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

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

19 vs.

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

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

**PLAINTIFFS’ NOTICE OF MOTION AND
 MOTION FOR FINAL APPROVAL OF CLASS
 ACTION SETTLEMENT WITH MCDONALD’S
 DEFENDANTS; MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT**

Judge: Hon. James Donato

Hearing Date / Time: July 13, 2017 / 10:00 a.m.

Complaint Filed: March 12, 2014

Trial Date: Not set

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEY(S) OF RECORD:

PLEASE TAKE NOTICE that on July 13, 2017 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 11 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California 94102, before the Honorable James Donato, plaintiffs Stephanie Ochoa, Ernestina Sandoval, Yadira Rodriguez, and Jasmine Hedgepeth will and hereby do move this Court to grant final approval of the class action settlement between plaintiffs, acting on their own behalf, on behalf of members of the certified class, and on behalf of the State of California, and defendants McDonald’s Corporation; McDonald’s U.S.A., L.L.C.; and McDonald’s Restaurants of California, Inc. (collectively, “McDonald’s”).

This Motion is made on the grounds that the settlement is fair, reasonable, and adequate, as this Court previously recognized in granting preliminary approval to the settlement, and should be given final approval. No objections to the settlement have been submitted, and only one class member has chosen to opt out. The requested named plaintiff service awards are justified by the substantial time and effort each named plaintiff expended in this litigation, the significant risks to current and future employment they shouldered by stepping forward on behalf of their low-income current and former coworkers, the significant benefits they have achieved for those coworkers through this settlement, and the general release they are providing to McDonald’s as a term of the settlement.

This motion is based on this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the supporting declarations of Kelsey E. Skye and P. Casey Pitts, filed herewith; the executed Settlement Agreement; the Court record in this action; all matters of which the Court may take notice; and such argument as the Court permits at the hearing on this Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs request final approval of their proposed class action settlement (“Settlement”)
3 with McDonald’s.¹ This Court has already concluded that the Settlement has “no obvious defects
4 and falls within the range of possible approval as fair, adequate, and reasonable.” Dkt. 384, at 1.
5 The Court should now confirm that the Settlement merits final approval. To the knowledge of
6 plaintiffs’ counsel, this is the first class action settlement between McDonald’s and a certified class
7 of crew members at franchisee-operated restaurants anywhere in the country. The Settlement
8 provides significant monetary and injunctive relief to class members, including 100% of the
9 backpay, interest, and liquidated damages that would have been recoverable at trial on the certified
10 class action claims, plus a portion of class members’ potential recovery on claims that were *not*
11 certified for trial. *See* October 28, 2016 Decl. of Barbara J. Chisholm, Dkt. 381-2 (“Chisholm
12 Decl.”) ¶16; Settlement Agreement ¶¶26-27. As a result of the Settlement, which is the product of
13 extensive arms-length negotiations, substantial discovery, and numerous in-person and telephonic
14 mediation sessions conducted by Magistrate Judge Jacqueline Corley, all class members will
15 promptly receive significant economic and non-economic benefits without facing the risks and
16 delays of one or more trials and appeals. No member of the class has objected to its terms, and
17 only one member chose to opt out. Decl. of Kelsey Skye (“Skye Decl.”) ¶19-20. Because the
18 Settlement is “fair, reasonable, and adequate,” final approval should be granted. Fed. R. Civ. P.
19 23(e)(2).

20 The Court should also award service awards of \$500 to each of the named plaintiffs. These
21 awards are more than justified by the time and efforts expended by the named plaintiffs in
22 achieving significant benefits to the class through this Settlement and the earlier, separate
23 settlement with The Edward J. Smith and Valerie S. Smith Family Limited Partnership (“Smith”),
24 the significant risks plaintiffs took in bringing and maintaining this action, the public interest in
25 encouraging individuals like the named plaintiffs to act as private attorneys general in order to
26 vindicate the rights of their low-income and vulnerable current and former coworkers, and the

27 _____
28 ¹ A copy of the Settlement Agreement is attached as Exhibit A to the Declaration of Barbara J. Chisholm, Dkt. 381-2.

1 significantly broader release of claims the named plaintiffs agreed to accept as part of the
2 settlement. Although this Court awarded service payments to the named plaintiffs in connection
3 with the Smith settlement, *see* Dkt. 382, at 5, the modest additional payments sought here are
4 warranted both by plaintiffs' additional efforts on behalf of the class over the last year, and because
5 the service awards provided pursuant to the Smith settlement were tied to the smaller overall
6 amount of that settlement and did not fully reflect the value of the services provided by the named
7 plaintiffs during the course of this litigation.

8 **FACTS AND CASE HISTORY**

9 **I. The Litigation**

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

27 In preparing for dispositive motion briefing and then for trial, the parties have conducted an
28 enormous amount of discovery—including numerous depositions and reams of written discovery—

1 concerning the merits of plaintiffs' claims, class certification issues, and defendants' liability under
2 various legal theories. Defendants produced over 100,000 pages of documents, including payroll
3 and time records for the plaintiff class. *See* Chisholm Decl. ¶4.

