UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ASHLEY JOHNSON, individually and on behalf of all others similarly situated,

Plaintiff,

v. **CASE NO.: 1:21-cv-24339-FAM**

McDONALD'S CORPORATION,

Defendant.
_____/

UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND SUPPORTING MEMORANDUM OF LAW

The Class Representative, Ashley Johnson ("Plaintiff" or "Named Plaintiff"), pursuant to Fed.R.Civ.P. 23, files this Unopposed Motion for Final Approval of the Parties' Class Action Settlement. On October 27, 2022, this Court issued an Order preliminarily approving the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement" or "the Agreement")[1] between Plaintiff, on behalf of the Settlement Class, and Defendant. (Doc. 42). In that Order, the Court found that Settlement terms are "fair, reasonable, and adequate." (*Id*., p. 3, ¶ 10).

Following entry of that Order, the Settlement Class Administrator sent a Notice of Settlement via first class mail to all Settlement Class Members. Importantly, class members made zero objections. (*See* attached Declaration of Mark Unkefer from Settlement Administrator, American Legal Claim Services, LLC, ¶¶ 9-10) (hereinafter "Unkefer Decl."). Not only that, only one request for exclusion was made. (*Id*.). Considering the large size of the Class, coupled with

[1] All defined terms contained herein shall have the same meaning as set forth in the Class Action Settlement and Release, filed on September 22, 2022. (*See* Doc. 37-2, pp. 2-35).

the fact this is a "claims paid" settlement (meaning all class members will automatically receive a check without having to file claims), and no funds revert to Defendant (instead they will be paid to a *cy pres* recipient), the Settlement is an excellent outcome.

In sum, little has changed since the Court's Order granting the Plaintiff's Motion for Preliminary Approval, confirming that the Settlement is fair, reasonable, adequate, and warrants final approval. As a result, Plaintiff requests that the Court enter the Final Approval Order attached as Exhibit A. In further support thereof, Plaintiff states as follows:

I. BACKGROUND AND OVERVIEW OF MOTION.

A. Allegations Included in Named Plaintiff's Complaint.

This is a putative class action brought by Named Plaintiff against Defendant under 29 C.F.R. § 2590.606–4(b)(4) *et seq*. and 29 U.S.C. § 1166(a). The lawsuit generally alleges that Defendant provided Named Plaintiff and the Settlement Class Members with a deficient COBRA election notice ("COBRA Notice"). More specifically, Named Plaintiff asserts that Defendant's COBRA Notice did not adequately inform her how to exercise her rights to elect COBRA coverage because, the COBRA Notice allegedly: (i) failed to include an address indicating where COBRA payments should be mailed; (ii) failed to include a physical election form; and (iii) failed to identify the plan administrator. As a result of the alleged violations in the Complaint, Named Plaintiff sought statutory penalties, injunctive relief, attorneys' fees, and costs, on behalf of herself and a putative class of all others similarly-situated during the applicable statutory period. The action was brought on behalf of all participants and beneficiaries in the Plan who, in the four years preceding

the filing of the Complaint through the present, received the COBRA Notice as a result of a qualifying event and who did not elect COBRA coverage.[2]

B. Defendant's Defenses.

Had mediation been unsuccessful, Defendant had available to it myriad defenses to Named Plaintiff's allegations, including arguments in a pending motion to dismiss. Defendant denied, and continues to deny, that it violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4 with regard to Named Plaintiff and/or any Settlement Class Member. In fact, as part of the Agreement, Defendant specifically denies that it engaged in any wrongdoing, does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been alleged against it in this case, denies that the claims asserted by Named Plaintiff are suitable for class treatment other than for settlement purposes, and Defendant denies that it has any liability whatsoever. The Agreement and this Motion are not, and shall not, in any way be deemed to constitute an admission or evidence of any wrongdoing or liability on the part of Defendant, nor of any violation of any federal, state, or municipal statute, regulation, principle of common law or equity. However, Defendant agreed to resolve this action through settlement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented in this case, the inconveniences involved, and the potential for disruption to its business operations.

C. Procedural History of Case.

Named Plaintiff filed suit against Defendant on December 15, 2021, and, after Defendant filed a Motion to Dismiss, Named Plaintiff filed an Amended Complaint on February 18, 2022

[2] The definition of Settlement Class Members was modified at mediation, as explained further below.

Defendant filed a Motion to Dismiss the Amended Complaint on March 8, 2022. Named Plaintiff responded, and Defendant filed a reply brief.

Both sides served extensive written discovery prior to engaging in settlement discussions. More specifically, Plaintiff served requests for production, interrogatories, and a Fed.R.Civ.P. 30(b)(6) notice on Defendant on March 31, 2022. Defendant, in turn, served on Plaintiff requests for production, interrogatories, and requests for admission on April 13, 2022, and also sought to take Plaintiff's deposition. Both sides provided written responses to the discovery requests, and also served document productions on each other that collectively included over 2,200 documents. Plaintiff's counsel deposed McDonald's corporate representative on June 1, 2022, and Defendant's counsel deposed Plaintiff on June 16, 2022. After completing extensive discovery efforts, the Parties participated in mediation with Carlos J. Burruezo on July 12, 2022.

D. Settlement Negotiations and Mediation.

On July 12, 2022, the Parties participated in an all-day mediation with highly respected class action mediator, Carlos J. Burruezo. After extensive arm's length negotiations—between experienced counsel—a tentative deal was reached. As a result of the agreement reached at mediation, the Parties agreed to enter into the Agreement, for which they now seek Court approval.

II. THE PROPOSED SETTLEMENT.

A. The Proposed Settlement Class.

The class includes 8,959 individuals who meet the following proposed Settlement Class definition: "All participants and beneficiaries in the McDonald's Corporation Health Plan who, as a result of a qualifying event, received a COBRA Notice between December 15, 2017, and February 9, 2021, as determined by Defendant's records, and who did not elect COBRA."

B. Benefits to the Settlement Class and Named Plaintiff.

The Agreement, if approved, will resolve all claims of Named Plaintiff and all Settlement Class Members in exchange for Defendant's agreement to pay $156,782.50 into the Settlement Account. This is a "claims paid" non-reversionary settlement. Every Settlement Class Member who does not timely opt out will receive a check for their respective Settlement Payment, without having to take any action, mailed to their last known address by the Settlement Administrator.

From the Settlement Account will be deducted amounts for the costs of settlement administration, Class Counsel's fees, and litigation costs, resulting in the "Net Settlement Proceeds," which will be allocated among the approximately 8,959 Settlement Class Members equally on a *pro rata* basis. No funds revert to Defendant. Any funds that are unclaimed (which shall only arise if/when a check is mailed but then not timely cashed) shall revert to a mutually agreeable *cy pres* recipient. The Parties have selected Bay Area Legal Services, a 501(c)(3) non-profit legal aid organization, and will ask the Court to approve it as the *cy pres* recipient.

The Parties negotiated the proposed Settlement on a common fund basis, meaning that the Parties' settlement offers were inclusive of all attorneys' fees and costs, and administrative expenses. The Parties did not negotiate attorneys' fees until after agreeing on all terms related to the size of the common settlement fund and the class definition. The Named Plaintiff is not seeking compensation for her service to the Settlement Class Members.

