final approval, the settlement will resolve and release claims you may have against McDonald's as set forth in more detail below and in the Settlement Agreement. This settlement does *not* affect the separate settlement that has already been reached with Smith.

II. Description of the Lawsuit

Plaintiffs Stephanie Ochoa, Ernestina Sandoval, Yadira Rodriguez, and Jasmine Hedgepeth ("Plaintiffs") filed this action on March 12, 2014 on behalf of themselves and all other current and former hourly workers working as crew members, crew trainers, and maintenance people in one or more of Smith's five restaurants on or after March 12, 2010.

Plaintiffs alleged 13 claims for relief under California law in their First Amended Complaint, including claims for unpaid wages, minimum wages, and overtime premiums; meal period and rest break violations; violations of recordkeeping and wage statement obligations; failure to reimburse crew members for uniform maintenance; and unlawful business practices. Plaintiffs sought relief including back wages, liquidated damages, injunctive and declaratory relief, civil penalties, interest, attorneys' fees, and costs. To review plaintiffs' First Amended Complaint in more detail, you may contact one of the counsel for the plaintiffs listed below or review it at www. .

McDonald's denies that it has violated any law, breached any agreement or obligation to the plaintiffs or the class members, or engaged in any wrongdoing with respect to the plaintiffs or the class members. McDonald's has entered into this settlement to fully, finally, and forever resolve this litigation against it, based on the terms set forth in the Settlement Agreement, to avoid the burden, expense, and uncertainty associated with the litigation.

III. Summary of the Settlement Agreement

People Included in the Proposed Settlement.

As described in more detail in the Settlement Agreement, the settlement includes all current and former workers who worked as hourly paid crew members, crew trainers, or maintenance workers at the restaurants located at 2301 MacDonald Avenue, Richmond, CA 94804; 4514 Telegraph Avenue, Oakland, CA 94607; 6623 San Pablo Avenue, Oakland, CA 94608; 800 Market Street, Oakland, CA 94607; and 1330 Jackson Street, Oakland, CA 94612, at any time between March 12, 2010 and November 5, 2016.

Who is Required to Submit a Claim Form?

No Claim Form need be submitted by any individual who receives a Class Notice in the mail. If you received a Notice in the mail, you are already on the Class List.

A Class Member who does not receive a hard copy of the Class Notice by mail **must** submit a Claim Form to the Claims Administrator to participate in the settlement. This Claim Form must be mailed to the Claims Administrator no later than , 2017.

The Claims Administrator will send a Claim Form to any individual who requests one and believes he or she may be a class member.

Amount and Timing of the Proposed Settlement.

McDonald's will pay up to \$3,750,000 to resolve plaintiffs' claims against it, provided the Court approves the settlement as set forth in the Settlement Agreement. This amount is in addition to the more than \$700,000 separately paid by defendant Smith to settle the claims against it.

From the total amount that McDonald's has agreed to pay, the parties will request that the Court approve the following payments: (1) \$1,500,000 for payments to class members, to be allocated according to the terms of the Settlement Agreement ("Class Payment"), including a service award of \$500 each for class representatives Stephanie Ochoa, Ernestina Sandoval, Yadira Rodriguez, and Jasmine Hedgepeth; (2) \$250,000 for civil penalties to be paid by McDonald's under California's Labor Code Private Attorney General Act ("PAGA") to the State of California for labor law enforcement and education; and (3) \$2,000,000 for litigation expenses incurred by and statutory attorneys' fees for Plaintiffs' Counsel. McDonald's will separately pay all costs of Class Notice and Claims Administration. No payments to plaintiffs, class members, plaintiffs' counsel, and the State of California will be distributed until after the Effective Date as defined in the Settlement Agreement.

