

**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.**

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**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND MEMORANDUM OF LAW IN SUPPORT**

Named Plaintiff, Ashley Johnson ("Johnson" or "Named Plaintiff"), on behalf of herself and a putative Settlement Class (collectively, "Plaintiffs" or "Settlement Class Members"), pursuant to Rule 23, hereby moves this Court for an Order granting preliminary approval to the parties' proposed Class Action Settlement Agreement and Release (the "Agreement" or "Settlement");<sup>1</sup> preliminarily certifying the proposed Settlement Class for settlement purposes only; designating Named Plaintiff as the Class Representative and her attorneys as Class Counsel; approving the form and manner of the Notice of Settlement; authorizing the Settlement Administrator to disseminate the Notice of Settlement to the Settlement Class Members; setting a deadline for Settlement Class Members to opt out or object to the proposed Settlement; and scheduling a Final Approval Hearing no earlier than 120 days after this Court's Preliminary Approval Order.

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<sup>1</sup> The Agreement is attached as Exhibit "B." Certain defined terms contained herein shall have the same meaning as set forth in the Agreement.

As explained further below, with the assistance of a highly respected ERISA and class action mediator, Named Plaintiff and Defendant McDonald's Corporation ("Defendant") (collectively the "Parties") have reached a tentative class-wide resolution for which Named Plaintiff now seeks Court approval. Specifically, the Settlement provides for Settlement Payments to be made to approximately 8,959 Settlement Class Members. The Settlement Administrator will create a non-reversionary Settlement Account, into which the Defendant will deposit a Gross Settlement amount of \$156,782.50. The Settlement Class Members will not be required to take any action to receive a portion of the funds, making it a "claims paid" settlement. Importantly, no funds will revert to Defendant.

Settlement Class Members are each entitled to *pro rata* gross amounts from the Settlement Account totaling approximately \$17.50 with net Settlement Payments of between approximately \$7.00 to \$10.00. These amounts are consistent with class action settlements in cases involving similar allegations under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") approved by other federal courts. *See, e.g., Vazquez v. Marriott Int'l, Inc.*, No. 8:17-cv-00116-MSS-MAP (M.D. Fla. Feb. 27, 2020), ECF. No. 127) (court approved class action settlement with gross recovery of \$13.00 per class member in case with allegedly deficient COBRA notice); *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).

In sum, Named Plaintiff respectfully submits that the proposed Settlement is fair, reasonable, and adequate and asks that it be approved accordingly. The Settlement was reached through arm's length negotiations conducted by experienced practitioners and with the assistance of a nationally respected class action mediator, Carlos J. Burruezo, who has extensive experience

mediating class action cases, including cases alleging deficient COBRA notices. In further support thereof, Named Plaintiff states the following:

**I. BACKGROUND AND OVERVIEW OF MOTION.**

**A. Allegations Included in Named Plaintiffs' 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 himself 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.<sup>2</sup>

**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. 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.

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<sup>2</sup> The definition of Settlement Class Members was modified at mediation, as explained further below.

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, 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.

Within ten (10) business days of the Court’s preliminary approval of the Agreement, Defendant shall provide (or shall have exercised best efforts to provide) to the Settlement Administrator a list of the full names and last known mailing addresses of each Settlement Class Member. Moreover, within ten (10) business days after receiving the list from Defendant, the Settlement Administrator shall mail the short form Notice of Settlement, (attached hereto as Exhibit C, and as Exhibit 1 to the Agreement), by first-class U.S. Mail to all Settlement Class Members. The short form Notice of Settlement shall apprise the Settlement Class Members of

the existence of the Agreement and of the Settlement Class Members' eligibility to recover their *pro rata* portion of the Net Settlement Proceeds and will include an explanation of the "claims paid" process, as well as an explanation as to what happens if the settlement checks are not timely cashed. Namely, the uncashed funds will be made part of a donation to a mutually-agreeable *cy pres* recipient.

The Notice of Settlement also shall inform Settlement Class Members of: (1) the material terms of the Agreement; (2) their right to object and how to do so; (3) their right to exclude themselves by opting out and how to do so; (4) that they will be bound by the Agreement if they do not opt out; (5) the date, time and location of the Final Approval Hearing scheduled by the Court (to be held at least 90 days after the Court's Order preliminarily approving the Settlement); and (6) that the Court retains the right to reschedule the Final Approval Hearing without further notice.

Similarly, the long form notice (attached hereto as Exhibit D and as Exhibit 2 to the Agreement) contains additional information carefully explaining all aspects of the Parties' proposed settlement. It will be made available on a website created by the settlement administrator devoted to the Parties' settlement on which all relevant documents will be made readily available to the class members, including, but not limited to, the Amended Complaint, the motion for preliminary and final approval, the Settlement Agreement, and Plaintiff's counsel's fee petition.

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, attached as Exhibit B. 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 will 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. 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 will submit the notices required by the Class Action Fairness Act of 2005 ("CAFA") to the appropriate Federal and State officials.



### III. MOTION FOR PRELIMINARY APPROVAL AND SUPPORTING MEMORANDUM OF LAW.

#### A. Applicable Legal Standard.

A class may be certified “solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.” *Woodward v. NOR-AM Chem. Co.*, 1996 WL 1063670 \*14 (S.D. Ala. 1996), citing *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 173–78 (5th Cir.1979), cert. denied, 452 U.S. 905, 101 S.Ct. 3029, 69 L.Ed.2d 405 (1981). In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997), the Supreme Court held that because a settlement class action obviates a trial, the district judge deciding whether to certify a settlement class action “need not inquire whether the case, if tried, would present intractable management problems,” under Rule 23(b)(3)(D).

Regardless of whether a class is certified for settlement or for trial, the Court must find these prerequisites are met: “(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed.R.Civ.P. 23(a). The proposed class must also meet the requirements of one of the three class types found in Rule 23(b). In this case, Named Plaintiff seeks to have this case certified pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3).

#### B. The Requirements of Rule 23(a) are Met for Purposes of Approving the Proposed Settlement.

Rule 23(a) sets forth four prerequisites for class certification: numerosity, commonality, typicality, and adequacy of representation. *See* Fed. R. Civ. P. 23(a). Named Plaintiff has

satisfied all four requirements under Rule 23(a) for purposes of approving the proposed Settlement.

**1. Numerosity.**

While Rule 23 does not specify an exact number necessary to satisfy numerosity, the Eleventh Circuit has indicated that having more than 40 class members is generally enough to satisfy the rule. *Klewinowski v. MFP, Inc.*, No. 8:13-cv-1204-T-33TBM, 2013 U.S. Dist. LEXIS 130591, at \*4 (M.D. Fla. Sept. 12, 2013) (citing *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)). Here, there are approximately 8,959 members of the proposed Settlement Class. Thus, the numerosity standard is satisfied.

**2. Commonality.**

Next, Rule 23(a)(2) requires the existence of “questions of law or fact common to the class.” Commonality is satisfied when the claims depend on a common contention, the resolution of which will bring a class-wide resolution of the claims. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011).

In this case, common questions of law and fact exist among Named Plaintiff and the proposed Settlement Class Members for purposes of approving the Settlement. All were participants in or beneficiaries of the Plan, were sent copies of Defendant’s allegedly deficient COBRA Notice, and did not elect COBRA continuation coverage following their receipt of that purportedly inadequate notice. Such common issues of law and fact have been found to satisfy commonality in similar COBRA cases. *Morris v. US Foods, Inc.*, No. 8:20-CV-105-SDM-CPT, 2021 WL 2954741, at \*5 (M.D. Fla. May 17, 2021); *Vazquez v. Marriott Int’l, Inc.*, No. 817CV00116MSSMAP, 2018 WL 3860217, at \*3 (M.D. Fla. Aug. 7, 2018) (certifying Rule 23

class in COBRA notice case and finding commonality satisfied based on same factors). Commonality is satisfied.

### 3. Typicality.

Here, Named Plaintiff is typical of the Settlement Class members she seeks to represent, as she received the same COBRA Notice as the Settlement Class Members and her claims stem from that COBRA Notice. Indeed, whether a COBRA Notice provides adequate information is not based on an individual's understanding of the COBRA Notice, but rather, an objective determination of whether the Notice complies with the letter of the statute. *Rodriguez v. Int'l Coll. of Bus. and Tech.*, 364 F.Supp.2d 40, 46 (D.P.R. 2005) (“Neither a plaintiff's actual knowledge of his rights under COBRA nor his prior COBRA related job responsibility, dispenses with a plan administrator’s obligation to give the employee [proper] notification”) (citing *Torres-Negron, et al. v. Ramallo Bros. Printing Inc.*, 203 F.Supp.2d 120, 124-125 (D.P.R. 2002)).

