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17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

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

21 Plaintiff,

22 v.

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

26 Defendants.

Case No. 1:20-cv-01175-NONE-HBK

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

Hearing Date: November 24, 2021
Time: 2:00 p.m.

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 (“Motion”) in accordance with the Settlement and
5 Release Agreement (the “Settlement Agreement” or the “Settlement”), which, together with its
6 exhibits, set forth the terms and conditions for a proposed settlement and dismissal of the Action
7 with prejudice upon the terms and conditions set forth therein, which is not opposed by Defendant
8 McDonald’s Restaurants of California, Inc. (“Defendant”); and

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

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

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

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

17 **SETTLEMENT CLASS CERTIFICATION**

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

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

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

- 25 a. A “June 2, 2020 Settlement Subclass” consisting of all California non-exempt
26 employees who received wage statements that included daily, weekly, or seventh
27 day premium overtime and/or MQI True Up wages at any time from June 2, 2020
28 through the Preliminary Approval Date (“June 2, 2020 Subclass Class Period”) and

1 who were subject to the class settlement reached in *Sanchez v. McDonald's*
2 *Restaurants of Cal., Inc.*, Los Angeles County Superior Court Case No. BC499888.

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

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

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

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

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

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

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

28 9. The Court appoints, for settlement purposes only, as Class Counsel: Diversity Law

1 Group, A Professional Corporation, Polaris Law Group, Hyun Legal, APC, and Law Offices of
2 Choi & Associates, P.C.

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

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

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

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

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

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

27 16. This is a non-reversionary settlement. Any amounts that are reduced by the Court
28 under the Settlement, such as the award of attorneys' fees or the requested class representative

1 service award, shall revert back to the Settlement Class Members only, to be distributed in
2 accordance with the distribution formula the parties have agreed to.

3 **PAGA SETTLEMENT**

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

11 **NOTICE AND ADMINISTRATION**

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

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

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

23 21. Counsel for the settling Parties have the right to review and approve any documents
24 to be mailed by the Claims Administrator in connection with the Settlement prior to their mailing,
25 and the Claims Administrator may not mail/e-mail any such documents without first receiving
26 written approval from counsel for the settling Parties or direction from the Court to send such
27 documents.

28 22. The Claims Administrator is ordered to take reasonable steps to protect the

1 disclosure of information concerning members of the Settlement Class provided by Defendant.

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

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

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

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

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

27 **EXCLUSIONS AND OBJECTIONS**

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

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

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

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

24 32. Any Settlement Class Member who does not submit a timely Opt-Out Form and
25 wishes to object to the Settlement may do so in writing by submitting a timely written statement
26 of objection to the Class Administrator within the Exclusion/Written Objection Deadline via First-
27 Class U.S. Mail.

28 33. The date of the postmark on the mailing envelope shall be the exclusive means used

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

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

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

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

25 36. The Parties and the Claims Administrator shall henceforth adhere to the schedule
26 anticipated by the Settlement Agreement. Class Counsel has stated their intention to request Class
27 Counsel attorney's fees of 33 and 1/3 % of the Gross Settlement Amount (or \$666,666.67), Class
28 Counsel's litigation costs and expenses not to exceed \$30,000, and a Service Award granted to

1 Plaintiff not to exceed \$10,000. The Court will weigh these amounts at Final Approval.

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

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

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

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

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

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28 Accordingly, and for the reason set forth above, the Court hereby **GRANTS** Plaintiff's

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Motion for Preliminary Approval. **IT IS SO ORDERED.**

DATED:_____

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