4 After this extensive discovery, plaintiffs filed motions for class certification and for partial
5 summary judgment (the latter of which was mooted by plaintiffs' settlement with Smith). *See* Dkt.
6 70, 224. McDonald's also filed a motion for summary judgment challenging plaintiffs' theories of
7 joint and derivative liability, which this Court granted in part and denied in part on September 24,
8 2015, concluding that McDonald's was not liable as a joint employer with direct control but
9 allowing plaintiffs to proceed against McDonald's on an ostensible agency theory. Dkt. 129, 289.
10 On July 7, 2016, the Court granted plaintiffs' motion for class certification of their miscalculated
11 wages, overtime payments, and uniform maintenance payments claims. Dkt. 319. McDonald's
12 sought appellate review of the Court's class certification order and plaintiffs took a conditional
13 cross-appeal, but the Ninth Circuit motions panel did act on those requests before plaintiffs and the
14 McDonald's defendants reached a settlement. Dkt. 322; Chisholm Decl. ¶20.

15 Trial in this matter was scheduled to begin December 5, 2016. Dkt. 334 & 336. In
16 preparing for trial, the parties exchanged lists of potential trial witnesses, as well as expert and
17 rebuttal expert reports. Chisholm Decl. ¶9.

18 **II. Settlement Negotiations and Settlement Agreement**

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

28 The Settlement requires McDonald's to pay \$1.75 million to class members and the

1 California Labor and Workforce Development Agency (“LWDA”) on a non-reversionary basis,
 2 plus all costs of Class Notice and administration, plus court-awarded statutory attorneys’ fees and
 3 costs to plaintiffs’ counsel up to a maximum amount of \$2 million (which is approximately half of
 4 plaintiffs’ counsel’s lodestar). Chisholm Decl. ¶¶22; Settlement Agreement ¶¶24, 26, 33; *see also*
 5 Plaintiffs’ Motion for Attorneys’ Fees and Costs, Dkt. 385. The \$1.75 million non-reversionary
 6 portion of the settlement fund will be distributed among plaintiffs, members of the certified class,
 7 and the LWDA, as follows: (a) \$716,667 to Class Members for backpay, interest, and liquidated
 8 damages, (b) \$350,000 to Class Members for wage statement penalties, (c) \$350,000 to Class
 9 Members for waiting time penalties, (d) \$83,333 to Class Members for the employee portion of
 10 civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), Cal.
 11 Labor Code §§ 2698 *et seq.*, and (e) \$250,000 to the LWDA under PAGA for labor law
 12 enforcement and education. Settlement Agreement ¶¶25-27, 33.² Payments to class members will
 13 be calculated based principally on the number of weeks each class member worked during the class
 14 period (March 12, 2010 to November 5, 2016), with former employees each receiving a separate,
 15 additional amount to compensate them on a per capita basis for their waiting time penalties claims.
 16 Settlement Agreement ¶26. The PAGA penalty payment of \$83,333 will be distributed on a pro
 17 rata basis for weeks worked after March 12, 2013 (the start of the PAGA limitations period). *Id.*
 18 ¶31.

19 In addition to the monetary payments, the Settlement provides for the following injunctive
 20 relief:

- 21 1. Within one month of preliminary approval of the Settlement, McDonald’s shall develop
 22 and present to Plaintiffs’ counsel for review and comment a training deck that
 23 McDonald’s, within one month after final approval of the Settlement, shall make
 24 available and offer to Smith that McDonald’s present to all Smith owners, supervisors,
 25 store managers, department managers, and shift managers. The training deck shall
 26 provide training on the following topics with respect to whatever ISP or e*Restaurant
 27 software is in use by Smith for scheduling and timekeeping purposes at the time of the
 training (hereinafter “Software”):
 - 28 a. How Software currently calculates and flags whether an employee’s time punches
 reflect the number, length, and timing of meal periods and rest breaks that would
 satisfy the parameters set by Smith, including but not limited to any parameters

² Under the settlement, these amounts will be adjusted proportionately to account for and distribute any interest earned, as well as the payment of any court-approved service awards. *Id.* ¶26.

- 1 established by Plaintiffs' settlement with Smith;
- 2 b. Instructions on how the franchisee can change or customize the Labor Law settings
- 3 in Software;
- 4 c. Information explaining how the franchisee could identify shifts on which an
- 5 employee's time punches reflect that a meal period was provided after five hours of
- 6 work, shifts on which an employee's time punches reflect that a meal period or rest
- 7 break has been combined with (or taken shortly before or after) another meal period
- 8 or rest break, and shifts on which an employee's time punches reflect a rest break
- 9 shortly before (e.g., within 10 minutes) of the end of the shift; and
- 10 d. Information explaining how Smith could determine whether to pay an employee a
- 11 premium wage because the employee's time punches reflect a shift that is missing a
- 12 required meal period or rest break or reflect an untimely meal period or rest break.
- 13 2. McDonald's shall provide the training deck described above to Plaintiffs' counsel for
- 14 review and comment before providing the training to Smith. McDonald's shall review
- 15 and accept Plaintiffs' counsels' reasonable, good faith requests for modification or
- 16 clarification of the training deck.
- 17 3. Nothing in this agreement shall preclude McDonald's from making clear in this or any
- 18 other training to Smith owners, supervisors, store managers, department managers, and
- 19 shift managers that McDonald's does not directly, indirectly, or through an agent
- 20 employ the workers in the Smith restaurants, and that Smith's use of Software for
- 21 scheduling and timekeeping purposes is optional, and not required by McDonald's.
- 22 4. After such training has taken place, McDonald's will report to Plaintiffs' counsel the
- 23 names, positions, and date of training for each Smith owner, supervisor, store manager,
- 24 department manager, shift manager, and other Smith employee or agent who attends the
- 25 training described above, to the extent McDonald's has such information.

