

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

TASHA BEARD, MARLON BELL, KIMBERLY
CASTILLO, CALEB CHEELY, NORMA CRIOLLO,
DERICK GODFREY, JANELL TARVER, and
DASHANAE ROBERTS, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

McDONALD'S CORPORATION,
McDONALD'S U.S.A., LLC, McDONALD'S
RESTAURANTS OF NEW YORK, INC.,

Defendants.

Case No. 14-cv-1664 (NGG)(RER)

ECF CASE

D/F

**ORDER GRANTING FINAL APPROVAL TO CLASS SETTLEMENT, GRANTING
PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES
AND EXPENSES, AND GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR
APPROVAL OF SERVICE AWARDS**

After engaging in months of discovery and participating in a mediation session with the Hon. Diane Welch (Ret.), the Parties negotiated a class action settlement, the terms of which are set forth in the Global Settlement Agreement, with exhibits ("Settlement Agreement"). See Dkts. 42, 45. On November 24, 2015, the Parties filed a motion for an order preliminarily approving the class action settlement. See Dkt. 38. On May 10, 2016, this Court entered an Order preliminarily approving the settlement on behalf of the class set forth therein (the "Class" or the "Class Members"), provisionally certifying the class for settlement purposes, appointing Joseph M. Sellers of Cohen Milstein Sellers & Toll PLLC and James Reif of Gladstein, Reif & Meginniss, LLP as Class Counsel, and authorizing notice to all Class Members (the "Preliminary Approval Order"). See Dkt. No. 46.

On October 7, 2016, the Parties filed a Joint Motion for Final Approval of the Class Settlement ("Motion for Final Approval"). The Court held a fairness hearing on October 20,

2016. No Class Member filed an objection within the deadline for doing so and there were no objections raised at the fairness hearing.

Having considered the Motions for Preliminary and Final Approval, the supporting declarations, oral argument presented at the October 20, 2016 fairness hearing, and the complete record in this matter, for the reasons set forth herein and stated on the record at the October 20, 2016 fairness hearing, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. This Court has jurisdiction over the subject matter of this litigation and all matters relating thereto, and over all Parties.

2. Except as otherwise specified herein, the Court adopts all defined terms as set forth in the Settlement Agreement.

3. Pursuant to Federal Rule of Civil Procedure 23, the Court confirms as final its certification of the Class for settlement purposes based on its findings in Section III of the Preliminary Approval Order and the absence of any objections from Class Members to such certification.

4. The Court confirms as final the appointment of Plaintiffs Tasha Beard, Marlon Bell, Caleb Cheely, Norma Criollo, Janell Tarver, and Dashanae Roberts as representatives of the Class under Federal Rule of Civil Procedure 23.

5. Plaintiff Kimberly Castillo shall no longer serve as a class representative and her appointment as class representative is hereby withdrawn because, despite extensive efforts as detailed in the Declaration of Joseph M. Sellers filed on October 14, 2016, Plaintiffs' Counsel has been unable to locate to her and thus has not been able to obtain her signature on the Settlement Agreement. Because Ms. Castillo is not a class representative, her signature is not required on the Settlement Agreement. Because Ms. Castillo is a Class Member who did not

opt-out, she shall remain eligible to receive a share of the settlement pursuant to the formula in the Settlement Agreement and, at such time as Final Judgment in this matter is entered and the Final Judgment has become Final (as that term is defined in the Settlement Agreement), she shall be bound by the release set forth in Section 4 of the Settlement Agreement.

6. The Court likewise confirms as final the appointment of Joseph M. Sellers of Cohen Milstein Sellers & Toll PLLC and James Reif of Gladstein, Reif & Meginniss, LLP as Class Counsel for the Class pursuant to Federal Rule of Civil Procedure 23.

7. If, for any reason, this Order and the Final Judgment entered concurrently herewith do not become Final, Defendants shall have no obligation to make any payments provided for in the Settlement Agreement; the Settlement Agreement shall be deemed null and void; the Settlement Agreement, this Order and any other Court Orders, and/or settlement negotiations shall not be cited to, used in, or admissible in any other proceedings with respect to any issues therein; the lawsuit shall proceed as if the Settlement Agreement had not been executed; Defendants' agreement not to oppose certification of the settlement class shall be null and void in its entirety; this Order certifying the settlement class shall be vacated; the Plaintiffs and Defendants shall return to their respective positions in this lawsuit as those positions existed immediately before the Plaintiffs and Defendants executed the Settlement Agreement; and none of the information provided by Defendants for the purposes of settlement negotiations or approval shall be used in the lawsuit.

8. The Court finds that the Class Notice and Opt-Out Statement sent to Class Members by the Claims Administrator constituted the best notice practicable under the circumstances, was accomplished in all material respects, and fully met the requirements of Rule 23(e) and all other legal and due process requirements.

9. Pursuant to Federal Rule of Civil Procedure 23(e), this Court hereby grants the Motion for Final Approval and finally approves the settlement as set forth therein. The Court finds that the settlement is fair, reasonable, and adequate in all respects for the reasons stated below and that it is binding on Class Members who did not timely opt out pursuant to the procedures set forth in the Preliminary Approval Order. A list of Class Members who timely opted out is attached to the Final Judgment as Exhibit A. The Court specifically finds that the settlement is rationally related to the strength of the claims and defenses in this case, given the risk, expense, complexity, and duration of further litigation.

10. William P. Michel submitted an opt-out form but wrote a note on the form stating his desire to participate in the settlement. Accordingly, Mr. Michel is permitted to participate in the settlement and will not be treated as an opt-out. As such, he is not included in Exhibit A.

