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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENNIFER MANZO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

MCDONALD'S RESTAURANTS OF
CALIFORNIA, INC., A CORPORATION;
AND DOES 1 THROUGH 50, INCLUSIVE,

Defendants.

Case No. 1:20-cv-01175-HBK

**[PROPOSED] ORDER GRANTING
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS AND PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Complaint filed: August 20, 2020

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1 **WHEREAS**, this action is pending as a putative class, collective, and representative
2 action (the “Action”);

3 **WHEREAS**, the Plaintiff Gennifer Manzo (“Plaintiff”) has filed a Motion for Preliminary
4 Approval of the Settlement of the Action and Renewed Motion for Preliminary Approval of
5 Settlement of the Action (collectively referred to as the “Motion”) (Doc. Nos 15, 21, 23) in
6 accordance with the Settlement and Release Agreement and First Amendment of the Class Action
7 Settlement and Release Agreement (collectively referred to as the “Settlement Agreement” or the
8 “Settlement”), which, together with its exhibits, set forth the terms and conditions for a proposed
9 settlement and dismissal of the Action with prejudice upon the terms and conditions set forth
10 therein, which is not opposed by Defendant McDonald’s Restaurants of California, Inc.
11 (“Defendant”); and

12 **WHEREAS**, this Order incorporates by reference the definitions in the Agreement, and
13 all terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

14 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

15 1. The Court has reviewed Plaintiff’s Motion and all declarations and exhibits filed
16 therewith, including the Settlement Agreement executed by the Parties.

17 2. For reasons explained below, the Court hereby **GRANTS** preliminary approval of
18 the class action settlement and approval of the Private Attorneys General Act (“PAGA”) settlement
19 as set forth in the Settlement Agreement.

20 **SETTLEMENT CLASS CERTIFICATION**

21 3. The Court recognizes that Plaintiff and Defendant stipulate to certification of the
22 Settlement Class for settlement purposes only.

23 4. The Settlement Agreement will not be deemed admissible in this or any other
24 proceeding for purposes of liability, and is for settlement purposes only.

25 5. On the basis of the findings set forth herein, the Court conditionally certifies the
26 following Settlement Class pursuant to Fed. R. Civ. P. 23 for settlement purposes only in
27 accordance with the terms of the Settlement Agreement:

28 a. A “June 2, 2020 Settlement Subclass” consisting of all California non-exempt

employees who received wage statements that included daily, weekly, or seventh day premium overtime and/or MQI True Up wages at any time from June 2, 2020 through the Preliminary Approval Date (“June 2, 2020 Subclass Class Period”) and who were subject to the class settlement reached in *Sanchez v. McDonald's Restaurants of Cal., Inc.*, Los Angeles County Superior Court Case No. BC499888.

b. An “April 6, 2019 Settlement Subclass” consisting of all California non-exempt employees who received wage statements that included daily, weekly, or seventh day premium overtime and/or MQI True Up wages at any time from April 6, 2019 through the Preliminary Approval Date (“April 6, 2019 Subclass Class Period”), and who were not subject to the class settlement reached in *Sanchez v. McDonald's Restaurants of Cal., Inc.*, Los Angeles County Superior Court Case No. BC499888.

6. The Court preliminarily finds, for settlement purposes only, that the requirements of Rule 23(a) are satisfied, as follows:

a. Rule 23(a)(1) is satisfied because the class consists of at approximately 5,500 persons, whose identities are ascertainable through Defendant’s records or through self-identification.

b. Rule 23(a)(2) is satisfied because there remain common issues of law and fact at the core of all claims, including whether Defendant’s wage statements comply with California law.

c. Rule 23 (a)(3) and (4) are satisfied because the named plaintiff’s claims are typical of those of the Settlement Class Members and the Class Representative, Gennifer Manzo, will fairly and adequately protect the interests of the Settlement Class.

7. Additionally, the Court preliminarily finds, for settlement purposes only, that the requirements of Rule 23(b)(3) are satisfied: the questions of law or fact common to the Settlement Class predominate over individual questions, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Court has investigated the matters pertinent to these findings and is satisfied that the Settlement Agreement meets the required standards.