C. Administration of Notice of Settlement.

The Parties have agreed to utilize a private, third-party vendor, American Legal Claim Services, LLC ("ALCS"), to administer the Settlement in this case, including but not limited to distribution of the Notice of Settlement. The Parties have also agreed that all fees and expenses charged by the Settlement Administrator shall be paid from the Settlement Account.

If the Court grants final approval of the settlement, Defendant will transfer designated amounts to the Settlement Account within twenty-one (21) days of the effective date of the Agreement, as defined in the Agreement. Settlement checks will be mailed to all Settlement Class Members within fifteen (15) days after receipt by the Settlement Administrator of the Settlement Account monies. To the extent any money remains in the Settlement Account after these distributions and after Settlement Class Members have had one-hundred eighty (180) days to cash their settlement checks, such monies shall be transferred to the *cy pres* recipient identified above.

The Notice of Settlement in this case is modeled after notices to class members approved by other federal courts in cases involving deficient COBRA notices, including in *Rigney, et al. v. Target Corp*., No. 8:19-cv-01432-MSS-JSS (M.D. Fla. July 14, 2020), ECF No. 49-4 and 49-4, 52; *see also Vazquez v. Marriott International, Inc*., No. 8:17-cv-00116-MSS-MAP (M.D. Fla. Feb. 27, 2020) ECF No. 127. For these reasons, the Notice of Settlement should be approved.

D. Attorneys' Fees and Costs.

Pursuant to the Agreement, Class Counsel is authorized to petition the Court for up to one-third of the Gross Settlement amount for attorneys' fees, plus costs limited to costs defined by Federal Rule of Civil Procedure 54, but limited to no more than $5,000 total. Class Counsel was required to file a separate motion seeking approval for Class Counsel's fees and costs at least fourteen (14) days prior to the Settlement Class Members' deadline to opt out or object to the Settlement, which was January 15, 2023. Class Counsel timely filed their unopposed motion for attorneys' fees and costs on December 29, 2022. ECF 45.

Defendant does not oppose the amount of fees and costs sought by Class Counsel, as specified above. Neither Settlement approval nor the size of the Gross Settlement amount are contingent upon Court approval of the full amount of Class Counsel's requested fees and costs.

E. Class Action Fairness Act Notice.

Defendant submitted the notices required by the Class Action Fairness Act of 2005 ("CAFA") to the appropriate Federal and State officials.

F. The Court's Order granting Preliminary Approval of the Settlement.

On October 27, 2022, the Court granted Plaintiff's Unopposed Motion for Preliminary Approval of the Class-Wide Settlement of the claims asserted against Defendant under 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4. (*See* Doc. 42). Following entry of that Order, and as further explained by the attached sworn declaration from the Settlement Administrator, Notice was mailed out to the approximately 8,000+ Settlement Class Members.

G. The Class Member's Reactions to the Settlement.

The Settlement Claims Administrator, ALCS, sent the short form Class Notice approved by the Court to each of the Settlement Class Members on November 16, 2022, via first-class U.S. mail. A total of 8,351 Class Notices were mailed to members of the Settlement Class. (*See* Unkefer Decl, ¶ 5). Thus, the Settlement Class Members overwhelmingly accepted the Settlement. According to the Settlement Administrator, 97.74% of the notices were deemed delivered. (Unkefer Supplemental Decl. ¶ 4). No Class Members have objected to the settlement thus far. (Unkefer Original Decl. ¶ 9). Additionally, to date only one person has asked to be excluded. (Unkefer Original Decl. ¶ 8).

III. THE PROPOSED CLASS HAS BEEN CERTIFIED AND THE NOTICE PLAN APPROVED.

A. The Class Has Already Been Certified on a Preliminary Basis.

The Court has already determined this action was proper for resolution on a class wide basis pursuant to Rule 23(a) and 23(b)(3). (*See* Doc. 42). Since the Court's Preliminary Approval Order, no objections addressing class certification were received. Thus, there is no reason to re-

visit the Court's prior ruling. Pursuant to Fed.R.Civ.P. 23(e), the Court should grant final approval of the settlement.

B. Notice to the Class under Fed.R.Civ.P. 23(e)(1).

Under Fed.R.Civ.P. 23(e)(1), Courts typically first analyze the notice to the class. As to the manner of providing notice, Federal Rule of Civil Procedure 23(c)(2)(B) provides, in pertinent part, that, "[f]or any class certified under Rule 23(b)(3) the Court must direct to class members the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." An individual mailing to each class member's last known address has been held to satisfy the "best notice practicable" test. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) (noting that individual mailings satisfy Rule 23(c)(2)).

Here, the Settlement Administrator exceeded these requirements by sending out the Court-approved short form version of the notice to all class members via U.S. Mail. That notice included all information required by Fed.R.Civ.P. 23(e)(1) and 23(c)(2)(B), including a link to the long-form version of the notice as well as the 1-800 informational number, along with all of the other required information. Thus, notice was sufficient.

C. Final Approval is Appropriate Under Fed.R.Civ.P. 23(e)(2).

Under Rule 23(e)(2), Courts look to whether: (1) the class representatives and class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length; (3) the relief provided for the class is adequate, and (4) the proposal treats class members equitably relative to each other. This standard is satisfied here, and the Court should enter a Final Order approving the Class Action Settlement Agreement.

1. The Class Representative and Class Counsel Have Adequately Represented the Class.

There is no question that the Named Plaintiff, Ashley Johnson, and the undersigned have adequately represented the class. This first Rule 23(e)(2) requirement encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action. *Battle v. Law Offices of Charles W. McKinnon, P.L.*, 2013 U.S. Dist. LEXIS 29263, at *10 (S.D. Fla. Mar. 5, 2013) (*citing Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1323 (11th Cir. 2008)).

Here, the adequacy-of-representation requirement has been met. The Named Plaintiff, Ashley Johnson, is adequate given that her interests are equivalent to those of the Settlement Class. She was actively involved in this case from its inception, including providing the original documents supporting the allegations from the Complaint, providing input and approval to the filing of the Complaint, participating in discovery, preparing for and sitting for her deposition, participating in settlement discussions, and also attending the Zoom mediation. She, along with his counsel, secured a six-figure settlement from a highly sophisticated Defendant in favor of the class members she represents.

With respect to Class Counsel, the proposed attorneys have extensive class action experience, as detailed in the previously filed declarations by class counsel, *see* Docs. 22-5 (Hill Decl.), and 22-6 (Cabassa Decl.), and the attached declaration. Additionally, the undersigned have been appointed as class counsel in several other COBRA class action cases, including *Baja v. Costco Wholesale Corp.* 0:21-cv-61210-AHS (S.D. Fla. Dec. 20, 2022)(Doc. 56); *see also Hicks v. Lockheed Martin Corp, Inc.*, 8:19-cv-00261-JSM-TGW (M.D. Fla. Sept. 5, 2018) (Doc. 34). *See also Valdivieso v. Cushman & Wakefield, Inc.,* M.D. Fla. Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla. Dec. 7, 2018) (Doc. 92) (appointing undersign as class counsel in a COBRA notice

class action), and *Carnegie v. FirstFleet Inc.,* M.D. Fla. Case No.: 8:18-cv-01070-WFJ-CPT (M.D. Fla. June 21, 2019) (Doc. 63) (same).