11. The Court finds that the proposed settlement is procedurally fair because it was reached through vigorous, arm's-length negotiations and after experienced counsel had evaluated the merits of the claims and defenses through factual and legal investigation. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005). The settlement is also substantively fair. All of the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), which provides the analytical framework for evaluating the substantive fairness of a class action settlement, weigh in favor of final approval.

12. The Court also finds that the class's reaction to the settlement was positive. No Class Member objected to the settlement, and only 75 Class Members (or less than 1% of the Class) opted out.

13. The Court finds that the proposed plan of allocation is rationally related to the relative strengths and weaknesses of the claims and defenses asserted. The mechanisms and

procedures set forth in the Settlement Agreement by which payments are to be calculated and made to Class Members who did not timely opt out are fair, reasonable, and adequate, and payment shall be made according to those allocations and pursuant to the procedures as set forth in the Settlement Agreement.

14. The Court has reviewed the individual releases for Plaintiffs Tasha Beard, Marlon Bell, Caleb Cheely, Norma Criollo, Janell Tarver, and Dashanae Roberts and finds them to be fair, reasonable, and enforceable under the FLSA and other applicable laws.

15. The Court has reviewed the (i) class release contained in Section 4 of the Settlement Agreement and incorporated by the Settlement Checks, and (ii) release of attorneys' fees and costs in Section 4 of the Settlement Agreement, and finds them to be fair, reasonable, and enforceable under Federal Rule of Civil Procedure 23, the FLSA, and other applicable laws.

16. Class Members shall have 180 days from the date of the initial mailing of the Settlement Checks to cash, deposit, or otherwise negotiate their settlement award. Ten days after this 180-day period, the Claims Administrator will determine the amount of any unclaimed funds remaining in the Settlement Fund. The unclaimed settlement money remaining in this fund, if any, shall revert to McDonald's on the date that is 190 days after the initial mailing of the Settlement Checks.

17. The Court approves the Parties' retention of Garden City Group as Claims Administrator. The Court also approves and finds reasonable the payment of the Claims Administrator's fees from the settlement fund.

18. At such time as the Final Judgment in this matter is entered, the time for all appeals has expired or has been exhausted, and the Final Judgment has become Final (as that term is defined in the Settlement Agreement), then all Released Claims are fully, finally and

forever released, relinquished and discharged, pursuant to the terms of the release set forth in Section 4 of the Settlement Agreement, as to Plaintiffs and all Class Members other than those listed in Exhibit A to Final Judgment.

19. The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Plaintiffs continue to maintain Defendants' liability for the claims asserted in this lawsuit. Conversely, Defendants in no way admit any violation of law or any liability whatsoever to Plaintiffs and/or the Class, individually or collectively, all such liability being expressly denied by Defendants.

20. The Court retains jurisdiction over this action for the purpose of enforcing the Settlement Agreement and overseeing the distribution of settlement funds. The Parties shall abide by all terms of the Settlement Agreement, which are incorporated herein, and this Order.

FURTHERMORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

21. In accordance with the terms of the Settlement Agreement, the claims of all Plaintiffs and all Class Members who did not timely and properly opt out of the Settlement are hereby dismissed with prejudice. Although Plaintiff Kimberly Castillo is not in touch with Class Counsel and thus has not consented to dismissal of her individual (non-class) claims, Plaintiff Kimberly Castillo's individual claims are hereby dismissed with prejudice pursuant to Defendants' oral motion at the fairness hearing. Ms. Castillo has failed to communicate with her counsel despite extensive outreach by her counsel. Ms. Castillo's failure to prosecute justifies dismissal of her individual claim with prejudice pursuant to Federal Rule of Civil Procedure 41(b). As noted above, Ms. Castillo is eligible to receive a share of the settlement because she is a Class Member who did not opt out.

FURTHERMORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, upon consideration of Plaintiffs' Unopposed Motion for Approval of Attorneys' Fees and Expenses ("Motion for Attorneys' Fees") (Dkt. 44) and Unopposed Motion for Approval of Service Awards, the supporting declarations, and oral argument in support thereof, that:

22. Consistent with the Settlement Agreement (§ 2.6), the Court has considered Plaintiffs' Unopposed Motion for Attorneys' Fees and Expenses and Unopposed Motion for Approval of Service Awards separate and apart from the Parties' Motion for Final Approval, understanding that the Court's ruling on the Motion for Attorneys' Fees and Motion for Approval of Service Awards would not affect the Court's ruling on the Motion for Final Approval.

23. The Court hereby awards Class Counsel \$450,000, which is less than one-third of the settlement fund, for Class Counsel's attorneys' fees and costs. This amount shall be paid from the settlement fund. The Court finds this award to be fair and reasonable based on: (A) the number of hours worked by Class Counsel during the Litigation; (B) the results achieved on behalf of the Class; (C) the contingent nature of Class Counsel's representation; (D) the complexity of the issues raised by the Litigation; (E) a lodestar cross check; (F) Class Counsel's recognized experience and expertise in the market; and (G) the reasonableness and necessity of incurring the claimed expenses in this case. The Court finds Class Counsel's hourly rates to be reasonable.

24. The Court finds reasonable and approves service awards for Plaintiffs Tasha Beard, Marlon Bell, Caleb Cheely, Norma Criollo, Janell Tarver, and Dashanae Roberts in the amount of \$3,000 each, in recognition of the services they rendered on behalf of the class. These amounts shall be paid from the settlement fund. Ms. Castillo will not receive a service award for

reasons set forth above.

It is so ORDERED this 28th day of October, 2016.

s/Nicholas G. Garaufis
/_____
Hon. Nicholas G. Garaufis
United States District Judge