1 8. The Court, for settlement purposes only, appoints Plaintiff Gennifer Manzo as the
2 Class Representative herein.

3 9. The Court appoints, for settlement purposes only, as Class Counsel: Diversity Law
4 Group, A Professional Corporation, Polaris Law Group, Hyun Legal, APC, and Law Offices of
5 Choi & Associates, P.C.

6 10. Class Counsel is authorized to act on behalf of Settlement Class Members with
7 respect to all acts or consents required by, or which may be given pursuant to, the Settlement
8 Agreement, and such other acts reasonably necessary to consummate the Settlement. Any
9 Settlement Class Member may enter an appearance through counsel of his or her own choosing
10 and expense. Any Settlement Class Member who does not enter an appearance or appear on his or
11 her own will be represented by Class Counsel.

12 11. The Court has weighed all factors in Rule 23(e)(2), and having done so, hereby
13 approves on a preliminary basis the Settlement Agreement and settlement described therein,
14 including the definitions and disposition of the Gross Settlement Amount proceeds and related
15 matters provided for in the Settlement Agreement.

16 12. It appears to the Court on a preliminary basis that the Gross Settlement Amount
17 and terms of the Settlement are fair, adequate, and reasonable as to all Settlement Class Members
18 when balanced against the probable outcome of further litigation relating to liability and damage
19 issues.

20 13. It further appears to the Court's satisfaction that sufficient investigation, including
21 informal pre-mediation discovery, have been conducted into the relevant legal issues herein such
22 that Class Counsel are able to reasonably evaluate claims and defenses alleged in the Action.

23 14. It further appears to the Court that settlement at this time will avoid substantial
24 additional costs by all parties, as well as avoid the delay and risks that would be presented by
25 further prosecution of the claims, including appeal of orders relating to class certification and/or
26 the substantive merits of the case.

27 15. It further appears that the Settlement Agreement has been reached as the result of
28 intensive, serious, non-collusive, and arm's-length negotiations after mediation with an

1 experienced mediator.

2 16. This is a non-reversionary settlement. Any amounts that are reduced by the Court
3 under the Settlement, such as the award of attorneys' fees or the requested class representative
4 service award, shall revert back to the Settlement Class Members only, to be distributed in
5 accordance with the distribution formula the parties have agreed to.

6 **PAGA SETTLEMENT**

7 17. The Court finds the Settlement was entered into in good faith, that the settlement is
8 fair, reasonable and adequate, and that the settlement satisfies the standards and applicable
9 requirements for approval of PAGA representative actions under California law. The Court
10 approves the penalties to be paid to the Aggrieved Employees and the State of California as set
11 forth in the Settlement Agreement, and approves all other terms of the settlement of the PAGA
12 claims of all Settlement Class Members as set forth in the Settlement Agreement pursuant to Labor
13 Code § 2699(1)(2).

14 **NOTICE AND ADMINISTRATION**

15 18. The Court approves and appoints ILYM to serve as the neutral, third-party Claims
16 Administrator in accordance with the Settlement Agreement and consistent with this Order.

17 19. Promptly following entry of this order, the Claims Administrator will prepare a
18 final version of the Notice of Class Settlement consistent with the template attached as Exhibit A
19 to the Settlement Agreement.

20 20. The Claims Administrator shall be responsible for all tasks delegated to the
21 Claims Administrator in the Settlement Agreement and which are reasonably necessary to
22 effectuate the issuance of the Court-authorized Notice of Class Settlement, to collect and track
23 Opt-Out Forms and objections received from the Settlement Class Members, and, upon any later
24 granting of final approval herein, to distribute funds associated with the Settlement in accordance
25 with the terms of the Settlement Agreement.

26 21. Counsel for the settling Parties have the right to review and approve any documents
27 to be mailed by the Claims Administrator in connection with the Settlement prior to their mailing,
28 and the Claims Administrator may not mail/e-mail any such documents without first receiving

1 written approval from counsel for the settling Parties or direction from the Court to send such
2 documents.

3 22. The Claims Administrator is ordered to take reasonable steps to protect the
4 disclosure of information concerning members of the Settlement Class provided by Defendant.