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

18 Smith.

19 Upon the Settlement's effective date, all Class Members who have not opted out will be

20 deemed to have released McDonald's from all claims that were or could have been asserted against

21 them in the First Amended Complaint based upon the facts alleged. *Id.* ¶40. Because no

22 objections have been filed, the effective date will be the date of entry of judgment. *Id.* ¶1(k). The

23 Claims Administrator will distribute payments to class members within 14 days after the effective

24 date. *Id.* ¶¶25-26. Any amounts uncashed 120 days after the date of distribution (including after

25 re-mailing of checks to any forwarding or otherwise updated addresses) will be redistributed

26 among all other class members in proportion to their initial settlement shares. *Id.* ¶31. If the total

27 amount of remaining funds after redistributions does not exceed \$40,000, these funds will be

28 donated as *cy pres* to Bay Area Legal Aid. *Id.* ¶39.

1 **III. Preliminary Approval, Class Notice and Claims Process**

2 This Court granted preliminary approval to the Settlement on January 27, 2017. Dkt. #384.
3 In granting preliminary approval, the Court found that the Settlement “falls within the range of
4 possible approval as fair, adequate, and reasonable.” *Id* at 1.

5 Pursuant to the Settlement Agreement’s terms and the preliminary approval order, on
6 February 13, 2017, the claims administrator mailed the Court-approved class notice and claim
7 forms, in English and Spanish, to the 886 individuals on the putative class list. Skye Decl. ¶¶4-5, 7;
8 *see also* Settlement Agreement ¶¶1(g); 10. The claims administrator was ultimately able to send
9 the class notice to 853 of the 886 Class Members. Skye Decl. ¶20. Each personalized class
10 settlement notice stated the recipient’s estimated settlement amount (assuming full participation),
11 the deadline for submitting a claim form (if a form were necessary), and the deadlines and
12 procedures for opting out of or objecting to the Settlement. Settlement Agreement ¶10(e).

13 Class members had until April 14, 2017—60 days from the postmarked date of notice—to
14 opt out or object. Skye Decl. ¶7; Settlement Agreement ¶10(e).³ Only one class member opted
15 out, and no class members submitted objections to the settlement. Skye Decl. ¶19-20.

16 For class members with deliverable home addresses, settlement checks will be mailed to
17 those addresses following final approval, and the class members need not submit any claim form.
18 Settlement Agreement ¶10(d). The only class members required by the Settlement to file claim
19 forms are those who did not receive class notices at their home addresses. The deadline for
20 submitting such a claim form or challenging the dates of employment listed in the personalized
21 class notices was May 15, 2017. Skye Decl. ¶7; Settlement Agreement ¶10(e). Twenty-nine claim
22 forms were submitted, but each was from a class member for whom the class list included a
23 deliverable home address. Skye Decl. ¶13. Accordingly, receipt of those twenty-nine forms did
24 not increase total class member participation in the Settlement. *Id.* ¶13, 20. No challenges were
25 lodged regarding the dates of employment listed in the personalized class notices. *Id.* ¶18.

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³ Plaintiffs’ filed their motion for attorneys’ fees on March 17, 2017, 28 days before the deadline
for submitting objections or opting out. *See* Dkt. 385.

ARGUMENT

I. Final Approval of the Settlement is Appropriate

Plaintiffs seek final approval of the class action settlement with McDonald's. Having granted preliminary approval to the proposed class action settlement and upon confirming that notice of the proposed settlement was provided to the class, the Court must conduct a fairness hearing, where "arguments and evidence may be presented in support of and in opposition to the settlement," and the Court may assess whether the settlement is "fair, reasonable, and adequate." *McNamara v. Bre-X Minerals Ltd.*, 214 F.R.D. 424, 426 (E.D. Tex. 2002); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 945-47 (9th Cir. 2015); *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); Fed. R. Civ. P. 23(e)(2).

"[S]trong judicial policy ... favors settlements, particularly where complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (citations omitted). When determining whether to grant final approval, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned." *Officers for Justice v. Civil Service Com'n of the City and County of San Francisco*, 688 F. 2d 615, 625 (9th Cir. 1982); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) ("It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness."). This Court has already concluded that the Settlement has "no obvious defects and falls within the range of possible approval as fair, adequate, and reasonable." Dkt. 384 at 1. There is no reason to revisit that conclusion.