The Claims Administrator will calculate the total number of weeks worked during the Class Period by all Class Members combined. The Claims Administrator will then:

a. Allocate \$716,667 of the Class Payment to backpay, interest and liquidated damages. Each Class Member's share of this amount will be based on the number of weeks he or she worked during the Class Period.

b. Allocate \$350,000 of the Class Payment for wage statement penalties. This amount will be paid to Class Members who worked between March 12, 2013 and the end of the Class Period, based on the number of weeks each Class Member worked during that period.

c. Allocate \$350,000 of the Class Payment for civil penalties available to former workers. This amount will be allocated in equal shares among Class Members whose final paycheck was dated between March 12, 2011 and the end of the Class Period.

d. Allocate \$83,333 of the Class Payment for the Class Members' share of PAGA penalties. This amount will be paid to Class Members who worked between March 12, 2013 and the end of the Class Period, based on the number of weeks each Class Member worked during that period.

Service awards of up to \$500 for each of the four named plaintiffs, if approved by the Court, will be paid proportionally from each of the amounts listed in (a) through (c) above.

Injunctive Relief.

McDonald's has also agreed to develop materials that it will make available to Smith for training of Smith owners and managers explaining how Smith could use scheduling and timekeeping software to identify the number, length and timing of meal periods and rest breaks and how Smith could determine whether to pay an employee a premium wage because the employee's time punches reflect a shift that is missing a required meal period or rest break or a shift that includes an untimely meal period or rest break.

After the training has taken place, McDonald's will report to plaintiffs' counsel the names, positions, and date of training for each Smith owner, supervisor, store manager, department manager, shift manager, and other Smith employee or agent who attends the training, to the extent McDonald's has such information.

Calculation of Individual Class Member Awards.

Each class member's share of the Class Payment will be based on the allocation described above. In calculating those amounts, the Claims Administrator has relied on work records produced by Smith.

Smith's records show that you are a class member who worked in one of Smith's McDonald's restaurants from [DATE] through [DATE].

Based on this information, your individual share of the settlement with McDonald's is estimated to be \$_____.

This estimate may change, based on the number of class members who cannot be reached or who do not seek their share of the settlement fund (because these estimates assume full participation by all class members), and is also based on whether the Court approves service awards to the class representatives as described above.

All legally required employer taxes and withholdings will be deducted from your individual payment of the settlement funds, based on the allocation described below.

Tax Matters.

For tax purposes, 24% of the amount distributed to each class member will be treated as payment of lost wages (including payroll taxes, deductions, and contributions), 14% will be treated as interest, and 62% percent will be allocated to civil or statutory penalties or liquidated damages. Plaintiffs' counsel is not qualified to provide tax advice to any class member, and cannot represent that applicable state and federal tax authorities will accept that allocation. Similarly, the Agreement provides that McDonald's is not responsible for any tax obligations, is not providing any tax advice to the plaintiffs or any class member, and does not represent that applicable state and federal tax authorities will accept that allocation. Each class member remains personally responsible for ensuring the proper payment of all taxes due, as determined by the applicable taxing authority. If you do not have or submit a valid Social Security Number or Individual Taxpayer Identification Number (ITIN), federal law requires that a 28% backup withholding must be applied to your payment.

Releases.

As set forth in more detail in the Settlement Agreement, upon the Effective Date each Class Member will waive, release, acquit and forever discharge McDonald's Corporation, McDonald's U.S.A., L.L.C, and McDonald's Restaurants of California, Inc., and their directors, shareholders, officers, owners, and attorneys from any and all Settled Claims, including any claims that arose during the Class Period.

The Settled Claims are any and all claims that were alleged in this action, arise out of or are related to the allegations and claims alleged in the action, and/or could have been alleged based on the facts, matters, transactions, or occurrences alleged in the lawsuit.

If you do not timely opt out, the law will assume you released all claims covered by the releases in the Settlement.

The information provided in this Class Notice is only a summary. The terms of the Settlement Agreement are the binding terms of this settlement, and all such terms, including the releases that will bind you as a class member if you do not opt out, are set forth fully in the Settlement Agreement that is on file with the Court and also can be found at www.██████████. If the settlement is not approved by the Court or does not become final for some other reason, the litigation against McDonald's will continue.