5 23. The Court authorizes notice of the Settlement as set forth in the Settlement
6 Agreement, and as ordered or modified herein, as it appears fair, reasonable, and adequate within
7 the meaning of Fed. R. Civ. P. 23 and the Class Action Fairness Act of 2005 (“CAFA”). The
8 Court also approves of the CAFA notification provisions set forth in the Settlement Agreement.

9 24. The parties are directed to ensure that the Notice of Class Settlement is
10 disseminated according to the terms of the Settlement Agreement.

11 25. The Court finds that the proposed Notice of Class Settlement, sent by U.S. Mail,
12 constitutes the best notice practicable under the circumstances and is in full compliance with the
13 United States Constitution and the requirements of due process. The Notice of Class Settlement
14 accurately informs the Settlement Class Members of the material elements of the lawsuit, the
15 Settlement, and each Settlement Class Member’s right and opportunity to opt into, opt out of or
16 object to the Settlement.

17 26. The Court further finds that mailing the Notice of Class Settlement to the Class
18 Members via U.S. Mail is an appropriate method of notice, reasonably designed to reach all
19 individuals who would be bound by the Settlement.

20 27. All costs and expenses due the Claims Administrator in connection with its
21 administration of the Settlement, including, but not limited to, providing the Notice of Class
22 Settlement, locating Settlement Class Members, processing Opt-Out Forms, issuing IRS forms,
23 and administering and distributing individual settlement payments, shall be paid from the Gross
24 Settlement Amount and are not anticipated to exceed \$30,000. In the event the reasonable costs
25 of the Claims Administrator exceed \$30,000, the Claims Administrator must file a declaration with
26 the Court explaining the basis for the costs above the cap articulated herein and seeking approval
27 for payment of the additional reasonable costs out of the amount remaining from the Net
28 Settlement Amount. The Claims Administrator shall not be paid for costs above \$30,000 absent

1 Court approval.

2 **EXCLUSIONS AND OBJECTIONS**

3 28. A Settlement Class Member may opt-out of or object to the Settlement.

4 29. The procedures for opting-out of or objecting to the Settlement shall be in
5 conformity with Sections VI and VII of the Settlement Agreement and as described in the Notice
6 of Class Settlement. A Settlement Class Member who wishes to opt out of the Settlement must
7 timely complete and return their Opt-Out Form to the Claims Administrator via First-Class U.S.
8 Mail. Forms must be sent on or before the “Exclusion/Written Objection Deadline,” which is 45
9 calendar days from the date that a Settlement Class Member’s Notice of Class Settlement was
10 mailed, or 15 calendar days from the date their Notice of Class Settlement was first re-mailed,
11 whichever is later.

12 30. The date of the postmark on the mailing envelope shall be the exclusive means used
13 to determine whether an Opt-Out Form is timely submitted. Any Settlement Class Member who
14 submits a timely and proper Opt-Out Form shall no longer be a member of the Rule 23 class, shall
15 be barred from participating in the non-PAGA portion of the Settlement, shall be barred from
16 objecting to the Settlement, and shall receive no benefit or payment from the Settlement except
17 for his/her proportional share of the PAGA Amount under the Settlement, because the right to opt
18 out does not apply to the PAGA claims in the Action. All Settlement Class Members are bound
19 by the release and settlement of the PAGA claims in the Action regardless of whether or not they
20 submit a valid Opt-Out Form.

21 31. In the event the Settlement receives final approval, any Settlement Class Member
22 who does not properly and timely request exclusion shall be bound by all the terms and provisions
23 of the Settlement Agreement, the final approval order, the final judgment, and the releases set forth
24 therein, and will be deemed to have waived all objections and opposition to the fairness,
25 reasonableness, and adequacy of the Settlement, whether or not such person objected to the
26 Settlement and whether or not such person made a claim upon, or participated in, the Settlement.

27 32. Any Settlement Class Member who does not submit a timely Opt-Out Form and
28 wishes to object to the Settlement may do so in writing by submitting a timely written statement

1 of objection to the Class Administrator within the Exclusion/Written Objection Deadline via First-
2 Class U.S. Mail.