Thus, whether Defendant’s contested COBRA Notice complies with the law does not depend on Named Plaintiff’s personal characteristics but, rather, on whether the COBRA Notice is understandable by an average plan participant. 29 C.F.R. 2590.606-4(b)(4). This requirement has been interpreted as “an objective standard rather than requiring an inquiry into the subjective perception of the individual [plan] participants.” *Wilson v. Sw. Bell Tel. Co.*, 55 F.3d 399, 407 (8th Cir. 1995). In sum, Named Plaintiff’s claims are typical of all Settlement Class Members and their resolution does not depend on Named Plaintiff’s personal characteristics. *Vazquez*, 2018 WL 3860217, at \*4. Accordingly, Rule 23(a)(3) is also satisfied for purposes of approving the Settlement.

### 4. Adequacy.

The fourth requirement of Rule 23(a) is that “the representative parties will fairly and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4). “This 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)).

In this case, Named Plaintiff—like each one of the Settlement Class Members—received the same allegedly deficient COBRA Notice from the same Defendant during the class period. Thus, Named Plaintiff and the Settlement Class Members have the exact same interest in recovering the statutory damages to which they are allegedly entitled. As such, Named Plaintiff does not have any interests antagonistic to those of the proposed Settlement Class. Indeed, Named Plaintiff’s pursuit of this litigation is evidence of the same.

Likewise, proposed Class Counsel—Brandon J. Hill and Luis A. Cabassa from Wenzel Fenton Cabassa, P.A.,—have extensive experience litigating class actions of similar size, scope, and complexity to the instant action. They regularly engage in major complex litigation involving employment and consumer-related claims, including cases alleging deficient COBRA notices like this. Class Counsel has the resources necessary to conduct litigation of this nature and have been appointed lead class counsel by federal courts throughout the country in more deficient COBRA notices cases than any other firms. *See generally* Declarations of Luis A. Cabassa and Brandon J. Hill.

Further, proposed Class Counsel have devoted substantial resources to claims in this lawsuit and have extensively litigated this matter. In sum, both the proposed Class

Representative and Class Counsel have dutifully prosecuted this action. Accordingly, the adequacy requirement is also met for purposes of approving the Settlement.

**C. The Requirements of Rule 23(b)(3) are Also Met.**

In addition to satisfying Rule 23(a), parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3). *Amchem*, 521 U.S. at 623. Here, Named Plaintiff seeks certification for the purposes of the Settlement under Rule 23(b)(3), which allows a class action to be maintained if: (1) questions of law or fact common to the class members predominate over any questions affecting only individual members; and (2) a class action is superior to other methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3) for purposes of approving the Settlement.

**1. Predominance.**

Rule 23(b)(3)'s predominance requirement focuses on whether the defendant's liability is common enough to be resolved on a class basis, *Dukes*, 564 U.S. at 359, and whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623.

In the present case, the common questions identified above predominate over any individualized issues. The central issues revolve around a standardized COBRA Notice that was common to all Settlement Class Members, whether that Notice complied with applicable statutory requirements and accompanying regulations, and whether Defendant should be required to pay statutory penalties for utilizing that allegedly deficient Notice.

In similar cases involving COBRA notices, courts have found that common issues predominated. *See, e.g., Hicks*, No. 8:19-cv-261-JSM-TGW, Doc. 34 (M.D. Fla.) (finding the predominance requirement satisfied in COBRA notice case); *Valdivieso*, No. 8:17-cv-118-SDM-

JSS, Doc. 89 (M.D. Fla.) (same); *Morris v. US Foods, Inc.*, No. 8:20-CV-105-SDM-CPT, 2021 WL 2954741, at \*6 (M.D. Fla. May 17, 2021) (same); *see also Vazquez*, 2018 WL 3860217, at \*6 (“the resolution of whether the COBRA Notice complied with the law, however, does not break into individualized inquiries; rather, it is an objective determination and central to the resolution of any claims of any purported class members. Thus, the question of individual class members’ motivations is irrelevant as to Defendant’s liability for the allegedly inadequate COBRA notice.”). Because Defendant utilized a standardized COBRA Notice with respect to all Settlement Class Members, Named Plaintiff’s claims “will prevail or fail in unison,” and as such, predominance is met for settlement purposes only. *Amgen Inc.*, 568 U.S. at 460.

## 2. Superiority.

Finally, the class action device is also the superior means of adjudicating this controversy because it “achieve[s] economies of time, effort and expense and promote[s] . . . uniformity of decision as to persons similarly situated.” *Amchem*, 521 U.S. at 615. Actions alleging a standard course of wrongful conduct are particularly well-suited for class certification because they facilitate efficiency and uniformity.

Here, all questions necessary to determine whether—for settlement purposes—Defendant violated COBRA (and its accompanying regulations) are common to all Settlement Class Members. As such, a class action is a much more efficient use of judicial and party resources than multiple actions. Further, absent a class action, members of the Settlement Class would almost certainly find the cost of individually litigating their claims to be prohibitive. Indeed, no other member of the proposed Settlement Class has brought any COBRA claims against Defendant, and thus, “there is no indication that any class member wants to individually control his or her own separate action.” *Calloway v. Caraco Pharm. Labs., Ltd.*, 287 F.R.D. 402, 408

(E.D. Mich. 2012). In fact, many members of the proposed Settlement Class may not even be aware that Defendant has allegedly violated their rights under ERISA/COBRA's notice requirements. Where class members are unlikely to discover (and vindicate) injuries absent certification of a class, class treatment is superior to the alternatives.

In the end, because common questions predominate and a class action is the superior method for adjudicating the controversy, maintenance of this action as a class action is appropriate for purposes of approving the Settlement.

**D. Rule 23(e) Is Also Satisfied.**

After analyzing certification under Rule 23(a) and Rule 23(b)(3), when deciding whether to preliminary approval a class actions settlement, Courts in this Circuit also look to whether the proposed settlement satisfies Rule 23(e). Under Rule 23(e), Fed.R.Civ.P., “[a] class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” The Agreement satisfies the applicable standards for approval under Rule 23(e) and Eleventh Circuit case law.

Rule 23(e) requires that a settlement agreement be “fair, reasonable, and adequate” before receiving approval. The following factors must be considered before determining whether that standard has been satisfied: (a) whether the class representatives and class counsel have adequately represented the class; (b) whether the agreement was negotiated at arm's length; (c) the adequacy of the relief provided for the class; and (d) whether the proposal “treats class members equitably relative to each other.” Fed. R. Civ. Proc. 23(e)(2)(A)-(D). Clearing these standards is not a high bar, given that “[p]ublic policy strongly favors the pretrial settlement of class action lawsuits.” *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). The Rule

23(e) factors are satisfied here. Accordingly, Named Plaintiff respectfully requests this Court grant preliminary approval of the Agreement.

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

There is no question that Named Plaintiff 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. Named Plaintiff, Ashley Johnson, is adequate given that her interests are equivalent to those of the Settlement Class. There is also no obvious conflict of interest between Named Plaintiff and the Settlement Class. Named Plaintiff has the same interest as the Settlement Class members in prosecuting her claims. She, along with Class Counsel, secured a six-figure settlement from a highly sophisticated Defendant in favor of the class members she seeks to represent.

With respect to Class Counsel, as demonstrated in the attached declarations, the proposed attorneys have extensive class action experience, and have been appointed as class counsel in many class action cases, including the following recent COBRA class action cases. 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). 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 is the product of arm's length negotiations that were overseen by an experienced and impartial mediator who was selected and appointed by the Court. (Doc. 28). This also weighs in favor of approval. *See Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding that class settlement was not collusive in part because it was overseen by "an experienced and well-respected mediator").

The proposed Settlement, and the record in this case, show that the Agreement was the product of extensive and detailed arm's length negotiations between the Parties and their counsel. The Parties participated in mediation with Carlos J. Burruezo during an all-day mediation—and with no promise Class Counsel would recover anything at all. The Parties and counsel were well-informed of the potential strengths and weaknesses of their positions and conducted good faith negotiations to avoid costly and protracted litigation. Attorneys' fees were not discussed until the class members' recovery was decided upon.

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. *See generally* Declarations of Luis A. Cabassa and Brandon J. Hill; *see also 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 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 ( $\$156,782.50 \div 8,959 \text{ persons} = \$17.50$ ) 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 Painwebber 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.”); *see also In re Mexico Money Transfer Litigation*, 267 F.3d 743 (7th Cir. 2001).

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 Settlement Class Members equitably. In fact, they are treated identically. This a “claims paid” settlement. All class members do not have to submit claim forms to receive a share of the settlement proceeds. Rather, all Settlement Class Members who do not opt out will simply receive checks after final approval. If settlement checks are not cashed, the Agreement provides for a donation to a *cy pres* recipient.