When, as here, the Parties are represented by counsel who have significant experience in class-action litigation and settlements and in ERISA cases, and no evidence of collusion or bad faith exists, the judgment of the litigants and their counsel concerning the adequacy of the settlement is entitled to deference. *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 532-33 (E.D. Ky. 2010) *aff'd sub nom. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011) ("in deciding whether a proposed settlement warrants approval, the informed and reasoned judgment of plaintiffs' counsel and their weighing of the relative risks and benefits of protracted litigation are entitled to great deference"); *see, e.g., UAW v. Ford Motor Co*., 2008 WL 4104329 at *26 (E.D. Mich. August 29, 2008) ("[t]he endorsement of the parties' counsel is entitled to significant weight, and supports the fairness of the class settlement."). Thus, the proposed Settlement satisfies Rule 23(e)(2)'s first component, adequacy.

2. The Settlement Is the Product of Arm's-Length Negotiations Between Experienced Counsel Before A Neutral Mediator.

The next Rule 23(e)(2) factor is also satisfied because the proposed Settlement, and the record in this case, show that the Settlement Agreement was the product of extensive and detailed arm's-length, and at times contentious, negotiations between the Parties and their counsel. Not only that, the Parties used a highly respected mediator in this case, Carlos J. Burruezo, one of the most respected class action mediators in Florida. *Perez v. Asurion Corp*., 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding that class settlement was warranted because it was overseen by "an experienced and well-respected mediator"). The Parties and counsel were well-informed of the potential strengths and weaknesses of their positions and conducted good-faith negotiations in an effort to avoid costly and protracted litigation.

Moreover, as stated above, all counsel involved in the negotiations are experienced in handling class action litigation and complex litigation and are clearly capable of assessing the strengths and weaknesses of their respective positions. *Pierre-Val*, 2015 U.S. Dist. LEXIS at *2 ("courts should give weight to the parties' consensual decision to settle class action cases, because they and their counsel are in unique positions to assess the potential risks"). Where there "is no evidence of any kind that the parties or their counsel have colluded or otherwise acted in bad faith in arriving at the terms of the proposed settlement … counsel's informed recommendation of the agreement is persuasive that approval is appropriate." *Strube v. American Equity Inv. Life Ins. Co.*, 226 F.R.D. 696, 703 (M.D. Fla. 2005).

3. The Settlement Provides Adequate Relief to the Class Members.

As detailed above, the Settlement will provide substantial relief to Settlement Class Members, satisfying the third Rule 23(e)(2) factor. The Settlement requires Defendant to pay $156,782.50 into a Settlement Account to resolve the claims at issue. This represents a gross recovery of approximately $17.50 per Settlement Class member ($156,782.50 ÷ 8,959 persons = $17.50 and a net recovery of approximately $7.00 to $10.00. This recovery falls well within the range of reasonableness for settlement purposes. *See e.g., Vazquez v. Marriott International, Inc*., M.D. Fla. Case No. 8:17-cv-00116-MSS-MAP (Feb. 27, 2020, Doc. 127) (Court approved gross recovery of $13.00 per class member in 20,000 settlement class); *Rigney v. Target Corp*., No. 8:19-cv-01432-MSS-JSS (M.D. Fla. Mar. 24, 2021), ECF Nos. 58, 59 (court approved class action settlement with gross recovery of $17.00 per class member in case with allegedly deficient COBRA notice). All Settlement Class members who do not opt out will share in the recovery, as they do not need to file a claim form to receive a settlement payment.

As set forth above, continuing the litigation would have been complicated, protracted, and expensive. The risk of Named Plaintiff being unable to establish liability and damages was also present because of the numerous defenses asserted by Defendant. Because this case settled not long after filing, Named Plaintiff had yet to survive class certification, summary judgment, and trial. Each of these phases of litigation presented serious risks, which the settlement allows Named Plaintiff and the Settlement Class Members to avoid. *See, e.g. In re Painewebber Ltd. P'ships* Litig., 171 F.R.D. 104, 126 (S.D.N.Y. 1997) ("Litigation inherently involves risks."). Courts reviewing the issue of fairness have also favored settlements that allow even partial recovery for class members where the results of suits are uncertain. *Murray v. GMAC Mortg. Corp*., 434 F.3d 948, 952 (7th Cir. 2006) ("Risk that the class will lose should the suit go to judgment on the merits justifies a compromise that affords a lower award with certainty.").

The Gross Settlement amount in this Settlement is in line with per class member settlement amounts in similar cases. Under the Parties' Agreement, the Settlement Class Members can quickly realize a portion of their possible statutory damage claims from the Settlement Account, even if the amount is less than what could have been recovered through successful litigation. Likewise, Defendant caps its exposure at less than the amounts it could owe to each Settlement Class Member if it were to lose at trial, in addition to avoiding protracted litigation and a trial which would involve significant time and expense for all Parties. Named Plaintiff supports the Settlement. Class Counsel believes that the bulk of the other Settlement Class Members will have a favorable reaction to the Settlement and not object to it once they have been advised of the settlement terms.

4. The Proposal Treats Class Members Equitably Relative to Each Other.

The last Rule 23(e)(2) factor is satisfied because the proposed Settlement treats class members equitably. In fact, they are treated identically. Moreover, this a "claims paid" Settlement. Settlement Class Members do not have to submit claim forms to receive a share of the settlement proceeds. Rather, all Settlement Class Members will simply receive checks after the Settlement Effective Date. If Settlement checks are not cashed, the Settlement Agreement provides for a donation to a *cy pres* recipient.

If Plaintiff had chosen to continue to litigate her claims, a successful outcome was far from guaranteed. As discussed below, Plaintiff faced significant risks with respect to liability and damages. First, with respect to liability, important issues remained to be decided upon the evidence presented. Second, with respect to damages, the pertinent regulations provide for a maximum statutory penalty of $110 per day, but no minimum penalty. *See* 29 C.F.R. § 2575.502c-1. Whether or not to award statutory penalties is left completely within the discretion of the court. *See Scott v. Suncoast Beverage Sales, Ltd.,* 295 F.3d 1223, 1232 (11th Cir. 2002). In other words, even if Plaintiff was able to prove that Defendant violated the COBRA notice regulation, Plaintiff and Settlement Class Members may have recovered only nominal damages, or even nothing at all. Third, even if Plaintiff overcame an inevitable defense summary judgment motion, successfully had the case certified as a class under Rule 23 by the Court, and won at trial, and convinced the court to award statutory penalties, Defendant likely would have appealed in final adverse judgment, meaning Plaintiff would also need to survive any and all appellate proceedings.

Thus, to avoid the foregoing risks, it was reasonable for Plaintiff to settle the case at this juncture, in order to assure class-wide monetary and prospective relief for Settlement Class Members. *See, Bennett v. Behring Corp.,* 76 F.R.D. 343, 349-50 (S.D. Fla. 1982) (stating that it

would have been "unwise [for plaintiffs] to risk the substantial benefits which the settlement confers … to the vagaries of a trial"), *aff'd,* 737 F.2d 982 (11th Cir. 1984).