3 33. The date of the postmark on the mailing envelope shall be the exclusive means used
4 to determine whether an objection is timely submitted. Any written objection to the Settlement
5 Agreement should contain (i) the objector's full name, address, telephone, and signature; (ii) a
6 clear reference to the Action; (iii) a statement of the specific legal and factual basis for each
7 objection argument; and (iv) a statement whether the objecting person or entity intends to appear
8 at the Final Approval Hearing, either in person or through counsel and, if through counsel, a
9 statement identifying that counsel by name, bar number, address, and telephone number. All
10 objections shall be signed by the objecting Settlement Class Member, even if the Settlement Class
11 Member is represented by counsel.

12 34. Although it is preferred that Settlement Class Members submit written objections,
13 no objector shall be denied the ability to object at the Final Approval Hearing (whether
14 individually or through counsel).

15 **FINAL APPROVAL, SCHEDULE, AND OTHER PROVISIONS**

16 35. A hearing (the "Final Approval Hearing") shall be held before this Court on
17 _____ [DATE] at _____ a.m./p.m. at the United States District Court for the
18 Eastern District of California, before the Hon. Helena M. Barch-Kuchta, at the United States
19 District Court for the Eastern District of California, Yosemite Federal Courthouse located at 9004
20 Castle Cliffs Ct, Yosemite Valley, CA 95389, to determine all necessary matters concerning the
21 Settlement, including: (a) whether the Settlement of the Action on the terms and conditions
22 provided for in the Stipulation is fair, adequate, and reasonable and should be finally approved by
23 the Court; (b) whether a final judgment should be entered herein; (c) whether the plan of allocation
24 contained in the Settlement Agreement, including the PAGA allocation, should be approved as
25 fair, adequate and reasonable to the Settlement Class Members; and (d) the appropriateness of
26 Class Counsel's attorneys' fees and costs, Plaintiff's incentive awards, and settlement
27 administration expenses of the Claims Administrator.

28 36. The Parties and the Claims Administrator shall henceforth adhere to the schedule

1 anticipated by the Settlement Agreement. Class Counsel has stated their intention to request Class
2 Counsel attorney's fees of 33 and 1/3 % of the Gross Settlement Amount (or \$666,666.67), Class
3 Counsel's litigation costs and expenses not to exceed \$30,000, and a Service Award granted to
4 Plaintiff not to exceed \$10,000. The Court will weigh these amounts at Final Approval.

5 37. If in considering final approval of the Settlement, the Court decides to award less
6 than the amounts set forth above, any unawarded amounts shall revert back to the Settlement Class
7 Members only, to be distributed in accordance with the approved distribution formula.

8 38. The Settlement Agreement is not a concession or admission and shall not be used
9 against Defendant or any of the putative Released Parties as an admission or indication with
10 respect to any claim of any fault or omission by Defendant or any of the Released Parties. Whether
11 or not the Settlement is finally approved, neither the Settlement Agreement (nor any document,
12 statement, proceeding or conduct related to the Settlement) nor any reports or accounts thereof,
13 shall in any event be:

- 14 a. Construed as, offered or admitted in evidence as, received as or deemed to be
15 evidence for any purpose adverse to the Released Parties, including, but not limited
16 to, evidence of a presumption, concession, indication or admission by Defendant
17 or any of the Released Parties of any liability, culpability, negligence, fault,
18 wrongdoing, omission, concession, or damage; or
19 b. Disclosed, referred to, or offered or received in evidence against Defendant or any
20 of the Released Parties in any further proceeding in the Action, or in any other civil,
21 criminal or administrative action or proceeding, except for purposes of settling the
22 Action pursuant to the Settlement.

23 39. As of the date this Order is signed, all dates and deadlines associated with the
24 Action shall continue to be stayed, other than those related to the approval and administration of
25 the Settlement of the Action, subject to the Final Approval Hearing.

26 40. The Court reserves the right to adjourn or continue the date of the Final Approval
27 Hearing and all dates provided for in the Stipulation without further notice to Settlement Class
28 Members, and retains jurisdiction to consider all further applications arising out of or connected

1 with the proposed Settlement.

2
3 Accordingly, and for the reason set forth above, the Court hereby **GRANTS** Plaintiff's
4 Motion for Preliminary Approval. **IT IS SO ORDERED.**

5
6
7 DATED: _____

BY: _____
Hon. Helena M. Barch-Kuchta
United States Magistrate Judge