#### **5. Additional Considerations.**

In terms of the likelihood of success at trial, if Named Plaintiff had chosen to continue to litigate her claims, a successful outcome was not guaranteed. As discussed herein, Named Plaintiff faced significant risks with respect to liability, damages, and certification of a litigation class. With respect to liability, important issues remained to be decided upon the evidence presented. Defendant's motion to dismiss the litigation in its entirety has not been decided, and the Court did not have before it (and therefore did not consider) arguments Defendant would have raised at summary judgment. Named Plaintiff would have faced risks on class certification as well. In certain cases involving allegedly deficient COBRA notices, class certification has been denied. *See, e.g., Brown-Pfizer v. St. Vincent Health, Inc.*, 2007 U.S. Dist. LEXIS 69930, at \*26 (S.D. Ind. Sept. 20, 2007). Thus, it was not guaranteed that the Court would have certified a class. To avoid the foregoing risks, it was reasonable for Named Plaintiff to settle the case at this juncture to ensure class-wide monetary and prospective relief for members of the Settlement Class. *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).

**WHEREFORE**, Named Plaintiff hereby moves for this Court's preliminary approval of the Parties' class action Settlement; preliminarily certifying the proposed Settlement Class; designating Named Plaintiff as the settlement Class Representative and her attorneys as Class Counsel; approving the form and manner of class notice; authorizing the Settlement Administrator to disseminate the Notice of Settlement to the Settlement Class Members; setting a deadline to opt out or object and scheduling a final approval hearing no earlier than one hundred ninety (90) days after this Court's Preliminary Approval Order. A proposed Order is attached as Exhibit A.

Dated this 22<sup>nd</sup> day of September, 2022.

Respectfully submitted,

/s/Brandon J. Hill

**BRANDON J. HILL**

Florida Bar Number: 37061

**LUIS A. CABASSA**

Florida Bar Number: 053643

**WENZEL FENTON CABASSA, P.A.**

1110 North Florida Ave., Suite 300

Tampa, Florida 33602

Main No.: 813-224-0431

Facsimile: 813-229-8712

Email: lcabassa@wfclaw.com

Email: bhill@wfclaw.com

*Proposed Class Counsel and Attorneys for Named Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to counsel of record for all parties via the Court's CM/ECF filing system on this 22<sup>nd</sup> day of September, 2022.

/s/Brandon J. Hill

**BRANDON J. HILL**

# Exhibit A

PROPOSED ORDER

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.

\_\_\_\_\_ /

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

This matter is before the Court on the Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. The Court has carefully considered the Motion, the proposed Class Action Settlement Agreement (the "Agreement"), the proposed Notices of Settlement, and the declarations submitted in support of the Motion. Being fully advised in the premises of the proposed Agreement, the Court now finds and hereby **GRANTS** the Motion and **ORDERS** as follows:

1. All defined terms contained herein shall have the same meaning as set forth in the Agreement executed by the Parties and filed with the Court.
2. In this Action, Plaintiff alleges that Defendant violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). Defendant denies Plaintiff's allegations and is not admitting liability in this case.

3. The Court has jurisdiction over the subject matter of the Action, the Class Representative, the Settlement Class Members and Defendant. Additionally, both the Named Plaintiff and the class members have sufficient standing for purposes of settlement. Jurisdiction is retained by this Court for matters arising out of the Agreement.

4. The Court preliminarily approves the Settlement and the terms set forth in the Agreement, subject to further consideration at the Final Approval Hearing after Settlement Class Members have had an opportunity to consider the Agreement and to object to the Settlement.

5. Pursuant to Federal Rule of Civil Procedure 23, the Court certifies, for settlement purposes only, the following Settlement Class:

“All individuals who received a COBRA notice on behalf of McDonald’s between December 15, 2017, and February 9, 2021 who did not elect COBRA” (referenced herein as the “Settlement Class”).

6. The Court finds that, for settlement purposes, the Settlement Class meets the criteria for certification under Federal Rule of Civil Procedure 23(a). The class consists of approximately 8,959 persons. Thus, the class is sufficiently numerous and joinder of all potential class members is impractical. For settlement purposes only, there are also questions of law and fact common to the Settlement Class with respect to the sufficiency of the COBRA Notice. In that regard, Named Plaintiff’s claims are typical of the claims of the Settlement Class. Finally, Named Plaintiff and his counsel have fairly and adequately represented the interests of the Settlement Class.

7. The Court further finds that, for settlement purposes, the Settlement Class meets the criteria for certification under Federal Rules of Civil Procedure 23(a) and 23(b)(3).



Prosecuting separate actions by individual Settlement Class Members would create a risk of inconsistent or varying adjudications with respect to individual Settlement Class Members that would establish incompatible standards of conduct for Defendant, and would create a risk of adjudications with respect to individual Settlement Class Members that, as a practical matter, would be dispositive of the interests of other Settlement Class Members and would substantially impair or impede their ability to protect their interests.

8. Luis A. Cabassa and Brandon J. Hill from Wenzel, Fenton, Cabassa, P.A., are hereby appointed as Class Counsel for the Settlement Class.

9. Named Plaintiff, Ashley Johnson, is hereby appointed Class Representative for the Settlement Class.

10. The Court finds on a preliminary basis that the terms of the proposed Settlement are fair, reasonable, and adequate. The Court further finds that the proposed Settlement is the result of arm's-length negotiations, and with the assistance of a class action mediator.

11. The Court therefore grants preliminary approval of the proposed Settlement.

12. More specifically, the Court finds and concludes that the Notices of Settlement, both the short form notice that will be mailed to Settlement Class Members, and the long form notice that will be made available on the Settlement Administrator's website, attached as Exhibit 1 and Exhibit 2 to the Agreement, and the procedures set forth in the Agreement for providing notice to the Settlement Class, satisfy the notice requirements of Rule 23, adequately advise Settlement Class Members of their rights under the Agreement, and meet the requirements of due process. The Notices of Settlement fairly, plainly, accurately, and reasonably provide Settlement Class Members with all required information, including (among

other things): (1) a summary of the Action; (2) a clear definition of the Settlement Class; (3) a description of the material terms of the Settlement; (4) a disclosure of the release of claims; (5) instructions as to how to opt out or object to the Settlement and a date by which Settlement Class Members must do so; (6) the date, time, and location of the Final Approval Hearing; (7) contact information for the Settlement Administrator; (8) the website address for the Settlement website and the toll-free telephone number that Settlement Class Members may call for further information; and (9) the amount that Class Counsel may seek in attorneys' fees and costs, and the costs of administration.

13. The proposed plan for mailing the short form Notices of Settlement by first class U.S. Mail to the Settlement Class Members is an appropriate method, reasonably designed to reach those individuals who would be bound by the Settlement. The short form Notice of Settlement will direct the Settlement Class Members to the Settlement website which will then provide access to additional information, including the long form Notice of Settlement. Accordingly, the Court approves the Notices of Settlement, attached as Exhibit 1 and Exhibit 2 to the Settlement Agreement, and the manner of distributing the Notices of Settlement to the Settlement Class.

14. Any Settlement Class Member who wishes to object to the Settlement must file a timely written statement of objection with the Clerk of Court, and mail a copy of the objection to the Settlement Administrator (at the address provided in the Notice of Settlement), postmarked no later than 60 days after the Class Notice Date. The statement of objection must state the case name and number; specify the basis for the objection; state whether it applies only to the objector, to a specific subset of the class, or the entire class; provide the name,

address, telephone number, and email address of the Settlement Class Member making the objection; and indicate whether the Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel. In addition, any statement of objection must be personally signed by the Settlement Class Member and, if represented by counsel, then also by counsel. Any Settlement Class Member who fails to timely object to the Settlement in the manner specified above shall be deemed to have waived any objections to the Settlement and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement.

15. Class Counsel's Motion for Attorneys' Fees and Costs must be filed at least 14 (fourteen) days prior to the objection deadline for class members.

16. The Final Approval Motion shall be filed no later than ten (10) days prior to the date of the Final Approval Hearing, and in the Final Approval Motion Class Counsel shall address any timely submitted objections to the Settlement.

17. The Court will conduct a Final Approval Hearing on [REDACTED], 2022, at [a.m.] [p.m.], in Courtroom [REDACTED], which is not less than 90 days from today, to determine whether the Settlement is fair, reasonable, and adequate and if final approval should be granted; whether any objections to the Settlement should be overruled; and whether Class Counsel's Motion for Attorneys' Fees and Costs should be granted.

18. Due to the ongoing COVID-19 pandemic, the Final Approval Hearing may be postponed to a later date or conducted via telephone or Zoom without further notice.

DONE and ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies to:  
Counsel of Record

# EXHIBIT B

(Class Action Settlement Agreement)

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.

\_\_\_\_\_ /

**CLASS ACTION SETTLEMENT AGREEMENT**

Named Plaintiff, Ashley Johnson ("Named Plaintiff") and McDonald's Corporation, ("Defendant") (collectively the "Parties"), enter into this Class Action Settlement Agreement (the "Agreement")<sup>1</sup> to resolve all claims in this Action, subject to the approval of the Court.