5. The Settlement Will Avoid a Complex, Expensive, and Prolonged Legal Battle Between the Parties.

Aside from the risks of litigation, continuing the litigation would have resulted in complex, costly, and lengthy proceedings before this Court and likely the Eleventh Circuit, which would have significantly delayed relief to Settlement Class Members (at best), and might have resulted in no relief at all. Moreover, Defendant would have appealed any judgment entered against it, resulting in further expense and delay. Indeed, complex litigation such as this "can occupy a court's docket for years on end, depleting the resources of the parties and taxpayers while rendering meaningful relief increasingly elusive." *In re U.S. Oil & Gas Litig.,* 967 F.2d at 493. By entering into the Settlement now, Plaintiff saved precious time and costs, and avoided the risks associated with further litigation, trial, and an inevitable appeal.

D. The Remaining Factors Under Fed.R.Civ.P. 23(e)(3)-(5) are Satisfied.

In accordance with Fed.R.Civ.P. 23(e)(3), the parties have filed the settlement agreement for which they seek final approval. Similarly, Fed.R.Civ.P. 23(e)(4) is satisfied by the notice period during which class members were given sufficient time to be excluded and/or object. And, finally, Fed.R.Civ.P. 23(e)(5), which sets out the applicable procedures for evaluating objections, is also satisfied because, in fact, to date there have been no objections made. Thus, each of these factors also weigh in favor of the Court granting final approval of the Parties' class action settlement.

IV. CONCLUSION.

For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion. A proposed Order is attached as Exhibit A.

V. LOCAL RULE 7.1(A)(3) CERTIFICATE.

The undersigned certifies that Plaintiff's counsel has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the Motion. Defendant does not oppose the relief sought in this Motion.

DATED this 27th day of January, 2023.

Respectfully submitted,

/s/Brandon J. Hill
BRANDON J. HILL
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Attorneys for Plaintiff and the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2023, the foregoing was electronically filed with the Clerk of the Court via the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/Brandon J. Hill
BRANDON J. HILL

Exhibit A

(Proposed Final Order)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ASHLEY JOHNSON, individually and on behalf of all others similarly situated,

Plaintiff,

v. **CASE NO.: 1:21-cv-24339-FAM**

McDONALD'S CORPORATION,

Defendant.
_____/

[PROPOSED] ORDER GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT

October 27, 2022, this Court granted preliminary approval to the proposed Class Action Settlement ("Settlement") set forth in the Plaintiff's Unopposed Motion for Preliminary Approval of their Class Settlement Agreement (the "Settlement Agreement"). (Doc. 42). The Court provisionally certified the case for Settlement purposes, approved the procedure for giving Class Notice to the Settlement Class Members, and set a final approval hearing to take place on February 8, 2022.

Following the final fairness hearing, the Court finds that the Notice to the Settlement Class substantially in the form approved by the Court in its Preliminary Approval Order was given in the manner ordered by the Court, constitutes the best practicable notice, and was fair, reasonable, and adequate. As such,

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Plaintiff's Unopposed Motion for Final Approval of the Parties' Class Action Settlement is **GRANTED**.

2. All defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement executed by the Parties and filed with the Court.

3. The Court has subject matter jurisdiction to approve the Settlement Agreement, including all Exhibits thereto, and to enter this Final Order and Judgment. Furthermore, both the Class Representative and Class Members have sufficient Article III standing.

4. The Settlement Agreement was negotiated at arm's length by experienced counsel who were fully informed of the facts and circumstances of this litigation (the "Action") and of the strengths and weaknesses of their respective positions. The Settlement Agreement was reached after the Parties had engaged in an all-day mediation session with the assistance of an experienced neutral class action mediator, and only after counsel for both sides exchanged written discovery, conducted depositions, and exchanged information on the claims and class size. Furthermore, Plaintiff retained counsel well-versed in the law pertaining to COBRA notice cases on a class basis. Counsel for the Parties were therefore well positioned to evaluate the benefits of the Settlement Agreement, taking into account the expense, risk, and uncertainty of protracted litigation.

5. The Court finds that the prerequisites for a class action under Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b), as well as Fed. R. Civ. P. 23(e), have been satisfied for settlement purposes only for each Settlement Class Member

6. Pursuant to Fed. R. Civ. P. 23, this Court hereby finally certifies the Settlement Class, as identified in the Settlement Agreement.

7. The Court finds the requirements of the Class Action Fairness Act have been satisfied.

8. The Court appoints attorneys Luis A. Cabassa and Brandon J. Hill of the law firm Wenzel Fenton Cabassa, P.A., as class counsel.

9. Further, Named Plaintiff Ashley Johnson shall continue serving as the Class Representative.

10. The Court makes the following findings on Notice to the Settlement class:

(a) The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object to the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

(b) The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Order and Judgment (i) constitute the most effective and practicable notice of the Final Order and Judgment, the relief available to Settlement Class Members pursuant to the Final Order and Judgment, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable laws.

11. The Settlement Agreement is finally approved in all respects as fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23(e). The terms and provisions of the Settlement

Agreement, including all Exhibits thereto, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Settlement Class Members.

12. The Court approves the distribution of the Settlement Fund, as described in the Settlement Agreement, as fair, reasonable, and adequate, and the Settlement Administrator is authorized to distribute the Settlement Fund in accordance with the terms of the Settlement Agreement.

13. The Parties are hereby ordered to implement and consummate the Settlement Agreement according to its terms and provisions.

14. Pursuant to Fed. R. Civ. P. 23(h), Class Counsel is awarded a fee consisting of one-third of the Settlement Fund ($52,260.83), plus costs from the Settlement Fund totaling $4,336.45, payable from the Settlement Fund pursuant to the terms of the Settlement Agreement.

15. The terms of the Settlement Agreement and of this Final Order and Judgment, including all Exhibits thereto, shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits maintained by the Plaintiff and all other Settlement Class Members, as well as their heirs, executors and administrators, successors, and assigns.

16. Without further order of the Court, the Settling Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

17. The following individual submitted an exclusion and, thus, should are not bound by the settlement: Anne Craver.

18. This Action, including all individual claims and class claims presented herein, is hereby dismissed on the merits and with prejudice against Plaintiff and all other Settlement Class Members, without fees or costs to any party except as otherwise provided herein.

19. The Court maintains jurisdiction over this case to enforce the terms and conditions of the Settlement Agreement if needed.

DONE and ORDERED this _____ day of February, 2023.

___

FREDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 1:21-cv-24339-FAM

ASHLEY JOHNSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

McDONALD'S CORPORATION,

Defendant.
_____/

DECLARATION OF BRANDON J. HILL

I, Brandon J. Hill, declare under penalty of perjury as follows:

1. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I understand that this declaration under oath may be filed in the above captioned action.

2. I am a partner at Wenzel Fenton & Cabassa, P.A., and counsel in the above-styled case.

3. I have been a member of the Florida Bar since April of 2007, the Illinois Bar since 2010, and District of Columbia Bar since 2011. I have an LL.M. from George Washington University School of Law, a J.D. from Florida State University College of Law, and two Bachelor's degrees from the University of Kansas.

4. I am admitted in the United States District Courts for the Northern, Middle, and Southern District Courts of Florida, the Northern District of Illinois, the Eastern District of Michigan, and the United States Court of Appeals for the Eleventh Circuit.