IV. How to Dispute the Calculation of Your Share of the Settlement

If you do not agree with the dates of your employment stated above, you must submit a written, signed statement explaining why the dates are incorrect, along with any supporting documents and the Claim Form, to the Claims Administrator at the address provided below (also provided on the Claim Form) by no later than [██████████](http://www.██████████), 2017. No challenge will be

considered if postmarked at [REDACTED], 2017. If you file a timely challenge, the Claims Administrator will evaluate your challenge, and its decision will be final and binding.

V. How to Exclude Yourself or Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself by “opting out.” If you opt out, you will not receive any money from the settlement with McDonald’s, and you will not release any of your claims. To opt out, you must send a letter that includes your name, telephone number, and current address, and the following statement: “I, [NAME], voluntarily choose not to participate in the settlement of the Certified Class Action against McDonald’s Corporation and McDonald’s USA, LLC, and hereby waive any rights I may have to participate in the Settlement with McDonald’s Corporation, McDonald’s USA, LLC, and McDonald’s Restaurants of California, Inc. in the federal court lawsuit entitled *Ochoa et al. v. McDonald’s Corp. et al.*, N. D. Cal. No. 3:14-cv-02098-JD.” You must sign the statement and it must be postmarked by [REDACTED]. The statement should be mailed to the following address:

CPT Group, Inc.
16630 Aston # A
Irvine, CA 92606

No opt-out statement will be valid if postmarked after [REDACTED]. Requests to opt out that do not include all required information will be deemed null, void, and ineffective.

If a class member files an opt-out statement and a Claim Form, the opt-out statement will be deemed invalid and the class member’s Claim Form and release of claims will be valid and controlling.

VI. How to Object to the Settlement

If you do not opt out but believe that the Court should not approve the settlement for any reason, you may object to the proposed settlement. To object, you must submit a written statement with your name, telephone number, current address, the time period you worked at a McDonald’s restaurant covered by the settlement, and the address to which your Class Notice and Claim Form was mailed. Your statement should state all of the reasons you believe the Court should not approve the settlement. To file your objection, you must mail your statement to:

Ochoa v. McDonald’s Corp., N.D. Cal. No. 3:14-cv-02098-JD
U.S. District Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
Att: Judge James Donato

You must also send copies of your statement to:

MATTHEW J. MURRAY
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108

JONATHAN BUNGE
Quinn Emanuel
500 W. Madison Street, Suite 2450
Chicago, Illinois 60661

No objection will be considered by the Court if postmarked after [REDACTED]. If you do not opt out or object in the way described in the Class Notice and Settlement Agreement, you will have waived any objections to the settlement you have, you will not be permitted to make any objections (whether by appeal or otherwise) to the settlement, and the settlement will be fully binding upon you.

At the final settlement hearing scheduled for [DATE], counsel for the plaintiffs and for McDonald's will ask the Court to approve the settlement, as set forth in full detail in the Settlement Agreement. *You are not required to appear at the hearing to receive your share of the settlement.* If you want to appear and be heard at the hearing, (1) your written objections must advise the Court that you (and/or your attorney) intend to appear at the settlement hearing, and (2) you must file with the Court and send to all parties' counsel a written "Notice of Appearance" by [DATE]. You will be solely responsible for the fees and costs for your own attorney.

VII. Hearing on the Settlement

The Court has scheduled a final approval hearing about the settlement at [TIME, DATE, ADDRESS]. The Court will review the proposed settlement and decide whether it is fair, reasonable and adequate, and should be finally approved. You are welcome, but not required, to attend this hearing, whether you agree with or object to the proposed settlement. You will be permitted to speak at the hearing only if you timely follow the procedures for objecting to the settlement, as described above.

The date of the final approval hearing may be changed without further notice to the Class. You may check to determine whether the date of the final approval hearing has changed at [www.\[REDACTED\]](http://www.[REDACTED]), or by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays.