**I. Recitals.**

1. 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. Defendant filed a Motion to Dismiss the Amended Complaint on March 8, 2022. Named Plaintiff responded, and Defendant filed a reply brief. The action is 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 allegedly statutorily deficient COBRA notices under ERISA § 606, 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4, and who did not elect COBRA

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<sup>1</sup> Other capitalized terms are defined in Section II below.

coverage. As a result of the aforementioned violations, the Amended Complaint seeks statutory penalties, injunctive relief, attorneys' fees, costs and expenses, and other appropriate relief.

2. 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. 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 and , Defendant's counsel deposed Plaintiff on June 16, 2022.

3. After completing extensive discovery efforts, the Parties participated in an all-day mediation with highly-respected class action mediator, Carlos J. Burruezo.

4. Defendant expressly denies that it has engaged in any wrongdoing, denies that the COBRA Notice at issue is deficient, and denies any violation of COBRA, ERISA, or any other law. By entering into this Agreement, Defendant does not admit or concede any fault or liability in connection with any facts or claims that have been or could have been alleged against it in this Action. Defendant denies that it has any liability whatsoever to Named Plaintiff or any members of the Settlement Class. Defendant has entered into this Agreement in recognition of the substantial expense and burden of continued litigation, the substantial period of time required to arrive at a judicial resolution of the issues presented, and the concomitant inconvenience, distraction, and disruption to its business operations.

5. Class Counsel (as defined in paragraph 8 below), who have substantial experience representing class representatives and prosecuting class actions, have investigated the law and facts relating to the claims asserted in the Complaint and Amended Complaint. Based on their experience in representing class representatives and litigating class action cases, Class Counsel

have concluded that this Settlement is fair and reasonable and in the best interests of the Settlement Class. Class Counsel have given due consideration to the benefits of amicably resolving this case as described herein and the risks and delays associated with further litigation.

6. Subject to the approval of the Court, the Parties propose to settle this Action on the terms set forth this Agreement.

## **II. Definitions.**

As used in this Agreement, capitalized terms and phrases not otherwise defined have the meanings provided below:

6. Action: the above-captioned action, *Johnson v. McDonald's Corporation*, Case No. 1:21-cv-24339, United States District Court, Southern District of Florida, Miami Division.

7. Agreement or Settlement: this Class Action Settlement Agreement.

8. Class Counsel: Luis A. Cabassa and Brandon J. Hill of Wenzel Fenton Cabassa, P.A.

9. Class Notice Date: the date that Notices of Settlement are initially mailed to Settlement Class Members.

10. Class Period for the Class: December 15, 2017, to February 9, 2021.

11. Class Representative or Named Plaintiff: Ashley Johnson.

12. COBRA: the Consolidated Omnibus Budget Reconciliation Act of 1985, including all regulations promulgated and applicable case law thereunder.

13. COBRA Coverage: continuing health and welfare coverage provided under COBRA.

14. COBRA Notice: the notice regarding the right to elect COBRA Coverage provided by or on behalf of Defendant to the Settlement Class (as defined below) in the form at issue in the



Action, a copy of which is attached as an exhibit to the Amended Complaint at Dkt. No. 16-2 and 16-3.

15. Court: the United States District Court for the United States District Court, Southern District of Florida, Miami Division.

16. Deadline to Opt Out or Object: the date the Court establishes as the deadline by which Settlement Class Members must postmark a written notice of their intent to opt out of the Settlement and by which any objections to the Settlement must be filed with the Court. Unless the Court establishes a different deadline, Settlement Class Members shall have sixty (60) days after the Notice of Settlement is mailed to opt out of or object to the Settlement.

17. Defendant: the named defendant in the Action, McDonald's Corporation.

18. Effective Date: fourteen (14) days after the first date on which all of the following have occurred: a) Named Plaintiff and Defendant have executed this Agreement; b) the Court has issued its Preliminary Approval Order and certifies the Settlement Class; c) the Notices of Settlement have been given to the Settlement Class Members, including providing them an opportunity to opt out or object to the Settlement; d) the Court has held a Final Approval Hearing, entered a Final Approval Order, and awarded Class Counsel their reasonable attorneys' fees and costs; and, e) only if there are written objections timely filed before the Final Approval Hearing and those objections are not withdrawn or overruled, any period for appeals, motion for reconsideration, rehearing, certiorari or any other proceeding seeking review ("Review Proceeding") has expired without the initiation of a Review Proceeding, or if a Review Proceeding has been timely initiated, that there has occurred a full, final, and complete disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand. If there is no written objection timely filed by a Settlement Class Member that is not withdrawn or overruled, and the events described in subparagraphs (a) through (d) above

have occurred, the Effective Date shall be fourteen (14) days after entry of the Court's Final Approval Order.

19. Final Approval Hearing: the hearing to be conducted by the Court, after the Court issues the Preliminary Approval of this Order, the Settlement Administrator disseminates the Notice of Settlement to the Settlement Class, and Defendant distributes the required notices under the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA"), at which time Named Plaintiff will request (and Defendant will not oppose) the Court to finally approve the fairness, reasonableness and adequacy of the terms of this Settlement and to enter a Final Approval Order.

20. Final Approval Motion: the Named Plaintiff's Unopposed Motion Seeking Final Approval of this Settlement.

21. Final Approval Order: the Court's order granting final approval of this Settlement on the terms provided herein, or as the same may be modified by subsequent written mutual agreement of the Parties.

22. Gross Settlement: One Hundred Fifty Six Thousand Dollars Seven Hundred Eighty Two Dollars and Fifty Cents (\$156,782.50), which is the total amount that Defendant shall pay in settlement of this Action pursuant to this Agreement.

23. Net Settlement Proceeds: the amount of money remaining after the Gross Settlement is reduced by the following amounts, none of which Defendant opposes:

- (a) Any award of Class Counsel's attorneys' fees up to 33.33% of the total Gross Settlement (*i.e.*, \$52,260.83), plus reasonable litigation costs limited to costs defined by Federal Rule of Civil Procedure 54, but limited to no more than \$5,000 total; and
- (b) Court-approved costs of the settlement administration process by the Settlement Administrator, including but not limited to distribution of the Notices of Settlement to Settlement Class Members (estimated to be between \$30,000 to \$40,000).

24. Notice of Settlement: the Notice of Class Action Settlement and Hearing approved by the Court in its Preliminary Approval Order, the short form of which the Settlement Administrator shall send to the Settlement Class Members by first-class U.S. Mail. The proposed short form notice is attached hereto as Exhibit 1 and the proposed long form notice, to be posted on the settlement website created by the Settlement Administrator, is attached as Exhibit 2. Exhibits 1 and 2 will be submitted to the Court for approval as part of Named Plaintiff's Preliminary Approval Motion.

25. Parties: Named Plaintiff, the putative Settlement Class, and Defendant.

26. Plan: McDonald's Corporation Health Plan

27. Preliminary Approval Motion: Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement.

28. Preliminary Approval Order: the Court's Order preliminarily approving this Settlement on the terms provided herein, or as the same may be modified by subsequent written mutual agreement of the Parties.

29. Released Parties: (i) Defendant; (ii) Defendant's current and former third party COBRA administrators; (iii) Defendant's third party administrators and claims administrators; (iv) any entity that was involved in any way with the drafting or delivery of the COBRA Notice as defined herein; (v) the Plan and Defendant's benefit plans, sponsors, and fiduciaries; and (vi) for each of the entities identified in subparts (i) through (v), their affiliates, parent companies, subsidiaries, predecessors, successors, corporate family members, officers, directors, partners, employees, attorneys, agents, administrators, insurers, shareholders, representatives, trustees, principals, and assigns.

30. Settlement Class: "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." The Settlement Class is to be certified pursuant to Fed. R. Civ. P. 23 for settlement purposes only, and it consists of approximately 8,959 members.

31. Settlement Class Member: any individual who is a member of the Settlement Class.

32. Settlement Account: the account, which shall be a Qualified Settlement Fund as established by Internal Revenue Service regulations, that the Settlement Administrator shall establish for purposes of administering monetary relief under this Agreement.

33. Settlement Administrator: American Legal Claims Services, LLC, a third-party settlement administrator selected and retained by the Parties for purposes of administering the Settlement and mailing the Notice of Settlement and Settlement Payments to Settlement Class Members.

34. Settlement Payment: an equal *pro rata* portion of the Net Settlement Proceeds that each Settlement Class Member shall be entitled to receive, payable by check by the Settlement Administrator out of the Settlement Account, pursuant to this Agreement.

### **III. Monetary Benefits to the Settlement Class.**

35. Settlement Account. Within ten (10) days of the Effective Date, the Settlement Administrator shall establish a Settlement Account, which shall be treated as a Qualified Settlement Fund, for purposes of administering monetary relief under this Agreement, and shall provide Class Counsel and Defendant's counsel with any information relating to the Settlement Account that is reasonably necessary for Defendant to fund the Settlement Account, including but not limited to a properly executed Form W-9.