5. I have represented employers and employees in all stages of litigation in federal and state courts throughout Florida, and beyond. In the Middle District of Florida alone I have served as co-counsel or lead counsel in 600+ federal cases.

6. I possess the requisite experience necessary to serve as class counsel in this case. I have been appointed as class counsel in multiple class actions, including cases involving a few hundred class members up to nearly half a million class members. Below is a list of class action cases I have been appointed as class counsel by the Court:

- *Brown, et al. v. Lowe's Companies, Inc., and LexisNexis Screening Solutions, Inc.,* Case No.: 5:13-CV-00079-RLV-DSC (W.D.N.C) (appointed as co-class counsel in national FCRA class action matter involving 451,000 class members);
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- *Kohler, Kimberly v. SWF Operations, LLC and Domino's Pizza, LLC*, Case No. 8:14-cv-2568-T-35TGH (appointed class counsel in Fair Credit Reporting Act case involving several hundred class members);
- *Hargrett, et al. v. Amazon.com, DEDC, LLC*, 8:15-cv-02456-WFJ-AAS, M.D. Fla. Case No.: 8:15-cv-02456 (appointed as class counsel in FCRA case with 480,000+ class members);
- *Smith, et al. v. QS Daytona, LLC,* Case No.: 6:15-cv-00347-GAP-KRS (M.D. Fla.) (Doc. 45) (appointed as class counsel in FCRA class action involving several hundred class members);
- *Patrick, Nieyshia v. Interstate Management Company, LLC*, Case No. 8:15-cv-1252-T-33AEP (M.D. Fla.) (appointed as class counsel in FCRA class action with approximately 32,000 class members);
- *Molina et al v. Ace Homecare LLC*, 8:16-cv-02214-JDW-TGW (M.D. Fla) (appointed as class counsel in WARN Act case with approximately 500 class members);
- *Moody, et al v. Ascenda, et al*., Case No. 0:16-cv-60364-WPD (S.D. Fla.) (appointed as class counsel in FCRA class action with approximately 12,000 class members);
- *Mahoney v. TT of Pine Ridge, Inc.,* Case No.: 9:17-cv-80029-DMM (S.D. Fla. Nov. 20, 2017) (served as class counsel in TCPA case with 300,000+ class members).
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- *Vazquez v. Marriott International, Inc*., Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 20,000 class members);
- *Figueroa v. Baycare Healthcare System, Inc*., Case No.: 8:17-cv-01780-JSM-AEP (M.D. Fla) (served as class counsel in FCRA case involving approximately 2,009 class members);
- *Valdivieso v. Cushman & Wakefield Inc*., Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 2,000+ class members);
- *Dukes v. Air Canada*, Case No.: 8:18-cv-02176-TPB-JSS (M.D. Fla) (served as class counsel in FCRA case involving approximately 1,300 class members);
- *Rivera v. Aimbridge Hospitality, LLC*, Case No.: 8:18-cv-02192-EAK-JSS (M.D. Fla) remanded to *Rivera v. Aimbridge Hospitality, LLC,* 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in data breach case with 320,000 class members).
- *Blaney v. Aimbridge Hospitality, LLC,* 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 17,00 class members);
- *Cathey v. Heartland Dental, LLC*, 2019-CA-000568, Fourth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 9,800 class members);
- *Harake v. Trace Staffing Solutions, LLC*, Case No.: 8:19-cv-00243-CEH-CPT (M.D. Fla) (served as class counsel in Fair Credit Reporting Act case with 8,700 class members;
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- *Holly-Taylor v. Acadia Healthcare Company, Inc., et al*., Case No.: 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 25,00 class members);
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- *Luker v. Cognizant Technologies Solutions U.S. Corporation*, Case No.: 8:19-cv-01448-WFJ-JSS (M.D. Fla) (served as class counsel in wage case with 308 class members);
- *Lyttle v. Trulieve, Inc., et al*., Case No.: 8:19-cv-02313-CEH-TGW (M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 1,300 class members);

- *Twardosky v. Waste Management, Inc. of Florida, et al*., 8:19-cv-02467-CEH-TGW(M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 29,295 class members);
- *Silberstein v. Petsmart, Inc.*, 8:19-cv-02800-SCB-AAS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 12,000+ class members);
- *Benson v. Enterprise Holdings, Inc. et al*., Case No.: 6:20-cv-00891-RBD-LRH (M.D. Fla) (appointed as class counsel in WARN Act class action involving 900+ class members);
- *Morris et al v. US Foods, Inc*., Case No.: 8:20-cv-00105-SDM-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 19,000+ class members;
- *Forsyth v. Lucky's Market GP2, LLC et al*, Case No.: 20-10166 (JTD); Adv. Pro. No. 20-50449 (JTD) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court adversarial proceeding involving hundreds of former employees);
- *Taylor v. Citizens Telecom Services Company, LLC*, Case No.: 8:20-cv-00509-CEH-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 16,137 class members);
- *Holmes et al v. WCA Waste Systems, Inc*., Case No.: 8:20-cv-00766-SCB-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 1,720 class members);
- *Boyd v. Task Management, Inc*., Case No.: 8:20-cv-00780-MSS-JSS (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 5,500 class members);
- *In re The Hertz Corporation, et al*, Case No.: 20-11218 (MFW) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court involving 6,000+ class members);
- *Kaintz v. The Goodman Group, Inc*., 8:20-cv-02115-VMC-AAS (appointed as class counsel in deficient COBRA notice case with 2,889 class members);
- *Gorman v. Whelan Event Staffing Services, Inc., et a*l., Case No.: 8:20-cv-02275-CEH-AEP (appointed as class counsel in Fair Credit Reporting Act case involving 29,000+ class members);
- *Benitez v. FGO Delivers, LLC*, Case No.: 8:21-cv-00221-KKM-TGW (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 9,000+ class members);
- *Lopez v. Ollie's Bargain Outlet, Inc.*, 2020-CA-002511-OC, Ninth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 3,500 class members);
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- *Santiago et al v. University of Miami*, 1:20-cv-21784-DPG (appointed as class counsel in ERISA class action involving university retirement plan and approximately 20,000 class members).

7. I have been retained by Plaintiff as counsel in the instant case.

8. I am confident that the proposed Class Representative, Ashley Johnson ("Plaintiff" or "Ms. Johnson"), will adequately represent the putative class members in this case.

9. At all times Ms. Johnson has actively participated in this case and represented the interests of the class members. She provided critical information utilized to draft the Complaint, Amended Complaint, and to answering Defendant's extensive written discovery requests. She was also deposed. Additionally, she attended mediation via Zoom, participated in settlement discussions, and has otherwise been an exemplary class representative. No conflicts, disabling or otherwise, exist between Ms. Johnson and the class members.

10. My law firm has the desire, intention, financial resources, and ability to prosecute these claims in the face of strenuous opposition by Defendant. I have no conflicts with any class members.

11. The decision to mediate this case, and resolve this case, on a class basis was well informed. Prior to settling this case we obtained extensive written discovery from Defendant, including over 2,000 pages of documents, third-party discovery from Defendant's COBRA administrator, and deposition testimony.