A. The Significant Relief Provided by the Settlement Supports Approval

The Settlement provides significant relief to class members, following hard-fought litigation, significant investigation and discovery, and extensive motion practice. Plaintiffs and their counsel believe that this is the first ever employment class action settlement with McDonald's involving a certified class of crew members working in franchise-operated stores, and it is certainly

1 by far the largest. Chisholm Decl. ¶15. The Settlement provides that class members will receive
2 more than 100% of the back pay, liquidated damages, and interest potentially available for the
3 claims this Court previously certified, while also providing class members with a large portion of
4 the corresponding penalties, as well as a portion of the back pay, liquidated damages, and interest
5 associated with the *uncertified* claims (which plaintiffs would otherwise have pursued on appeal,
6 regardless of the outcome of trial). *Id.* ¶16. This monetary relief is in addition to the more than
7 \$500,000 in payments directly to the class (not counting attorneys' fees, costs, or payments to the
8 LWDA) provided by the separate class settlement with Smith.

9 The Settlement also requires McDonald's to provide meaningful injunctive relief that
10 directly addresses plaintiffs' underlying legal claims, and which supplements and integrates with
11 the injunctive relief in the Smith settlement. The new injunctive relief requires McDonald's to
12 make available to Smith a training on the use of McDonald's software and techniques for using the
13 software to ensure compliance with California's laws governing overtime, meal periods, and rest
14 breaks. *Id.* ¶19. This relief will benefit current and future employees at Smith-operated
15 McDonald's restaurants by helping to ensure that the meal-and-rest-break, overtime, and other
16 wage-and-hour violations alleged in this lawsuit do not reoccur. *Id.*; *see Hanlon*, 150 F.3d at 1027,
17 1029 (approving settlement after evaluating value of injunctive relief to class members).

18 **B. The Risks and Delay of Further Litigation Support Approval**

19 Although plaintiffs believe they have a strong case and would ultimately prevail as
20 litigation continues, McDonald's has disputed the facts, the applicable law, and the appropriateness
21 of maintaining this case as a class action lawsuit, thus entailing significant risks in the absence of
22 settlement. Those risks, at the time the Settlement was executed, included McDonald's pending
23 Rule 23(f) petition to the U.S. Court of Appeals for the Ninth Circuit, which sought to reverse this
24 Court's class-certification ruling; McDonald's motion seeking to strike plaintiffs' representative
25 PAGA claims; the possibility of a loss on the merits at trial, either as to plaintiffs' ostensible-
26 agency theory of liability or on any of the underlying substantive claims; and the possibility that a
27 favorable judgment at trial might be reversed on appeal. Chisholm Decl. ¶¶8, 20. Given the vast
28 number of issues involved and the multitude of potential stumbling blocks, the Settlement with

1 McDonald's is fair, adequate, and reasonable. *See Nat'l Rural Telecomm. v. DIRECTV, Inc.*, 221
2 F.R.D. 523, 526 (C.D. Cal. 2004) ("The Court shall consider the vagaries of litigation and compare
3 the significance of immediate recovery by way of the compromise to the mere possibility of relief
4 in the future, after protracted and expensive litigation.") (citation and internal quotation marks
5 omitted).

6 The timing of the Settlement is also beneficial to class members. Even if the class were to
7 prevail on all claims at trial and to fully preserve that judgment on appeal, the class members'
8 ultimate recovery would be delayed by years. Under the Settlement, the predominantly low-
9 income and minimum-wage worker class members will enjoy the benefit of an immediate, certain,
10 and significant recovery. Chisholm Decl. ¶20. The certainty of at least a partial monetary recovery
11 now, before additional fees and costs are incurred, is extremely beneficial to the class. *See In re*
12 *Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 510 (E.D.N.Y. 2003) ("The
13 potential for this complex litigation to result in enormous expense, and to continue for a long time,
14 was great."). Given the risks presented by this litigation and the inevitable delay that would result
15 from further litigation, the Settlement is fundamentally fair and in the best interests of the class.

16 **C. The Substantial Discovery Completed and the Stage of the Proceedings**
17 **Support Approval**

18 "A settlement following sufficient discovery and genuine arms-length negotiation is
19 presumed fair." *Vasquez v. Coast Valley Roofing Inc.*, 266 F.R.D 482, 489 (E.D. Cal. Mar. 9,
20 2010). In this case, the parties have conducted extensive discovery into the merits of plaintiffs'
21 claims, class certification, and defendants' liability under various legal theories. The parties also
22 fully briefed and received rulings on McDonald's motion for summary judgment and plaintiffs'
23 motion for class certification, and were in the midst of preparing for a December 2016 jury trial
24 when they agreed to settle the matter. *See* Chisholm Decl. ¶¶6-10. The extent of preparation and
25 discovery conducted in this litigation is more than sufficient to provide class counsel a thorough
26 understanding of the strength of plaintiffs' claims. There can be no doubt that the parties
27 negotiated the present settlement in good faith and at arm's length. *See* Chisholm Decl. ¶¶6-10.
28

1 **D. The Lack of Opposition by the Class Supports Approval**

2 “The reactions of the members of a class to a proposed settlement is a proper consideration
3 for the trial court.” *Nat’l Rural Telecomm.*, 221 F.R.D. at 528 (internal quotation marks omitted).
4 As detailed above, the claims administrator mailed notice of the Settlement to the class members in
5 accordance with this Court’s preliminary approval order. *See supra* at 7. No class member has
6 objected, and only one class member opted out of the settlement. *Skye Decl.* ¶19-20. The absence
7 of any class member objections to the settlement, and the decision by only one class member to opt
8 out, further establish the fairness, reasonableness, and adequacy of the Settlement.