VIII. What if I Need More Information?

If you have any questions or would like more information, contact [REDACTED] at Altshuler Berzon LLP at (415) 421-7151 or [REDACTED]@altber.com. You may also contact any of the counsel for plaintiffs listed below. The full terms of the Settlement Agreement, including the release of claims that will bind you as a class member if you do not opt out, are set forth in the Settlement Agreement that is on file with the Court and that can be found at [www.\[REDACTED\]](http://www.[REDACTED]).

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PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR COUNSEL
FOR MCDONALD'S OR SMITH WITH QUESTIONS

EXHIBIT 3

1 MICHAEL RUBIN (SBN 80618)
 BARBARA J. CHISHOLM (SBN 224656)
 2 P. CASEY PITTS (SBN 262463)
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14 *Attorneys for Plaintiffs and the Class*

15
 16 IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA – San Francisco

17 STEPHANIE OCHOA, *et al.*,
 18
 Plaintiffs,

19 vs.

20 MCDONALD’S CORP., *et al.*,
 21
 Defendants.

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

**[PROPOSED] ORDER GRANTING MOTION
 FOR FINAL APPROVAL OF CLASS ACTION
 SETTLEMENT AND JUDGMENT**

Complaint Filed: March 12, 2014
 Trial Date: December 5, 2016

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[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT

This matter came before the Court for hearing pursuant to the Order Granting Preliminary Approval of Class Settlement dated _____ (“Preliminary Approval Order”), and on application of the parties for final approval of the parties’ Settlement Agreement dated _____ (“Settlement”). Due and adequate notice having been given of the Settlement as required in the Preliminary Approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. All defined terms used in this Judgment have the same meanings as set forth in the Settlement.
2. The Court finds that it has jurisdiction over the subject matter of the action and over all parties to the action, including all Class Members.
3. The Court finds and concludes that adequate notice has been given to the Class as directed in the Preliminary Approval Order, which notice was the best notice practicable under the circumstances and fully satisfied due process, the requirements of Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law. The Court further finds and concludes that notice was provided to appropriate state and federal officials in accordance with all applicable laws, including Cal. Labor Code § 2699(l)(2) and the Class Action Fairness Act.
4. Class Members were given a full opportunity to participate in the Final Settlement Hearing, and all Class Members and other persons wishing to be heard have been heard. Accordingly, the Court determines that all Class Members who did not timely and properly opt out are bound by this Final Order and Judgment. [A list of the individuals who did timely and properly opt out is included on Exhibit A.]
5. The Court hereby finally approves in all respects the Settlement and finds that the Settlement and the plan of distribution and allocation are, in all respects, fair, just, equitable, reasonable, and adequate for the Class. The Court also finds that the Settlement is in

1 the best interest of the Class Members and that extensive arm's-length negotiations have taken
2 place in good faith between Class Counsel and counsel for the Released Parties resulting in the
3 Settlement. The Court has considered all relevant factors for determining the fairness of the
4 Settlement and has concluded that all such factors weigh in favor of granting final approval.
5 The Court directs the Settlement to be consummated in accordance with the terms and
6 conditions set forth in the Settlement.

7 6. The Court hereby finds that Class Counsel have fairly and adequately
8 represented the Class for all purposes, including entering into and implementing the Settlement.

9 7. If the Settlement does not become effective in accordance with the terms of the
10 Settlement, this Judgment shall be rendered null and void to the extent provided by and in
11 accordance with the Settlement and shall be vacated and, in such event, all orders entered and
12 releases delivered in connection herewith shall be null and void to the extent provided by and in
13 accordance with the Settlement.