12. By way of further procedural background, Named Plaintiff Ashley Johnson filed her original Complaint on December 15, 2021. (*See* Doc. 1). Defendant filed a potentially dispositive Motion to Dismiss on February 4, 2021, raising a variety of arguments, including failure to state a claim. (*See* Doc. 13). Before the Court ruled on Defendant's Motion to Dismiss, Named Plaintiff filed a First Amended Complaint which, in turn, mooted the first Motion to Dismiss filed by Defendant. (*See* Docs. 16-17, 19).

13. The Parties conferred and filed the required Joint Scheduling Report on March 4, 2022. (Doc. 18). The Court entered its Scheduling Order shortly thereafter. (Doc. 20).

14. Defendant filed a Motion to Dismiss the First Amended Complaint March 8, 2022. (Doc. 19). On March 22, 2022, Named Plaintiff filed a comprehensive response in opposition to the Motion to Dismiss. (Doc. 23). Defendant filed its reply brief on April 1, 2022. (Doc. 26).

15. Both sides served extensive written discovery prior to engaging in settlement discussions. More specifically, Plaintiff served requests for production, interrogatories, and a Fed.R.Civ.P. 30(b)(6) notice on Defendant on March 31, 2022.

16. Defendant, in turn, served on Plaintiff requests for production, interrogatories, and requests for admission on April 13, 2022. Both sides provided written responses to the other side's discovery requests, and also served document productions on each other that collectively included over 2,200 documents. In terms of depositions, Plaintiff's counsel deposed McDonald's corporate representative on June 1, 2022. Likewise, Defendant's counsel deposed Plaintiff on June 16, 2022.

17. After both sides had completed extensive discovery efforts, the Parties participated in an all day mediation with highly-respected class action mediator, Carlos J. Burruezo on July 12, 2022.

18. The terms of the Settlement Agreement were modeled after similar COBRA class action settlements approved by other federal courts, including in *Hicks v. Lockheed Martin Corp, Inc*., 8:19-cv-00261-JSM-TGW (M.D. Fla. Sept. 5, 2018) (Doc. 34), and *Rigney, et al. v. Target Corp*., No. 8:19-cv-01432-MSS-JSS (M.D. Fla. July 14, 2020) (Doc. Nos. 49-4).

19. Based upon my involvement in many, many class actions over the last few years, including in multiple deficient COBRA notice cases filed and settled in federal courts over the last

few years cited Plaintiff's Motion, the Parties' proposed settlement is fair, reasonable, and adequate.

20. In sum, as Plaintiff's counsel I was well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis upon which to settle them, as a result of similar class action cases I've brought in the past. I fully support the settlement.

21. For the reasons set forth above, I respectfully submit that this settlement is fair, reasonable, and adequate and should be granted final approval.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27th day of January, 2023.

Brandon J. Hill

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 1:21-cv-24339-FAM

ASHLEY JOHNSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

McDONALD'S CORPORATION,

Defendant.
_____/

DECLARATION OF LUIS A. CABASSA

1. I represent Plaintiff in the above matter, along with the other attorneys in my firm.

2. Regarding my relevant educational and professional background, I have been engaged in the practice of law for approximately twenty-five (25) years. The corresponding state and federal bar admissions are:

- Supreme Court of Florida (1995)
- United States Court of Appeals for the Eleventh Circuit (1998)
- United States District Court for the Southern District of Florida (2003)
- United States District Court for the Northern District of Florida (1995)
- United States District Court for the Middle District of Florida (1997)
- United States District Court for the Eastern District of Michigan (2020).

3. I obtained a *Juris Doctor* in 1995 from the Florida State University College of Law (With Honors) and a B.S. in Industrial Labor Relations from Cornell University in 1992.

4. For over twenty years, my practice has been devoted almost exclusively to Labor and Employment Law. I have extensive trial experience in State and Federal Court, including several collective and class actions.

5. Since 2005, I have been Board Certified by the Florida Bar as a Specialist in Labor and Employment Law. I am also AV rated by Martindale Hubbell and a Fellow of the American Bar Foundation.

6. I have served on the Board Certification Committee for the Labor and Employment Section of the Florida Bar.

7. I, along with Brandon J. Hill, possess the requisite experience necessary to serve as class counsel in this case. I have been appointed as class counsel in multiple class actions, including cases involving a few hundred class members up to nearly half a million class members. Below is a list of class action cases I have been appointed as class counsel by the Court:

- *Brown, et al. v. Lowe's Companies, Inc., and LexisNexis Screening Solutions, Inc.,* Case No.: 5:13-CV-00079-RLV-DSC (W.D.N.C) (appointed as co-class counsel in national FCRA class action matter involving 451,000 class members);
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- *Patrick, Nieyshia v. Interstate Management Company, LLC*, Case No. 8:15-cv-1252-T-33AEP (M.D. Fla.) (appointed as class counsel in FCRA class action with approximately 32,000 class members);
- *Molina et al v. Ace Homecare LLC*, 8:16-cv-02214-JDW-TGW (M.D. Fla) (appointed as class counsel in WARN Act case with approximately 500 class members);
- *Moody, et al v. Ascenda, et al*., Case No. 0:16-cv-60364-WPD (S.D. Fla.) (appointed as class counsel in FCRA class action with approximately 12,000 class members);
- *Mahoney v. TT of Pine Ridge, Inc.,* Case No.: 9:17-cv-80029-DMM (S.D. Fla. Nov. 20, 2017) (served as class counsel in TCPA case with 300,000+ class members).
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- *Vazquez v. Marriott International, Inc*., Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 20,000 class members);
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8. I have been retained by Plaintiff as counsel in the instant case.

9. I am confident that the proposed Class Representative, Ashley Johnson ("Plaintiff" or "Ms. Johnson"), will adequately represent the putative class members in this case.

10. At all times Ms. Johnson has actively participated in this case and represented the interests of the class members. She provided critical information utilized to draft the Complaint, Amended Complaint, and to answering Defendant's extensive written discovery requests. She was also deposed. Additionally, she attended mediation via Zoom, participated

in settlement discussions, and has otherwise been an exemplary class representative. No conflicts, disabling or otherwise, exist between Ms. Johnson and the class members.

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13. By way of further procedural background, Named Plaintiff Ashley Johnson filed her original Complaint on December 15, 2021. (*See* Doc. 1). Defendant filed a potentially dispositive Motion to Dismiss on February 4, 2021, raising a variety of arguments, including failure to state a claim. (*See* Doc. 13). Before the Court ruled on Defendant's Motion to Dismiss, Named Plaintiff filed a First Amended Complaint which, in turn, mooted the first Motion to Dismiss filed by Defendant. (*See* Docs. 16-17, 19).

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19. The terms of the Settlement Agreement were modeled after similar COBRA class action settlements approved by other federal courts, including in *Hicks v. Lockheed Martin Corp, Inc*., 8:19-cv-00261-JSM-TGW (M.D. Fla. Sept. 5, 2018) (Doc. 34), and *Rigney, et al. v. Target Corp*., No. 8:19-cv-01432-MSS-JSS (M.D. Fla. July 14, 2020) (Doc. Nos. 49-4).

20. Based upon my involvement in many, many class actions over the last few years, including in multiple deficient COBRA notice cases filed and settled in federal courts over the last few years cited Plaintiff's Motion, the Parties' proposed settlement is fair, reasonable, and adequate.