9 **E. The Experience and Views of Class Counsel Support Approval**

10 Finally, “[g]reat weight is accorded to the recommendation of counsel, who are most
11 closely acquainted with the facts of the underlying litigation.” *Nat’l Rural Telecomm.*, 221 F.R.D.
12 at 528 (internal quotation marks omitted). “Parties represented by competent counsel are better
13 positioned than courts to produce a settlement that fairly represents each party’s expected outcome
14 in the litigation.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, class
15 counsel has extensive experience litigating employment class actions and is well-positioned to
16 assess the risks of continued litigation and the benefits provided by the Settlement. *See Chisholm*
17 *Decl.* ¶14; *see also Decl. of Michael Rubin in Support of Plaintiffs’ Motion for Attorneys’ Fees*
18 *and Costs*, Dkt. 385-1, ¶¶3-12 (describing class counsel’s experience). Substantial discovery,
19 investigation, and research over the course of more than two years have enabled plaintiffs’
20 experienced counsel to assess the strength of plaintiffs’ claims and the benefits of the settlement.
21 Class counsel believe the Settlement with McDonald’s is fair, reasonable, adequate, and in the best
22 interests of the class in light of all known facts and circumstances, including the risk of significant
23 delay in obtaining relief for class members and the possible defenses to this litigation. *Chisholm*
24 *Decl.* ¶14.

25 **II. The Requested Service Awards Should Be Approved**

26 In examining the reasonableness of a requested service payment, courts must consider all
27 “relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of the class,
28 the degree to which the class has benefitted from these actions, ... the amount of time and effort

1 the plaintiff expended in pursuing the litigation ... and reasonabl[e] fear[s of] workplace
2 retaliation.” *Staton*, 327 F.3d at 977 (citation omitted). Each of those factors weighs in favor of
3 granting service payments in the present case. The modest \$500 award each plaintiff seeks is
4 significantly less than the \$5,000 that is “presumptively reasonable” in the Ninth Circuit, *Smith v.*
5 *Am. Greetings Crop.*, No. 14-CV-02577-JST, 2016 WL 2909429, at *10 (N.D. Cal. May 19, 2016),
6 and when combined with the prior service awards, represents reasonable compensation for the time
7 named plaintiffs spent pursuing this case, including time spent after achieving the settlement with
8 Smith, which provides significant benefits to the unnamed class members; the information and
9 insight named plaintiffs provided to class counsel to prosecute the case efficiently; the risks
10 involved in bringing this case as named plaintiffs and class representatives; and the delays resulting
11 from bringing this case on a class rather than individual basis. The service awards are also justified
12 by the broader release of rights that the named plaintiffs agreed to provide to McDonald’s as part
13 of the settlement.

14 **A. Named Plaintiffs Took Significant Actions That Benefitted the Class as a**
15 **Whole, and Expended Substantial Time Assisting with the Successful**
16 **Prosecution of the Lawsuit and Negotiation of Settlements with Smith and**
17 **McDonald’s**

17 Service awards are payments to class representatives for their service to the class in
18 bringing the lawsuit. *See Rodriguez*, 563 F.3d at 958-59. Class representatives bring critical
19 factual knowledge to employment class actions, including information about employer policies and
20 practices that affect wages. *See Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011
21 WL 1230826, at *32-37 (N.D. Cal. Apr. 1, 2011).

22 In this case, each of the four plaintiffs took actions to protect the interests of the class and
23 from which the class benefitted as a whole. Plaintiffs’ work included, but was not limited to,
24 working with counsel to provide the facts underlying the claims set forth in the original and
25 amended complaints, and continuing to communicate with counsel throughout the litigation. Decl.
26 of Plaintiff Stephanie Ochoa in Support of Plaintiff’s Motion for Final Settlement Approval and
27 Plaintiff’s Service Awards (“Ochoa Decl.”), Dkt. 311, ¶¶2-3; Decl. of Plaintiff Ernestina Sandoval
28 in Support of Plaintiffs’ Motion for Final Settlement Approval and Plaintiffs’ Service Awards