14 8. Upon the Effective Date, the Class Representatives and each Class Member on
15 the one hand and McDonald's on the other hand, for themselves and their respective agents,
16 heirs, predecessors, successors, assigns, representatives and attorneys, mutually shall be
17 deemed to have, and by operation of the Final Approval, shall have fully, finally, and forever
18 irrevocably waived, released, relinquished, and discharged with prejudice each other from any
19 and all claims that were alleged in this action, arise out of or are related to the allegations and
20 claims alleged in the action, and/or could have been alleged based on the facts, matters,
21 transactions, or occurrences alleged in the action through the date of the Settlement. By
22 operation of the Final Approval, the Class Representatives and McDonald's shall be deemed to
23 have waived and relinquished any and all employment-related claims, rights, or benefits that
24 each may have with respect to the other under California Civil Code § 1542, which provides:
25 "A general release does not extend to claims which the creditor does not know or suspect to
26 exist in his or her favor at the time of executing the release which if known by him or her must
27 have materially affected his or her settlement with the debtor."
28

1 9. The Court hereby dismisses the above-captioned action against the Released
2 Parties with prejudice as to the Class Representatives and all Class Members and without costs,
3 except as otherwise provided in the Settlement.

4 10. No Class Representative or Class Member, either directly, representatively, or in
5 any other capacity, shall commence, maintain or prosecute any action or proceeding against
6 any or all Released Party or Parties in any court or tribunal asserting any of the Settled Claims
7 defined in the Settlement. The covenants, agreements, and releases in the Settlement shall be a
8 complete defense to any such Settled Claims against any of the Released Parties as define in the
9 Settlement.

10 11. Nothing in this Final Order and Judgment, the Settlement, or any documents or
11 statements related thereto, is or shall be deemed or construed to be an admission or evidence of
12 any violation of any statute or law or of any liability or wrongdoing by any of the Released
13 Parties.

14 12. The Court finds that a service award of \$500 for each Class Representative is
15 appropriate for the Class Representatives' efforts in bringing and prosecuting this action and
16 for devoting time and effort to keeping themselves informed of the litigation.

17 13. Class Counsel have moved for an award of attorneys' fees and reimbursement of
18 litigation expenses. Class Counsel's motion will be addressed by a separate order.

19 14. Without affecting the finality of this Final Order and Judgment in any way, this
20 Court hereby retains continuing jurisdiction over (a) implementation of the Settlement; and (b)
21 the Parties and the Class Members for the purpose of construing, enforcing, and administering
22 the Settlement and this Final Order and Judgment.

23 **IT IS SO ORDERED.**

24
25 Dated: _____

26 Hon. James Donato
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Attorneys for Plaintiffs and the Class

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) GRANTING
PRELIMINARY APPROVAL OF THE
PROPOSED CLASS ACTION SETTLEMENT,
(2) DIRECTING DISSEMINATION OF NOTICE
TO THE CLASS; AND (3) 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 McDonald's Defendants, and
3 the Court having reviewed that motion, the accompanying memorandum of points and authorities
4 in support of the motion and other supporting documents, the parties' Settlement Agreement and
5 the record in this case, and for good cause shown, the Court hereby GRANTS plaintiffs' motion
6 and ORDERS as follows:

7 **I. PRELIMINARY APPROVAL OF SETTLEMENT**

8 The Settlement with defendants McDonald's Corporation, McDonald's U.S.A., LLC, and
9 McDonald's Restaurants of California, Inc. ("McDonald's") is attached as Exhibit A to the
10 Declaration of Barbara J. Chisholm in Support of Preliminary Approval of Class Action
11 Settlement. The Court has reviewed the terms of the Settlement. The Court has also considered
12 the declaration of Barbara J. Chisholm in support of preliminary approval. Based on the Court's
13 review of these papers and its familiarity with the case, the Court finds and concludes that the
14 Settlement is the result of arms-length negotiations between the parties conducted after class
15 counsel adequately investigated plaintiffs' claims and became familiar with the strengths and
16 weaknesses of those claims. The Court concludes that the proposed settlement satisfies all of the
17 requirements for preliminary settlement approval. The Settlement has no obvious defects and falls
18 within the range of possible approval as fair, adequate, and reasonable, such that notice to the class
19 is appropriate. Accordingly, the Settlement is hereby preliminarily approved.