21. In sum, as Plaintiff's counsel I was well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis upon which to settle them, as a result of similar class action cases I've brought in the past. I fully support the settlement.

22. For the reasons set forth above, I respectfully submit that this settlement is fair, reasonable, and adequate and should be granted final approval.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27th day of January, 2023.

/s/ Luis A. Cabassa
LUIS A. CABASSA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ASHLEY JOHNSON, individually and on behalf of all others similarly situated Plaintiff, v. McDONALD'S CORPORATION, Defendant.	CASE NO.: 1:21-cv-24339-FAM

DECLARATION OF AMERICAN LEGAL CLAIM SERVICES, LLC REGARDING DUE DILIGENCE IN NOTICING

I, Mark Unkefer, declare as follows:

1. I am a competent adult, over the age of eighteen, and this declaration is based on my personal knowledge.

2. I am a Case Manager for American Legal Claim Services, LLC ("ALCS").

3. **Class Action Fairness Act ("CAFA") Notice.** On November 3, 2022, ALCS mailed, via certified mail, a CAFA Notice pursuant to 28 U.S.C. § 1715 to the Attorneys General of the 50 states and the territory of Puerto Rico, the Attorney General of the United States, the District of Columbia's Corporate Counsel, the Attorney General for Guam, the Attorney General for American Samoa, the Attorney General for the United States Virgin Islands, and the Attorney General for the Northern Mariana Islands ("CAFA Service Parties"). The CAFA Notice package contained a cover letter on behalf of the Defendant McDonald's Corporation as well as a CD-ROM that included the following eight exhibits: 1) Class Action Complaint, 2) Memorandum of Law in Support of Defendant's Motion to Dismiss, 3) First Amended Class Action Complaint, 4) Memorandum of Law in Support of Defendant's Motion to Dismiss Amended Complaint, 5) Plaintiff's Opposition to Defendant's Motion to Dismiss, 6) Reply in Support of Motion to Dismiss Amended Complaint, 7) Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law in Support, and 8) Order Granting Preliminary Approval of Class Action Settlement.

4. **Class List Processing:** On or about November 10, 2022, ALCS processed the mailing list ("Class List") containing names and street addresses, where available. ALCS reviewed and processed the data and identified a total of 8,356 rows in the class data. After analysis, the final Noticing List contained 8,351 class members as 5 duplicates were removed. Throughout the noticing process, ALCS utilized several means of ensuring the most accurate mailing addresses for class members. These methods included National Change of Address through the USPS, skip-tracing, and manual updates from class members.

5. **Initial Class Notice:** On November 16, 2022, ALCS mailed the Notice of Class Action Lawsuit (attached hereto as Exhibit A) to 8,351 class members.

6. **Returned Mail Handling:** ALCS processed all Class Notices returned by USPS. A minority of the mail included an updated address provided by USPS ("FOE"). For these, the class member addresses were updated, and the Class Notice were re-mailed to the updated address provided. The remainder of the mail returned by the USPS did not contain an updated address ("UAA"). For these, ALCS conducted address searches using a nationally recognized location service to attempt to locate new addresses for these class members. Of the 8,351 Initial Notices mailed, 755 were returned by USPS as of the date of this declaration. ALCS has remailed 681 Notices to updated addresses. Of the 681 remailed Notices, 14 were returned by USPS as of the date of this declaration.

7. **Noticing Campaign Summary:** The following is a summary of the noticing, as of the date of this Declaration:

   - Total Class Members: 8,351
   - Initial Notice of Class Action Settlement mailed via USPS: 8,351
   - Notice of Class Action Settlement returned by USPS: 755
   - Notice of Class Action Settlement remailed via USPS: 681
   - Remailed Notice of Class Action Settlement returned as UAA: 14
   - Notice of Class Action Settlement deemed undeliverable: 88
   - Percentage of Notice of Class Action Settlement deemed delivered: **98.95%**

8. **Exclusions:** Class members were who wished to opt out of the proposed settlement were instructed to mail a written request for exclusion to the Settlement Administrator by January 15, 2023. ALCS has received 1 request for exclusion from the proposed settlement as of the date of this declaration (attached hereto as Exhibit B).

9. **Objections:** Class members who wished to object to the proposed settlement were instructed to mail a written objection to the Settlement Administrator and the Court by January 15, 2023. ALCS has not receive any objections to the proposed settlement as of the date of this declaration.

10. **Website:** ALCS created a case website www.johnsonvmcdonaldssettlement.com that provided further information as stated in the Notice. The website contained sections for important Court documents, key dates and answers to frequently asked questions. The Court documents posted were the Complaint, the Amended Complaint, Settlement Agreement, Preliminary Approval Order, and Class Notice. Class members also had an opportunity to update their address.

11. **Toll-Free Telephone:** ALCS established a toll-free telephone line (888-755-4391) for Class member to contact with questions about the settlement or update their address. As of the date of this declaration, we received 100 phone calls on the case dedicated line.

I declare under penalty of perjury pursuant to the laws of the State of Florida that the foregoing is true and correct to the best of my knowledge. Executed on December 28, 2022, in Jacksonville, Florida.

Mark Unkefer

Exhibit A

COURT ORDERED NOTICE

Johnson
v.
McDonald's Corp.

Class Action Notice

c/o Settlement Administrator
PO Box 23680
Jacksonville, FL 32241-3680

PRSRT FIRST CLASS
U.S. POSTAGE
PAID
MAILED FROM
ZIP CODE 32216
PERMIT NO 584

8131-FC-008638

Postal Service: Please do not mark barcode
Notice ID: <<noticeid>> PIN: <<pin>>

1 * 1
<<fname>> <<lname>>
<<addrline1>>
<<addrcity>> <<addrstate>> <<addrzip>>

(Continued below)

A Settlement has been reached in a proposed class action lawsuit in which Named Plaintiff Ashley Johnson ("Named Plaintiff") alleges that McDonald's Corporation ("Defendant") provided her and other putative class members with a notice that did not adequately inform class members how to exercise their right to elect continuation health coverage under the Consolidated Omnibus Reconciliation Act of1985 ("COBRA"). Defendant denies Named Plaintiff's allegations and denies that it violated any law or regulation (nor has the Court found that Defendant violated any law or regulation), and Defendant has affirmatively asserted that all COBRA Notices complied with applicable laws,but has agreed to the Settlement to avoid the uncertainties and expenses of continuing the case. Defendant is agreeing to deposit $156,782.50 into a Settlement Account and, after deducting amounts for the Named Plaintiff's reasonable attorneys' fees and costs and settlement administration costs, each Settlement Class Member will receive a *pro rata* share of the remaining net settlement proceeds. There are approximately 8,959 Settlement Class Members.

Am I a Class Member? Defendant's records indicate you are a member of the settlement class defined as follows: "All participants and beneficiaries in the McDonald's Corporation Health Plan who, as a result of a qualifying event, received a COBRA Notice between December 15, 2017, and February 9, 2021 , as determined by Defendant's records, and who did not elect COBRA" (referenced herein as the "Settlement Class").