36. Funding of Settlement Account. Within twenty-one (21) days of the Effective Date, and upon receipt of a properly executed Form W-9 for the Settlement Account, Defendant shall

deposit or cause to be deposited the Gross Settlement amount into the Settlement Account, which sum may be paid in one or more deposits to the Settlement Account, which shall be used by the Settlement Administrator to pay Settlement Class Members and to pay any amounts approved by the Court for Class Counsel's attorneys' fees and costs, and expenses of settlement administration. Payment of the Gross Settlement amount shall be the sole, total and only payment obligation of Defendant, inclusive of all settlement administration costs.

37. Settlement Payments. Each Settlement Class Member who does not opt out will receive a Settlement Payment, in the form of individual settlement checks, each of which constitutes an equal pro rata portion of the Net Settlement Proceeds. For the avoidance of doubt, each Settlement Class Member who does not timely opt-out will automatically receive a Settlement Payment, determined by taking the Gross Settlement amount – the cost of settlement administration by the Settlement Administrator – Class Counsel's fees and costs = Net Settlement Proceeds / number of Settlement Class Members (approximately 8,959) = amount of Settlement Payments to Settlement Class Members. These amounts are all subject to Court approval. After Defendant pays or causes to be paid the Gross Settlement into the Settlement Account, Defendant (and all other Released Parties) shall have no liability as to the Settlement Payments, the allocation of Settlement Payments to each Settlement Class Member, and/or the distribution of Settlement Payments to each Settlement Class Member.

38. Manner of Distribution. The Settlement Administrator shall send the Settlement Payments to Settlement Class Members by first-class U.S. Mail within fifteen (15) days after the Gross Settlement amount has been deposited into the Settlement Account. For purposes of this mailing, the Settlement Administrator shall use the address information that Defendant provides for each Settlement Class Member in accordance with this Agreement (see paragraph 46 below),

subject to appropriate updating of addresses by the Settlement Administrator and/or Class Counsel by cross-referencing the National Change of Address Database. If any Settlement Payment is returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will promptly re-mail the check to the forwarding address. If the Settlement Payment is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to obtain a current address for the pertinent Settlement Class Member, and the Settlement Administrator shall re-mail the check if a current address is obtained before the check's expiration date.

39. Deadline for Cashing Checks. Each Settlement Class Member shall have one-hundred eighty (180) days from the date which appears on the face of check issued to them to negotiate their settlement check. If any funds remain in the Settlement Account after each Settlement Class Member's 180-day deadline for negotiating their settlement checks has passed, the Settlement Administrator shall retain such funds in the Settlement Account for a period of ten (10) days to allow for the processing and payment of any checks that may still be in the bank's check clearing process. Thereafter, the Settlement Administrator shall close out the Settlement Account by issuing a check for any remaining balance as a *cy pres* award to be paid to Bay Area Legal Services (or any other *cy pres* recipient that the Court may approve). 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.

40. Payments Not Considered Wages. The Parties agree that the Settlement Payments are not wages and shall not be treated as such for tax purposes. The Settlement Administrator shall arrange for the preparation and filing of any tax reports, forms, and returns required to be filed, prepared or disseminated by the Settlement Account, and will send Class Counsel copies of any



such filings and receipts of payment in a timely manner. Neither the Parties nor their respective counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Settlement Account. If any tax liability exists, it is the responsibility of each Settlement Class Member only.

**IV. Attorneys' Fees, Reasonable Litigation Costs, and Costs of Administration.**

41. Unopposed Motion for Attorneys' Fees and Costs. At least fourteen (14) days prior to the Deadline to Opt Out or Object, Named Plaintiff will file a motion seeking an order from the Court awarding Class Counsel their reasonable attorneys' fees in the sum total of Thirty-Three and One-Third Percent (33.33%) of the Gross Settlement (*i.e.*, \$52,260.83) and, in addition, out-of-pocket costs incurred in this Action that, upon approval, will be paid from the Settlement Account. Defendant agrees that it will not oppose Named Plaintiff's application for Class Counsel's attorneys' fees and costs, up to 33.33% of the Gross Settlement, plus reasonable litigation costs up to \$5,000. The Settlement Administrator shall make Named Plaintiff's motion and any attachments available on the Settlement website as soon as practicable after the motion is filed. The procedure for and the allowance or disallowance of any application for fees and costs are matters separate and apart from the Settlement. Any order or proceeding relating to fees and costs, or any appeal from any order relating thereto, or any reversal or modification thereof, shall have no effect on the Settlement, and shall not operate to, or be grounds to, terminate or cancel the Agreement or to affect or delay the finality of the Final Approval Order or any Judgment.

42. Payment of Approved Attorneys' Fees and Costs. Within ten (10) days of the Settlement Account being funded, the Settlement Administrator shall pay attorneys' fees and costs to Class Counsel, pursuant to the terms of the Court order granting such award, by wire transfer or

check from the Settlement Account as directed by Class Counsel to the trust account of Wenzel Fenton Cabassa, P.A.

43. Cost of Administration. The Parties agree that all costs of administration shall be paid out of the Settlement Account and not separately by Defendant or Class Counsel. It is estimated the cost of notice for administration will be approximately \$30,000 to \$40,000, and Plaintiff's counsel will obtain competitive bidding from multiple possible administrators.

**V. Limited Release of Claims.**

44. Limited Release. On the Effective Date, and in consideration of the benefits provided by this Agreement, the sufficiency of which has been determined by the Court and is hereby acknowledged by the Parties, 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 and claims arising from the facts alleged in this lawsuit, only, whether they directly, indirectly, or derivatively, had, have, or may have such claims. No claims by class members for ERISA 502(a)(1)(B) benefits under ERISA are subject to this waiver except to the extent such a claim for benefits (or disputed benefits) relates to the alleged failure to receive a proper COBRA Notice. Likewise, Named Plaintiff Ashley Johnson is not required to release Defendant as to her claims pending at the EEOC, including for pregnancy discrimination and retaliation under Title VII and the Florida Civil Rights Act, and nothing in this litigation, nor this settlement, affects Named Plaintiff Ashley Johnson's ability to timely pursue those claims in a subsequent proceeding/lawsuit against Defendant and/or against any of Defendant's affiliated corporations.



**VI. Notice of Settlement and Right to Opt Out or Object.**

45. Notice to Settlement Class Members. The Settlement Administrator shall utilize the Court-approved short and long forms of the Notice of Settlement, which will be the only forms utilized by the Settlement Administrator. The Settlement Administrator shall also provide the Parties with a list of all documents that will be available to Settlement Class Members on the Settlement Administrator's website. Within ten (10) business days after issuance of the Preliminary Approval Order, Defendant shall either have provided or shall have exercised best efforts to cause to be provided a list of the full names and last known mailing addresses of each Settlement Class Member to the Settlement Administrator. Moreover, within ten (10) business days after receiving the list from Defendant (*i.e.*, on the Class Notice Date), the Settlement Administrator shall send the short form Notice of Settlement to all Settlement Class Members via first-class U.S. Mail in the approved form of envelope, if applicable. The Settlement Administrator shall also make the long form Notice of Settlement available on its website at the time when the Notice of Settlement is mailed to the Settlement Class Members.

46. Manner of Distributing Notice. For purposes of distributing the short form Notice of Settlement, the Settlement Administrator shall use the address information that Defendant provides for each Settlement Class Member in accordance with this Agreement, subject to appropriate updating by the Settlement Administrator or Class Counsel of addresses by cross-referencing the National Change of Address Database. If any Notice of Settlement is returned by the U.S. Postal Service with a forwarding address, the Settlement Administrator will promptly re-mail the Notice to the forwarding address provided. If the Notice of Settlement is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to obtain a valid address for the pertinent Settlement Class Member, and mail the Notice to the updated address.

47. Settlement Telephone Number and Talking Points. Beginning on the Class Notice Date, or as soon thereafter as practicable, the Settlement Administrator shall establish a toll-free telephone number with an interactive voice response ("IVR") system that Settlement Class Members may call to obtain further information about the Settlement. The Settlement Administrator shall maintain the telephone number until one hundred (100) days after the Effective Date, at which point it shall be discontinued. Defendant shall have no responsibility for responding to Settlement Class Member inquiries whether written, electronic, or via telephone.

48. Settlement Website. Beginning on the Class Notice Date, or as soon as thereafter as practicable, the Settlement Administrator shall establish an active website (the "Settlement Website") from which Settlement Class Members can download relevant forms such as the Complaint, the Amended Complaint, the long form Notice of Settlement, this Agreement, and ECF-filed (*i.e.*, publicly-available) copies of the pleadings in support of approval of the Settlement, Named Plaintiff's motion for Class Counsel's attorneys' fees and costs, and papers reflecting costs of administration. The Settlement Administrator shall maintain the Settlement Website until one hundred (100) days after the Effective Date, at which point it shall be discontinued.