1 (“Sandoval Decl.”), Dkt. 312, ¶2-3; Decl. of Plaintiff Yadira Rodriguez in Support of Plaintiffs’
2 Motion for Final Settlement Approval and Plaintiffs’ Service Awards (“Rodriquez Decl.”), Dkt.
3 313, ¶2-3; Decl. of Plaintiff Jasmine Hedgepeth in Support of Plaintiffs’ Motion for Final
4 Settlement Approval and Plaintiffs’ Service Awards (“Hedgepeth Decl.”), Dkt. 314, ¶2-3. Each
5 plaintiff also spent significant time preparing for and being deposed in furtherance of the lawsuit,
6 and each plaintiff sat for a full day of deposition. Ochoa Decl. ¶3; Sandoval Decl. ¶3; Rodriguez
7 Decl. ¶3; Hedgepeth Decl. ¶3. All four plaintiffs spent significant time searching for and providing
8 documents responsive to McDonald’s discovery requests, and working with class counsel to
9 prepare, review, and approve responses to interrogatories. Ochoa Decl. ¶3; Sandoval Decl. ¶3;
10 Rodriguez Decl. ¶3; Hedgepeth Decl. ¶3; Declaration of P. Casey Pitts (“Pitts Decl.”) ¶6. Each
11 plaintiff participated in the McDonald’s settlement negotiation process by speaking with class
12 counsel in preparation for mediation, conferring with counsel after mediation to review, discuss,
13 and execute the written agreement, and—for two plaintiffs—attending two all-day mediation
14 sessions with class counsel in San Francisco. Sandoval Decl. ¶2; Rodriguez Decl. ¶2; Pitts Decl.
15 ¶6. The named plaintiffs also assisted counsel in preparing for trial. Pitts Decl. ¶6. Through June
16 22, 2016, when plaintiffs last submitted declarations describing their efforts to this case, *each*
17 *plaintiff* had spent between approximately 37.5 and 61.5 hours assisting in the prosecution and
18 settlement of their claims against Smith and McDonald’s. *See* Ochoa Decl. ¶2-3; Sandoval Decl.
19 ¶2-3; Rodriguez Decl. ¶2-3; Hedgepeth Decl. ¶2-3. Class counsel’s contemporaneous time records
20 from June 23, 2016 through February 2017 show approximately 32 hours of additional time
21 involving interactions with the named plaintiffs regarding this litigation. Pitts Decl. ¶6; *see also*
22 Dkt. 385-1, Ex. A (time records).

23 Courts regularly grant larger service awards to named plaintiffs who have expended less
24 time contributing to litigation. *See, e.g., Smith*, 2016 WL 2909429, at *10-11 (approving \$5,000
25 incentive awards for plaintiffs who spent 20 to 25 hours on case); *Chavez v. PVH Corp.*, No. 13-
26 CV-01797-LHK, 2015 WL 9258144, at *9 (N.D. Cal. Dec. 18, 2015) (awarding \$5,000 to plaintiff
27 who spent 40 hours and \$2,500 to plaintiff who spent 15 hours on case); *Willner v. Manpower Inc.*,
28 No. 11-cv-02846-JST, 2015 WL 3863625, at *8-9 (N.D. Cal. June 20, 2015) (awarding \$7,500 to

1 class representative who contributed 54 hours to litigation). Moreover, the number of hours that
2 plaintiffs expended fails to capture the value added to this case by their efforts. Plaintiffs provided
3 class counsel with information about and documents confirming their working conditions and
4 compensation received that were essential to framing the claims in the complaint and amended
5 complaint and prosecuting the case. By actively participating in settlement strategy and
6 negotiations, plaintiffs contributed significantly to the successful outcome of their claims against
7 McDonald's.

8 **B. The Broader Release Accepted by the Plaintiffs Supports Their Request for**
9 **Service Awards**

10 As part of the Settlement, each of the named plaintiffs agreed to execute a much broader
11 release than the release that applies to absent class members. Whereas class members will release
12 any and all claims that were alleged in the action, arise out of or are related to the allegations and
13 claims alleged in the action, and/or could have been alleged based on the facts, matters,
14 transactions, or occurrences alleged in the action through the date of this Agreement, the named
15 plaintiffs also agreed to waive and relinquish any and all employment-related claims, rights, or
16 benefits they may have against McDonald's, and to waive their rights under California Civil Code
17 §1542. Settlement Agreement ¶40. The broader scope of release of known and unknown
18 employment-related claims against McDonald's warrants an additional service award. *See Dent v.*
19 *ITC Serv. Grp., Inc.*, No. 12-CV-0009 JCM, 2013 WL 5437331, at *4 (D. Nev. Sept. 27, 2013)
20 (awarding enhancement in part because wage plaintiff signed a general release); *Wade v. Kroger*
21 *Co.*, No. 3:01-CV-699-R, 2008 WL 4999171, at *13 (W.D. Ky. Nov. 20, 2008) (awarding
22 plaintiffs additional compensation because they agreed to a "release of all claims ... broader than
23 the release given by other members of this class").