20 **II. APPROVAL OF THE CLASS NOTICE, CLAIM FORM, AND MANNER OF
21 DISTRIBUTION OF NOTICE AND PAYMENTS**

22 The parties have submitted for this Court's approval a proposed Class Notice and a
23 proposed Claim Form (for use only by class members whose mail is undeliverable or who are not
24 on the class list). The parties have also proposed a plan for disseminating these documents by mail
25 to all class members, after the Court grants preliminary approval of the Settlement, and a plan for
26 distributing payments to class members after the Court grants final approval. After carefully
27 reviewing these documents and plan of dissemination, the Court finds and concludes as follows:
28

1 **a. Best Notice Practicable**

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

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

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

21 The proposed plan for disseminating the Class Notice is reasonably calculated to reach all
22 individuals who would be bound by the Settlement. The Claims Administrator will distribute the
23 Class Notice to all class members by first-class mail to their last known address (including any
24 updated addresses that may be discovered through reasonable methods). The Claims Administrator
25 will also track non-delivered notice materials and take reasonable steps to re-send them to the
26 correct, current addresses. The Claims Administrator will also email a copy of the Class Notice to
27 all class members whose email addresses are known.

28 The Court finds and concludes that the proposed plans for disseminating the Class Notice

1 will provide the best notice practicable and satisfies the notice requirements of Rule 23(e) and all
2 other legal and due process requirements. The Court hereby orders as follows:

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

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

10 v. No later than ten (10) business days after entry of this Order, the Claims
11 Administrator shall prepare, in electronic form, the Class List described in ¶10.b of the Settlement
12 Agreement.

13 vi. No later than ten (10) business days after preparation of the Class List, the
14 Claims Administrator shall mail the Class Notice to all class members and shall email the Class
15 Notice to all class members whose email addresses are known, in accordance with ¶10.d of the
16 Settlement Agreement.

17 vii. The Class Notice shall inform the class members that, as provided in the
18 Settlement Agreement, the deadline for submitting any objection to the Settlement or for opting out
19 of the Settlement shall be sixty (60) calendar days after the postmark date of the initial mailing of
20 Class Notice, and that the deadline for submitting a Claim Form (where necessary) shall be ninety
21 (90) calendar days after such postmark date.

22 viii. For any notice that is returned by the post office as undeliverable, the Claims
23 Administrator shall perform a skip trace that shall include: (1) processing the class list through the
24 United States Postal Service's National Change of Address database; (2) performing address
25 searches using public and proprietary electronic resources as are available to the Claims
26 Administrator that lawfully collect address data from various sources such as utility records,
27 property tax records, motor vehicle registration records, and credit bureaus; and (3) calling last-
28 known telephone numbers (and telephone numbers updated through public and proprietary

1 databases). If the Claims Administrator is successful in locating an alternate subsequent address or
2 addresses, the Claims Administrator will forward the notice to the new address within ten (10)
3 calendar days of receipt of the undeliverable notice.

4 ix. If a Claim Form is timely submitted but is deficient in one or more aspects,
5 the Claims Administrator shall, within five (5) calendar days of receipt of the deficient form, notify
6 the Parties' counsel of receipt of the deficient form and shall return the form to the class member
7 with a letter explaining the deficiencies and informing the class member that he or she shall have
8 fourteen (14) calendar days from the date of the deficiency notice to correct the deficiencies and
9 resubmit the Claim Form. This letter shall be provided in English and Spanish.

10 x. In the event of final approval of the settlement, the Claims Administrator
11 shall distribute payments to class members in the manner and at the time provided by ¶¶25-39 of
12 the Settlement Agreement.

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

15 **III. INJUNCTIVE RELIEF**

16 Within one month of the date of this Order, McDonald's shall implement the injunctive
17 relief set forth in ¶¶19-25 of the Settlement Agreement.

18 **IV. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

19 **a. Final Approval Hearing**

20 The Court hereby schedules a hearing to determine whether to grant final approval of the
21 Settlement (the "Final Approval Hearing") for _____.