49. Right to Opt Out. Settlement Class Members who wish to exclude themselves from the Settlement must submit a written statement requesting exclusion from the Settlement ("opt-out request"). Such opt-out request must affirmatively state that the individual wishes to opt out of the Settlement, state the case name and number, contain the name, address, telephone number, and email address of the Settlement Class Member requesting exclusion, and be personally signed by that Settlement Class Member. The opt-out request must be sent by U.S. Mail to the Settlement Administrator (at the address provided in the Notice of Settlement), and must be postmarked on or before the Deadline to Opt Out or Object. The Settlement Administrator shall provide the

Parties' counsel (as specified below) with copies of all opt-out requests received to date within five (5) business days after the Deadline to Opt Out or Object, and provide any additional opt-out requests within ten (10) business days after the Deadline to Opt Out or Object. Any Settlement Class Member who timely requests exclusion from the Settlement will not be entitled to any Settlement Payment and will not be bound by this Settlement or have any right to object, appeal or comment thereon. No opt-out request may be made on behalf of a group of Settlement Class Members. Each opt-out request must be individually signed by the Settlement Class Member who is opting out of the Settlement.

50. Objections. Any Settlement Class Member who does not opt-out and wishes to object to the Settlement must file a timely written statement of objection ("objection") with the Clerk of Court, and mail a copy of that objection to the Settlement Administrator (at the address provided in the Notice of Settlement), filed with the Court and postmarked no later than the Deadline to Opt Out or Object. The Settlement Administrator shall provide the Parties' counsel (as specified below) with copies of all objections received to date within five (5) business days after the Deadline to Opt Out or Object, and provide any additional objections within ten (10) business days after the Deadline to Opt Out or Object. The objection must state the case name and number; state with specificity the grounds for the objection; state whether it applies to only the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; provide the name, address, telephone number, and email address of the Settlement Class Member making the objection; and indicate whether the Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel. In addition, the objection must be personally signed by the Settlement Class Member and, if represented by counsel, then also by counsel. Any Settlement Class Member who fails to timely object to the Settlement in the manner specified

counsel with a report listing the names and addresses of all Settlement Class Members to whom the Settlement Administrator mailed a Notice of Settlement, and indicating which Settlement Class Members submitted a timely opt-out request, if any, and which Settlement Class Members submitted a timely objection, if any (as well as copies of any such opt-out requests or objections).

54. Right to Terminate Settlement. The Parties shall each have the right to unilaterally terminate this Agreement by providing written notice of their election to do so within ten (10) business days after any of the following have occurred: (a) the Court refuses to certify the Settlement Class as defined herein; (b) the Court refuses to grant preliminary approval of the Settlement after the Parties have attempted to re-submit the Preliminary Approval Motion at least one time addressing any issues raised by the Court as to the first Preliminary Approval Motion and/or this Agreement; (c) the Court refuses to grant final approval of the Settlement (or if the Final Approval Order agreed to by the Parties is materially modified in a manner unacceptable to either Party); or (d) any objection(s) are timely made, and, as a result of said objection(s), the Final Approval Order is reversed, or if the Final Approval Order is materially modified in a manner unacceptable to either Party by the U.S. Court of Appeals for the Eleventh Circuit or the U.S. Supreme Court.

55. The above notwithstanding, the Parties agree that should any of the conditions set forth in Paragraph 53 occur, the Parties will, within the above-indicated period, meet and confer by telephone in a good-faith attempt to reach agreement on a settlement of this Action.

56. In addition, Defendant shall have the right unilaterally to terminate this Agreement by providing written notice to Class Counsel of its election to do so within fifteen (15) business days after the Deadline to Opt Out or Object if a total of one percent (1%) or more of the total

Settlement Class Members request exclusion from the Settlement by submitting timely opt-out requests (i.e., if 89 class members opt out).

57. Termination of Settlement. If the Settlement is terminated pursuant to Paragraph 54 or 55 of this Agreement, the Parties will return to the *status quo ante*, and the Action shall proceed as if this Settlement had never been negotiated. Specifically, the Parties agree that:

- (a) the Settlement proposed herein shall be of no further force and effect;
- (b) the agreements and definitions in this Agreement concerning the certification of the Settlement Class will not be used as evidence or argument to support class certification or the definition of any class in this Action or any further litigation, and Defendant will retain all rights to oppose the certification of any class in this Action and any further litigation, which shall survive the termination of the Settlement; and
- (c) this Agreement and all negotiations, proceedings and statements relating thereto, and any amendment thereof, shall be null and void and shall be without prejudice to the Parties or the Released Parties, and each Party and Released Party shall be restored to his, her or its respective position as it existed prior to the execution of this Agreement.

58. Settlement Modification. The Parties may agree by written stipulation of counsel to reasonable modifications of the timetables set forth in this Agreement or to modifications to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court, without the need to formally amend this Agreement.

59. Dismissal with Prejudice: Within five (5) days after the Effective Date, Named Plaintiff and Defendant agree that they will jointly stipulate to the dismissal with prejudice of the Action. Named Plaintiff and Defendant agree they will request that the Court retain jurisdiction to enforce the Agreement until one hundred (100) days after the Effective Date.

#### **VIII. Other Provisions.**

60. Mediation; Dispute Resolution. In the event that the Parties disagree upon the terms of this Agreement or as to any matter concerning the administration of this Settlement, the Parties

and the relevant Released Parties agree to use their best efforts to amicably resolve the dispute and to participate in mediation before an agreed upon mediator prior to seeking relief from the Court.

61. Authority. The signatories below represent that they are fully authorized to enter into this Agreement. All Settlement Class Members who do not opt out are bound by the signature of the Named Plaintiff as to any settlement and/or judgment.

62. No Admission/ No Waiver. The Settlement shall not be deemed to be an admission of any liability or wrongdoing by Defendant or any Released Party in any manner, nor shall it be construed as such, but rather it is understood that Defendant is settling this matter to, among other reasons, avoid the cost of protracted litigation. Neither this Agreement, nor any document or account relating to this Settlement shall be construed as, offered or admitted into evidence as, or be deemed to be evidence for any purpose adverse to Defendant or any Released Party, except for purposes of settling this Action or enforcing settlement of this Action. Defendant enters into this Agreement solely on the facts and circumstances particular to the matters covered by this Agreement. This Agreement shall not be deemed as an admission by, waiver of, or used as estoppel against, the rights of Defendant to assert that the claims set forth in this Action or any other proceeding are otherwise inappropriate for class certification under Rule 23 in the absence of the Settlement. To the extent this Settlement is not approved, Defendant does not waive, but rather expressly reserves all rights to challenge any and all claims and allegations asserted by Named Plaintiff (whether procedural or substantive) should the Action proceed.

63. Best Reasonable Efforts and Mutual Full Cooperation. The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including, but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this Settlement. The Parties will use their best reasonable efforts, including



all efforts contemplated by this Agreement and any other efforts that may become necessary as ordered by the Court, or otherwise, to effectuate this Agreement and to secure the Court's approval of the Settlement.

64. Communications with Settlement Class Members. The Parties and their respective counsel shall not discourage any Settlement Class Member from participating in this Settlement or lobby or encourage any Settlement Class Member to opt out of the Settlement or object to the Settlement.

65. Standing. The Parties agree that Named Plaintiff and each class member have sufficient standing under Article III for settlement purposes.

66. Binding Effect on Successors and Assigns. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

67. Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, arm's length negotiations between the Parties, and that this Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or Party's counsel participated in the drafting of this Agreement.

68. Entire Agreement. This Agreement and the attached exhibits, incorporated herein by reference, constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior negotiations, communications, and agreements between the Parties, and may not be amended, or any of their provisions waived, except by a writing executed by all Parties hereto. The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their commercially reasonable best efforts to

accomplish the foregoing terms and conditions of the Agreement. The Parties intend this Agreement to be a final and complete resolution of all disputes between them, relating to or arising out of the subject matter of the Action. Accordingly, the Parties agree that the terms of the Agreement represent a good-faith settlement, reached voluntarily based upon adequate information and after consultation with experienced counsel. The Parties also agree Class Counsel's attorneys' fees and costs were not discussed until all other terms were reached.

69. Governing Law. This Agreement shall be governed by the laws of the State of Florida without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

70. Venue. The Parties hereby agree that any action brought upon the enforcement of this Agreement shall be commenced or filed in the United States District Court for the Southern District of Florida, Miami Division.

71. Effect of Paragraph Titles Captions and Headings. Paragraph titles, captions, and headings in this Agreement are inserted as a matter of convenience and for reference purposes only, and in no way define, limit, extend, or describe the scope of this Agreement or any provision in it. Apart from those provisions expressly designated as Recitals, each term of this Agreement is contractual and is not merely a recital.