24 **C. The Risks Plaintiffs Took Support Their Request for Service Awards**

25 Service awards are particularly appropriate in wage-and-hour class actions where plaintiffs
26 undertake a significant "reputational risk" by bringing suit against their current or former
27 employers. *Rodriguez*, 563 F.3d at 958-59. In the workplace context, workers are often blacklisted
28 if they are considered "troublemakers," and employees who sue their employers are vulnerable to

1 retaliation and termination. *See In re High-Tech Emp. Litig.*, 11-CV-02509 LHK, 2015 WL
2 5158730, at *17 (N.D. Cal. Sept. 2, 2015) (granting service awards based in part on the named
3 plaintiffs' risk of future workplace retaliation and diminished future employment prospects for
4 being labeled "troublemakers" in the industry); *Connolly v. Weight Watchers N. Am. Inc.*, No 14-
5 CV-01983 THE, 2014 WL 3611143, at *4 (N.D. Cal. July 21, 2014) (named plaintiffs assume "the
6 risk of being stigmatized or disfavored by their current or potential future employers by suing their
7 employer"); *Bredbenner v. Liberty Travel, Inc.*, No. CIV.A. 09-1248 MF, 2011 WL 1344745, at
8 *23 (D.N.J. Apr. 8, 2011) (awarding enhancements to named plaintiffs in recognition of the fact
9 that they "risk their good will and job security in the industry for the benefit of the class as a
10 whole").

11 Plaintiffs have documented their continued fear regarding future negative impacts on their
12 employment that might occur if a potential future employer discovers (from a simple internet
13 search) that they initiated a class action lawsuit against their employers. Ochoa Decl. ¶5; Sandoval
14 Decl. ¶5; Rodriguez Decl. ¶5; Hedgepeth Decl. ¶5; *see Guippone v. BH S&B Holdings, LL.*, No.
15 09-CV-01029 CM, 2011 WL 5148650, at *7 (S.D.N.Y. Oct. 28, 2011) ("Today, the fact that a
16 plaintiff has filed a federal lawsuit is searchable on the internet and may become known to
17 prospective employers when evaluating that person.").

18 Plaintiffs may have been able to resolve their individual claims against Smith and
19 McDonald's confidentially, but they were willing to risk exposure and act as named plaintiffs in
20 this litigation in order to secure a remedy for fellow workers who might be unwilling, afraid, or
21 unable to bring their own case. Ochoa Decl. ¶7-8; Sandoval Decl. ¶7-8; Rodriguez Decl. ¶7-8;
22 Hedgepeth Decl. ¶7-8; *see Nantiya Ruan, Bringing Sense to Incentives: An Examination of*
23 *Incentive Payments to Named Plaintiffs in Employment Discrimination Class Actions*, 10 Emp. Rts.
24 & Emp. Pol'y J. 395, 411-413 (2006) (discussing the realistic fear of reprisal facing employees
25 who bring workplace class actions, unlike plaintiffs who bring consumer and securities class
26 actions). The risk of retaliation and deterred future employment weighs in favor of the requested
27 service awards, especially for these low-income workers who are particularly vulnerable to the
28 adverse consequences that come with loss of current or future employment and, indeed, any gap in

1 employment.

2 **D. The Reasonableness of Plaintiffs' Request Favors Granting Service Awards**

3 To ensure that the amount of a requested service payment is reasonable, courts balance “the
4 number of named plaintiffs receiving incentive payments, the proportion of the payments relative
5 to the settlement amount, and the size of each payment.” *Staton*, 327 F.3d at 977; *see also In re*
6 *Online DVD-Rental*, 779 F.3d at 947-48 (applying these factors and affirming incentive awards of
7 \$5,000 each for nine named plaintiffs where class members each received \$12). The amount being
8 requested here, \$500 per named plaintiff, is eminently reasonable in light of the factors courts
9 balance to ascertain the reasonableness of payments, including when combined with the \$2,000
10 service awards granted in the Smith settlement.

11 First, the service payments amount to only a miniscule amount of the total value of the
12 Settlement. The aggregate amount of service awards requested in connection with the Settlement
13 (\$2,000) is only 0.11% (approximately one-tenth of one percent) of the total \$1.75 million payment
14 to class members and the LWDA provided for in the Settlement. Even factoring in the additional
15 \$8,000 in service awards from the Smith settlement, the aggregate value of the service awards
16 remains just 0.57% (just over one-half of one percent) of the total value of the McDonald's
17 settlement to class members and the LWDA, and an even smaller amount of the total value of the
18 combined Smith and McDonald's settlements.

19 Further, the average settlement payment from the McDonald's settlement for each of the
20 approximately 852 participating class members is likely to exceed \$1,760, with individual
21 payments of as much as \$4,300. Pitts Decl. ¶8. Courts often approve service awards that exceed
22 the average settlement payment by a far greater amount, and which represent a far greater
23 percentage of the overall class settlement. *See, e.g., In re Online DVD-Rental*, 779 F.3d at 947-48
24 (affirming incentive awards of \$5,000 each for nine named plaintiffs where class members each
25 received \$12); *Chavez*, 2015 WL 9258144, at *9 (awarding named plaintiffs \$5,000 and \$2,500,
26 about 19 to 38 times more than the approximately \$130 each class member received); *In re High-*
27 *Tech Emp. Litig.*, 2015 WL 5158730, at *17-18 (approving service awards of \$80,000 to \$120,000
28 per named plaintiff where the average class member received \$5,770). Indeed, service awards of

1 up to \$5,000—twice the amount of the combined service awards requested in this litigation—are
 2 “presumptively reasonable” in the Ninth Circuit. *Smith*, 2016 WL 2909429, at *10.⁴ Plaintiffs’
 3 request for modest \$500 additional service payments (and for a total service payment of \$2,500 per
 4 named plaintiff) is thus reasonable.