What Will the Settlement Mean for Me? If the Court approves the Settlement, you will receive a payment by check. After deducting expenses, the Gross Settlement amount will be divided equally on a pro rata basis among all Settlement Class Members who do not opt out of the Settlement. The gross amount payable to each Settlement Class Member (assuming all potential members participate) will be approximately $17.50. However, certain deductions will be made from the Settlement Account, as approved by the Court. Specifically, Class Counsel will ask the Court to approve (1) Class Counsel's attorneys' fees equivalent to one-third of the Settlement Account; (2) Class Counsel's litigation costs; (3) settlement administration costs. If the Court awards the amounts, the net amount to each Settlement Class Member will be approximately $7.00 to $10.00

In exchange for their *pro rata* shares of the net settlement proceeds, each Settlement Class Member will be releasing Defendant, the Plan, the COBRA administrator and other administrators for the Plan, and other related entities (the "Released Parties") from the claims brought in this action with respect to the COBRA Notice sent to each Settlement Class Member at issue in Named Plaintiff's First Amended Class Action Complaint. If approved by the Court, Named Plaintiff Ashley Johnson and all Settlement Class Members who have not opted out of the Settlement Class, shall fully and forever release, waive, acquit, and discharge each of the Released Parties from the claims in this lawsuit only. No claims by class members for benefits under ERISA are subject to this waiver except to the extent the claim for benefits or disputed benefits relate to the alleged failure to receive a proper COBRA Notice.

Continued on reverse side.)

What Do I Need to Do to Receive a Payment? To receive a settlement payment, you do not need to do anything. You will receive your pro-rata portion of the net Settlement Fund provided you do not opt-out of the Settlement, as described in further detail below.

Who Represents Me? The Court appointed lawyers Luis A. Cabassa and Brandon J. Hill from Wenzel Fenton Cabassa, P.A., to represent the Settlement Class. As Class Counsel, they will seek to be paid legal fees out of the Settlement Account as described above. You may hire and pay for a lawyer at your own expense if you do not wish to be represented by Class Counsel, but you are not required to retain your own counsel.

What If I Don't Like the Settlement? You may exclude yourself from participating in the Settlement or object to its terms. To exclude yourself ("opt out") and keep any individual rights you may have against Defendant concerning the COBRA Notice at issue in this lawsuit (and Defendant will keep any defenses it has against your claims), you must specifically state in writing that you want to opt out of the Settlement and send your written opt-out request to the Settlement Administrator by January 15, 2023. Your written opt-out request must (i) state the case name and; (ii) state your name, address, telephone number, and email address; and (iii) include your personal signature. If you do not opt out of the Settlement, you may still object to the terms of the proposed Settlement by filing a written objection with the Court and sending a copy of your objection to the Settlement Administrator by January 15, 2023. If you object to the Settlement, your written objection must (i) state the case name and number; (ii) provide the specific grounds for your objection; and (iii) state whether your objection pertains to just you individually, or all or some of the proposed Settlement Class (iv) state your name, address, telephone number, and email address; (v) state whether you intend to appear at the Final Approval Hearing, either with or without your own counsel; and (vi) include your personal signature (and your legal counsel's signature, if you have your own representation).

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing on February 8, 2023 at 9:30 AM at the Wilkie D. Ferguson, Jr. United States Courthouse for the Southern District of Florida, Miami Division, 400 North Miami Avenue, Miami, Florida 33128, in Courtroom 12-2. The hearing may be postponed to a later date so you should visit the website listed below for updates prior to the hearing date. It may also be conducted via telephone or by Zoom due to COVID without further notice. If the Court approves the settlement, there may be appeals or objections that must be resolved before the settlement will become effective. Settlement payments to members of the Settlement Class will be made only if the settlement is finally approved by the Court and only after all appeals or objections are resolved. This may take some time, so please be patient. You may check on the status of this approval process by visiting this website www.johnsonvmcdonaldssettlement.com.

How May I Get More Information? For more information, contact the Johnson v. McDonald Settlement Administrator, PO Box 23680, Jacksonville, FL, 32241-3680, at (888) 755-4391, via e-mail at info@johnsonvmcdonaldssettlement.com, or visit www.johnsonvmcdonaldssettlement.com.

Please use this section to update your address

<<noticeid>> <<PIN>>

NAME_____

ADDRESS_____

CITY, STATE, ZIP_____

PLACE STAMP HERE

Johnson v. McDonald's Corp.

c/o Settlement Administrator

PO Box 23680

Jacksonville, FL 32241-3680

Exhibit B

578 11/21/2022

Case Name: Johnson v McDonald Copp

NOV 25 2022

Anne Craver
260 E. Main St #1
Owensville, Ohio 45160
573 431-2296
craveranne@gmail.com

I (request) to opt out of the court settlement.

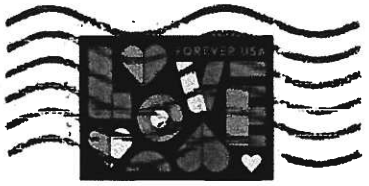
Anne M. Craver

578
JOHNSON v MCDONALD
EXCLUSION 900001

Case 1:21-cv-24339-FAM Document 46-4 Entered on FLSD Docket 01/27/2023 Page 9 of 9

Miss Anne M. Craver
260 E Main St Apt 1
Owensville, OH 45160

CINCINNATI OH 450
21 NOV 2022 PM 5 L



NOV 25 2022

Johnson v McDonald's Corp.
c/o Settlement Administrator
P.O Box 23680
Jacksonville, FL 32241-3680

32241-368080

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ASHLEY JOHNSON, individually and on behalf of all others similarly situated

Plaintiff,

v.

McDONALD'S CORPORATION,

Defendant.

CASE NO.: 1:21-cv-24339-FAM

SUPPLEMENTAL DECLARATION OF AMERICAN LEGAL CLAIM SERVICES, LLC REGARDING DUE DILIGENCE IN NOTICING

I, Mark Unkefer, declare as follows:

1. I am a competent adult, over the age of eighteen, and this declaration is based on my personal knowledge.

2. I am a Case Manager for American Legal Claim Services, LLC ("ALCS").

3. **Returned Mail Handling:** ALCS processed all Class Notices returned by USPS. A minority of the mail included an updated address provided by USPS ("FOE"). For these, the class member addresses were updated, and the Class Notice were re-mailed to the updated address provided. The remainder of the mail returned by the USPS did not contain an updated address ("UAA"). For these, ALCS conducted address searches using a nationally recognized location service to attempt to locate new addresses for these class members. Of the 8,351 Initial Notices mailed, 777 were returned by USPS as of the date of this declaration. ALCS has remailed 716 Notices to updated addresses. Of the 716 remailed Notices, 128 were returned by USPS as of the date of this declaration.

4. **Noticing Campaign Summary:** The following is a summary of the noticing, as of the date of this Declaration:

   - Total Class Members: 8,351
   - Initial Notice of Class Action Settlement mailed via USPS: 8,351
   - Notice of Class Action Settlement returned by USPS: 777
   - Notice of Class Action Settlement remailed via USPS: 716
   - Remailed Notice of Class Action Settlement returned as UAA: 128
   - Notice of Class Action Settlement deemed undeliverable: 189
   - Percentage of Notice of Class Action Settlement deemed delivered: **97.74%**

I declare under penalty of perjury pursuant to the laws of the State of Florida that the foregoing is true and correct to the best of my knowledge. Executed on January 17, 2023, in Jacksonville, Florida.

Mark Unkefer