72. Notices. Unless otherwise specifically provided in this Agreement, any notices or communications to Named Plaintiff or Defendant relating to this Settlement should be sent to their respective counsel in writing, and will be deemed to have been duly given as of the third business day after mailing by U.S. registered or certified mail, return receipt requested or as of the date of



delivery confirmation by Federal Express, United Parcel Service or equivalent express carrier, as follows:

**Named Plaintiff's Counsel:**

Luis A. Cabassa, Esq.  
Brandon J. Hill, Esq.  
Wenzel Fenton Cabassa, P.A.  
1110 N. Florida Ave., Suite 300  
Tampa, Florida 33602

**Defendant's Counsel:**

Kimberly Jones  
Richard Pearl  
Faegre Drinker Biddle & Reath LLP  
320 South Canal Street, Suite 3300  
Chicago, Illinois 60606

73. Counterparts. This Agreement may be executed in one or more counterparts. All executed copies of this Agreement and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

74. Settlement Class Signatories. The Parties agree that because the Settlement Class Members are so numerous, it is impossible and impracticable to have each Settlement Class Member execute this Agreement. Therefore, the Notice of Settlement will advise all Settlement Class Members of the binding nature of the Agreement and will have the same force and effect as if executed by each Settlement Class Member.

75. Authority of Court. The administration and implementation of the Settlement as embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Agreement, including, but not limited to, enforcement of the releases contained in paragraphs 44 and 45 of this Agreement. The Court

expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement.

76. Execution. The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on Effective Date, as defined in this Agreement, and if it has been executed by all Parties.

*[Remainder of this page left blank; signatures on next page]*

ASHLEY JOHNSON

  
\_\_\_\_\_

DATE: 08 / 30 / 2022

McDONALD'S CORPORATION

BY:   
\_\_\_\_\_

TITLE: Vice President

DATE: September 21, 2022

## **EXHIBIT 1**

**COURT ORDERED  
NOTICE**

*Johnson v. McDonald's Corp.*  
c/o Settlement Administrator  
PO Box 23459  
Jacksonville, FL 32241-3459



*Johnson*

v.

*McDonald's Corp.*

**Class Action Notice**

\*8131-ΦX-008638\*

Postal Service: Please do not mark barcode  
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*(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 of 1985 (“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 of 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 [REDACTED], 2022. 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 [REDACTED], 2022. 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 [REDACTED], 2022 at [REDACTED] a.m./p.m. 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 [REDACTED]. 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.XXXX.com](http://www.XXXX.com).

**How May I Get More Information?** For more information, contact the Settlement Administrator, PO Box 23459, Jacksonville, FL, 32241-3459, at (888) XXX-XXXX, via e-mail at [info@XXXX.com](mailto:info@XXXX.com), or visit [www.XXXX.com](http://www.XXXX.com).

***Please use this section to update your address***

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NAME \_\_\_\_\_

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CITY, STATE, ZIP \_\_\_\_\_

PLACE  
STAMP  
HERE

*Johnson v. McDonald's Corp.*

c/o Settlement Administrator

Jacksonville, FL 32241-3459

## **EXHIBIT 2**

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.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING

**A court authorized this Notice. This is not a solicitation from a lawyer.**

This **Notice of Proposed Class Action Settlement and Hearing** provides important information regarding your right to participate in or to opt out of a proposed settlement in a putative class action lawsuit (referred to in this notice as the "Settlement"). Named Plaintiff, Ashley Johnson ("Johnson" or "Plaintiff"), filed a lawsuit against Defendant McDonald's Corporation ("Defendant"), in which she alleges that 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 of 1985 ("COBRA"). Plaintiff and Defendant are referred to in this notice together as the "Parties." Defendant disputes the allegations and has asserted that the COBRA Notice complied with all applicable laws. That case is pending in the U.S. District Court, Southern District of Florida, Miami Division. The judge has not made any determination about who is right or wrong in the case. A summary of the claims asserted in the lawsuit and the proposed Settlement follows.

- The notice at issue is referred to as a "COBRA" Notice and the continuation of health insurance coverage after separation of employment is called "COBRA continuation coverage," after the Consolidated Omnibus Budget Reconciliation Act of 1985. The COBRA Notice is designed to provide former employees who were covered under employer sponsored group health care plans with information and details regarding their right to continue their healthcare coverage and the terms and conditions of that COBRA continuation coverage. 29 U.S.C. § 1166(a) (2), (a)(4), (c).

- The lawsuit generally alleges Defendant provided Plaintiff and other putative class members with a deficient COBRA Notice. More specifically, Plaintiff asserted that Defendant's COBRA Notice did not adequately inform her and the putative class how to exercise their rights to elect COBRA continuation coverage because Defendant's COBRA Notice: (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, Plaintiff sought statutory penalties, injunctive relief, attorneys' fees, costs and expenses on behalf of himself and all others similarly-situated.



- Defendant denies that its COBRA Notice was deficient in any manner and denies that it has any liability to Plaintiff or their putative class whatsoever. Rather, Defendant has asserted that its COBRA Notice complied with any and all relevant laws, including COBRA and the Employee Retirement Income Security Act.

- At this point in the case, the presiding judge has not made any determination about who is right or wrong. Rather, instead of proceeding with potentially years of litigation with uncertain outcomes, the parties have agreed to resolve the lawsuit through a Court-supervised settlement to avoid further cost and uncertainty.

- The Parties seek to settle this dispute on behalf of Plaintiff and a “Settlement Class,” which the Parties have agreed to define 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.”

- Membership in the Settlement Class will be determined based upon Defendant’s records reflecting who received the specific COBRA Notice at issue during the Class Period. It is estimated that the Settlement Class is comprised of 8,959 potential members.

- You received notice of this Settlement by mail which directed you to this website because Defendant’s records indicate that you are a “Settlement Class Member” and eligible to receive payment from this proposed class action settlement.

- Your rights and options—and the deadlines to exercise them—are explained in this Notice. Here is a brief summary of your rights and options.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Do Nothing</b>	If you do nothing and the Court approves this Settlement, you will receive a settlement payment (the amount of which is described below). As a member of the Settlement Class, you will release Defendant and others from any potential liability regarding the COBRA Notice in this lawsuit only. No other claims are impacted by this lawsuit.
<b>Ask to be Excluded by [REDACTED], 2022</b>	If you do not want to be included in the case and the Settlement, you must take action to exclude yourself. This is called “opting out.” To opt out, you must send a written opt-out request to the Settlement Administrator postmarked by [REDACTED], 2022. 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 elect to opt out, you may pursue your own individual action against Defendant for the claims raised in this case if you choose to do so.
<b>Object by [REDACTED], 2022</b>	If you do not like the Settlement, or any of its specific terms, you may “object.” To object, you must file a written objection with the Court and send a copy of your objection to the Settlement Administrator postmarked by [REDACTED], 2022. Your written objection must (i) state the case name and number; (ii) provide the specific grounds for your objection; (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 and speak at the Final Approval Hearing, either with or without your own counsel; and (vi) include your personal signature (and your counsel’s signature, if you have your own representation). You may not file an objection if you opt out of the settlement.
<b>Go to a Hearing on</b>	If you wish to be heard, you may attend the Final Approval Hearing and ask to speak

, 2022	in Court about the fairness of the Settlement. You are not required to attend the hearing. If you opt out, you may not present your opinions regarding the Settlement at the Final Approval Hearing.
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**The Court still has to decide whether to approve this settlement, which may take some time, as explained below.**

### Basic Information

#### **1. Why did I receive this notice?**

You were sent notice by mail of this proposed Settlement because you are currently a member of the Settlement Class. Composition of the Settlement Class is based upon Defendant's records. The Notice of Settlement you received by mail directed you to the Settlement Administrator's website which provides additional information regarding this Settlement, including this more detailed Notice of Proposed Class Action Settlement and Hearing. As a current member of the Settlement Class you have a right to know about the proposed settlement of this case as a class action and about your options to participate as a Settlement Class Member, your ability to object to the Settlement terms as a class member, or to opt out of the Settlement, before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after all objections or appeals relating to that settlement are resolved, the payment provided for by the Settlement will be available to all Settlement Class Members who have not elected to opt out.

This Notice explains the lawsuit, the proposed Settlement, your legal rights, the Settlement payment and who will be eligible to receive a payment from the Settlement Account, and the basis upon which payments will be made. A copy of the Class Action Settlement Agreement (referred to in this Notice as the "Agreement") is available to Settlement Class Members on this website.

#### **2. What is the lawsuit about?**

The lawsuit generally alleges Defendant provided Plaintiff and other putative class members with a deficient COBRA Notice. More specifically, Plaintiff asserted that Defendant's COBRA Notice did not adequately inform her and putative class members how to exercise their rights to elect COBRA continuation coverage because Defendant's COBRA Notice: (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, Plaintiff sought statutory penalties, injunctive relief, attorneys' fees, costs and expenses on behalf of himself and all others similarly-situated.

Defendant disputes the Plaintiff's allegations and denies all liability to Plaintiff and the Settlement Class. Defendant has affirmatively asserted that the COBRA Notice at issue complied with any and all applicable laws. In the lawsuit, Defendant denied Plaintiff's allegations and asserted a number of defenses. Further, Defendant has, at all relevant times, asserted that Plaintiff's claims are not appropriate for class action treatment in the absence of a settlement.