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

23 **i. Form of Election**

24 A class member may opt out of the Settlement by timely mailing a valid opt-out statement
25 to the Claims Administrator. The procedure for opting out shall be the procedure set forth in the
26 Court-approved Class Notice attached as Exhibit 2 to the Settlement Agreement. The statement to
27 be provided by a class member who chooses to opt out of the Settlement shall be: "I, [NAME],
28 voluntarily choose not to participate in the settlement of the Certified Class Action against

1 McDonald's Corporation and McDonald's USA, LLC, and hereby waive any rights I may have to
2 participate in the settlement with McDonald's Corporation, McDonald's USA, LLC, and
3 McDonald's Restaurants of California, Inc. in the federal court lawsuit entitled *Ochoa v.*
4 *McDonald's Corp.*, N. D. Cal. No. 3:14-cv-02098-JD.”

5 ii. Deadline for Submitting Election

6 Absent a showing of good cause, as determined by the Claims Administrator after input
7 from Class Counsel and McDonald's, no opt-out statement shall be honored or valid if postmarked
8 more than sixty (60) calendar days after the postmark date of the initial mailing of the Class Notice.
9 Requests to opt out that do not include all required information shall be deemed null, void, and
10 ineffective. If a class member files both an opt-out statement and a Claim Form, the opt-out
11 statement shall be deemed invalid and the class member's Claim Form and release of claims shall
12 be valid and controlling.

13 **c. Deadline for Filing Objections to Settlement**

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

17 i. Any such objection must be filed with the clerk of the Court and served on
18 counsel for the Parties identified in the Class Notice no later than sixty (60) calendar days after the
19 postmark date of the initial mailing of Class Notice.

20 ii. The postmark date of the mailing shall be the exclusive means for
21 determining whether an objection is timely.

22 iii. The objection must state the basis for the objection.

23 iv. Class members who fail to make objections in the manner specified shall be
24 deemed to have waived any objections and shall be foreclosed from making any objection (whether
25 by appeal or otherwise) to the Settlement, and the Settlement shall be fully binding upon them.

26 **d. Deadline for Submitting Claim Forms**

27 Absent a showing of good cause, as determined by Class Counsel, no Claim Form shall be
28 honored if postmarked more than ninety (90) days after the date the Class Notice is first mailed to

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

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

4 No later than thirty-five (35) days before the Final Approval Hearing, plaintiffs shall file a
5 motion for final approval of the settlement. Two weeks or more before the final approval hearing,
6 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 thirty-five (35) 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
Claims Administrator to Prepare Class List	December __, 2016 (within 10 calendar days after Preliminary Approval Order)
Claims Administrator to Mail Class Notice	December __, 2016 (within 10 calendar days after preparation of Class List)

1 2	Class Counsel to File Motion for Attorneys' Fees and Costs	January __, 2017 (At least 28 days before opt-out deadline)
3 4	Deadline for submitting requests not to participate and objections	February __, 2017 (60 days after the Class Notice is mailed)
5 6	Deadline for Filing Claim Forms	March __, 2017 (90 days after the Class Notice is mailed)
7 8	Class Counsel to file Motion for Named Plaintiffs' Service Awards and Motion for Final Approval	[date] (35 days prior to Final Approval Hearing)
9 10	Final Approval Hearing	[date] (No sooner than 120 days after the Preliminary Approval Order)

11 **V. 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 listed on the Class List who does not file a timely and complete
14 election to opt out of the Settlement according to the Settlement's terms shall, pursuant to the
15 Settlement Agreement and as of its Effective Date, be adjudicated to have forever released and
16 discharged claims as set forth in the Settlement Agreement. Further any class members who
17 submit a valid Claim Form shall be deemed to have opted in to the class action and shall thereby
18 release their claims, whether or not such class member was listed on the Class List.

19 **VI. APPOINTMENT OF CLAIMS ADMINISTRATOR**

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

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

Date: December __, 2016

United States District Court Judge