5 **E. Plaintiffs Should Be Awarded Service Payments to Encourage Private**
 6 **Attorneys General to Enforce Important Remedial Statutes**

7 Courts in this Circuit grant service payments to encourage “private attorney[s] general” to
 8 bring important civil rights and wage rights cases that would not otherwise be heard. *Rodriguez*,
 9 563 F.3d at 959; *see also Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974)
 10 (“We also think there is something to be said for rewarding those [employees] who protest and help
 11 to bring rights to a group of employees who have been the victims of [employer wrongdoing.]”); *In*
 12 *re Smithkline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525, 535 (E.D. Pa. 1990) (approving \$5,000
 13 award because named plaintiffs “rendered a public service” and “conferred a monetary benefit” on
 14 the shareholder class). Without individuals who are willing to step forward and represent a class,
 15 the public policies served by wage-and-hour class actions such as this litigation would be
 16 undermined. “[E]ncouraging participation in class actions suits is a societal good, and if a fee is

17
 18 ⁴ *See Chavez*, 2015 WL 9258144, at *9 (“The Ninth Circuit has established \$5,000 as a reasonable
 19 benchmark award for representative plaintiffs.”); *Lopez v. Bank of Am., N.A.*, No. 10-CV-01207-
 20 JST, 2015 WL 5064085, at *8 (N.D. Cal. Aug. 27, 2015); *In re Conseco Life Ins. Co. Life Trend*
 21 *Ins. Mktg. & Sales Practice Litig.*, No. C-10-02124 SI, 2014 WL 186375, at *3 (N.D. Cal. Jan. 16,
 22 2014) (“In general, courts have found incentive payments of \$5,000 presumptively reasonable”) (citations omitted); *see also Harris v. Vector Marketing Corp.*, No. C-08-5198 EMC, 2012 WL
 23 381202, at *7 (N.D. Cal. Feb. 6, 2012) (recognizing that “\$5,000 is a reasonable amount”) (citations omitted); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000)
 24 (approving \$5,000 incentive awards); *Wren*, 2011 WL 1230826, at *37 (same); *Hopson v.*
 25 *Hanesbrands, Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009)
 26 (same). Courts sometimes award far greater amounts. *See, e.g., In re High-Tech Emp. Litig.*, 2015
 27 WL 5158730 at *16-18 (granting service awards of \$120,000 for one named plaintiff and \$80,000
 28 each); *Garner*, 2010 WL 1687832, at *17 n.8 (“Numerous courts in the Ninth Circuit and
 elsewhere have approved incentive awards of \$20,000 or more”) (collecting cases); *Graham v.*
Overland Solutions, Inc., No. 10-CV-0672 BEN, 2012 WL 4009547, at *8 (S.D. Cal. Sept. 12,
 2012) (preliminarily approving \$25,000 service awards to each named plaintiff for their time,
 effort, risks undertaken, stigma upon future employment opportunities, and general release of all
 claims related to their employment); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007
 WL 221862, at *16-17 (N.D. Cal. Jan. 26, 2007), *aff’d*, 331 F. App’x 452 (9th Cir. 2009)
 (approving payments of \$25,000 to each named plaintiff); *Van Vranken v. Atlantic Richfield Co.*,
 901 F. Supp 294, 299-300 (N.D. Cal. Aug. 16, 1995) (awarding \$50,000 to lead plaintiff).

1 needed in order to ensure that more people are willing to ‘take the plunge’ by serving as the named
2 plaintiff in a class action lawsuit, then incentive awards can be justified.” Elisabeth M. Sperle,
3 *Here Today, Possibly Gone Tomorrow: An Examination of Incentive Awards and Conflicts of*
4 *Interest in Class Action Litigation*, 23 Geo. J. Legal Ethics 873, 877 (2010). Class representatives
5 should be rewarded for the personal sacrifices they make in order to vindicate the rights of others.
6 *See, e.g., Sauby v. City of Fargo*, No. 3:07-CV-10 RRE, 2009 WL 2168942, at *2 (D. N. Dakota,
7 Jul. 16, 2009); *see also* Sperle, 23 Geo. J. Legal Ethics at 880-81 (identifying personal sacrifice,
8 opportunity costs, personal burdens, risk of retaliation, and publicity risks for named class
9 representatives). Such sacrifices are particularly acute for low-income workers who live paycheck
10 to paycheck.

11
12 **CONCLUSION**

13 For the foregoing reasons, class counsel respectfully request that the Court grant final
14 approval of the class settlement between plaintiffs and McDonald’s and award \$500 in service
15 awards to each of the four named plaintiffs.

16 Date: June 8, 2017

Respectfully submitted,

17
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