Although the Court has authorized this Notice of Proposed Class Action Settlement and Hearing, the Court has not determined or ruled upon the merits of the claims or defenses asserted by either side in the lawsuit. The Court has not found Defendant violated the law in any way. The Court has not found that the Plaintiff would prevail in this case. The Court has not made any determination that Plaintiff will recover any damages in this litigation.

#### **3. Why is this case a class action?**

Class actions are lawsuits in which the claims and rights of many people are decided in a single proceeding. In a class action, as here, Plaintiff (“Class Representative”) seeks to assert claims on behalf of herself and all members of a putative class who received the same allegedly deficient COBRA Notice. In a class action, individuals with similar claims are generally treated alike. The Court supervises the prosecution of the class claims by Counsel for the Settlement Class (“Class Counsel”) to ensure that all members of the Settlement Class are adequately and fairly represented. Settlement Class Members are not individually responsible for the costs or fees of Class Counsel, which must be approved by the Court and which will be paid out of the Settlement Account.

#### **4. Why is there a settlement?**

The Court has not decided the merits of this case in favor of the Class Representative or in favor of Defendant. Instead, Class Counsel investigated the facts and applicable law regarding the Class Representative’s claims and Defendant’s defenses. The parties engaged in lengthy and arm’s-length negotiations to reach this settlement. The Class Representative and Class Counsel believe that the proposed settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class Members.

Both sides agree that, by settling, Defendant is not admitting any liability or that Defendant did anything wrong. Additionally, both sides want to avoid the uncertainties and expense of further litigation.

### **Who Is Included In The Settlement**

#### **5. How do I know if I am part of the Settlement?**

You are included in the Settlement if you fit the definition of “Settlement Class” above. If you received a notice of settlement in the mail, Defendant’s records indicate you are a member of the Settlement Class. If you are not certain as to whether you are or should be a member of the Settlement Class, you may contact the Settlement Administrator to find out (see contact information below). In all cases, the question of Settlement Class membership will be determined based on Defendant’s records.

### **The Settlement Payment—What You May Receive**

#### **6. What does the Settlement provide?**

If you are a member of the Settlement Class, you are eligible to receive a payment under the Settlement. Defendant has agreed to pay a total of \$156,782.50 into a Settlement Account. After deducting expenses, the Settlement Account 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, for Class Counsel’s attorneys’ fees and litigation costs, and the costs of settlement administration. If the Court awards the amounts sought for these awards and expenses, the net amount payable to each Settlement Class Member will be approximately \$7.00 to \$10.00.

Each Settlement Class Member shall have sixty (60) days from the date which appears on the face of check issued to him/her to negotiate his/her settlement check. If any funds remain in the Settlement Account after the 60-day deadline for Settlement Class Members to negotiate their settlement checks as a result of uncashed or undeliverable checks, the Settlement Administrator shall retain such funds in the Settlement Account for a period of ten (10) business days to allow for the processing and payment of any checks that may still be in the bank’s check clearing process. Thereafter, the Settlement Administrator shall close out the Settlement Account by issuing a check for any remaining balance to the Court-approved “*cy pres*” recipient. The Parties have asked the Court to name Bay Area Legal Services, a 501(c)(3) non-profit legal aid organization, as the *cy pres* recipient.

**7. How do I receive a payment from the Settlement?**

To receive a check with your settlement payment, you do not have to do anything. Your interest in this matter will be represented by Plaintiff as Class Representative and Class Counsel. As a Settlement Class Member, you will be bound by the terms of the Agreement and any judgment arising from the Settlement. If the Court approves the Settlement at or after the Final Approval Hearing and you have not elected to opt out of the Settlement, you will automatically receive a settlement check for your share of the funds remaining in the Settlement Account after deduction for Court-approved awards (attorneys' fees and costs, and settlement administration costs).

**8. When would I receive my payment?**

The Court will hold the Final Approval Hearing on [REDACTED], 2022 at [REDACTED] a.m./p.m. 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 [REDACTED]. 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.XXXX.com](http://www.XXXX.com).

**9. What am I giving up to receive a payment or stay in the class?**

Upon the Court's approval of the Settlement, 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.

**10. Do I have to participate in the Settlement?**

No. You may choose to be excluded from the Settlement (in other words "opt out") and you will not be bound by the Agreement or any judgment or other final disposition of the lawsuit. If you opt out, you will retain any individual claims you may have against Defendant, and Defendant will retain any defenses it has to your claims. To request exclusion, you must state in writing your desire to opt out and to be excluded from the Settlement Class, and see page 3 above for requirements for your opt-out request. **Your request to opt out which will exclude you from the Settlement must be sent by first class U.S. Mail, postmarked on or before [REDACTED], 2022. You must send your written opt out request to:**

*Johnson v. McDonald's Corporation*  
c/o Settlement Administrator  
P.O. Box XX  
Jacksonville, FL 32241-3459  
**(888) XXX-XXXX**

**If your written opt out request is not postmarked on or before [REDACTED], 2022, your request for exclusion will be invalid, and you will be bound by the terms of the Settlement approved by the Court, including without**

limitation, the terms of the Agreement and the judgment ultimately rendered in the case, and you will be barred from bringing any claims against Defendant which arise out of or relate in any way to the claims described in Section 9 above.

**11. If I don't exclude myself, can I sue Defendant for the same thing later?**

No. If you do not opt out of the Settlement, you will give up any right to sue Defendant for the described in Section 9 above.

**12. If I exclude myself, will I receive any payment from this Settlement?**

No. If you opt out and thereby exclude yourself, you are not part of the Settlement and will get no money from it.

**The Lawyers Representing the Settlement Class**

**13. Will I have a lawyer in this case?**

The Court has appointed Ashley Johnson as the Class Representative. The Court has also appointed Luis A. Cabassa and Brandon J. Hill of Wenzel Fenton Cabassa, P.A. as Class Counsel. Class Counsel's contact information is as follows:

Luis A. Cabassa, Esq.  
Brandon J. Hill, Esq.  
WENZEL FENTON CABASSA, P.A.  
1110 North Florida Ave., Suite 300  
Tampa, FL 33602  
(813) 224-0431  
lcabassa@wfcclaw.com  
bhill@wfcclaw.com

Class Counsel represent the interests of all of the Settlement Class Members. You may hire your own attorney to advise you regarding this matter and the proposed settlement if you so choose, but you are not required to do so and if you hire your own attorney, you will be responsible for paying that attorney's fees and costs.

**14. How will Class Counsel be paid?**

Class Counsel will apply to the Court for an award of attorneys' fees, in an amount not to exceed one-third (33.33%) of the Settlement Account, which totals \$52,260.83, plus litigation costs totaling \$5,000 or less. The Court may award less than the amounts Class Counsel are requesting. Costs of administration incurred by the Settlement Administrator (estimated at between \$30,000 and \$40,000) will also be paid from the Settlement Account. The amounts approved by the Court for these awards, fees, and costs will be paid directly from the Settlement Account, and not by you or the other Settlement Class Members.

**Objecting to the Settlement**

**15. How do I tell the Court that I don't like the settlement?**

If you decide not to opt out of the Settlement, you may still object to any aspect of the proposed Settlement by filing and serving a written objection. Your written objection must include the information listed on page 3 above.

**You must file any objection with the Clerk of the Court at the address below within sixty (60) days of the postmarked date on the Notice of Settlement that you received by mail:**

United States Courthouse for the Southern District of Florida, Miami Division  
400 North Miami Avenue, Miami, Florida 33128

In any mailing to the Court, be sure to include the case number (1:21-cv-24339), and the case name (*Johnson v. McDonald's Corporation*).

**You must also send your objection by first class U.S. Mail, postmarked on or before [REDACTED], 2022, to the Settlement Administrator at this address:**

American Legal Claims Services, LLC  
P.O. Box XX  
Jacksonville, FL 32241-3459

Any member of the Settlement Class who does not file and serve an objection in the time and manner described above will not be permitted to raise an objection later.

**16. Is there a difference between objecting and opting out?**

Yes. By objecting, you are simply telling the Court that you don't like something about the Settlement and would like the Settlement to be changed, but you are agreeing to be bound by the Settlement as approved by the Court. You may object only if you stay in the Settlement Class. If you elect to opt out of the Settlement Class, you are telling the Court that you do not want to be part of the Settlement. If you opt out and thereby exclude yourself from the settlement, you will have no basis to object because the lawsuit and Settlement no longer affect you or any potential claims you may have.

**17. Where and when will the Court decide whether to approve the settlement?**

The Court will hold the Final Approval Hearing on [REDACTED], 2022 at [REDACTED] a.m./p.m. 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 [REDACTED]. 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.XXXX.com](http://www.XXXX.com).

The purpose of the hearing is to determine the fairness, reasonableness, and adequacy of the terms of the Settlement; whether the Settlement Class is adequately represented by the Class Representative and Class Counsel; and whether an order and final judgment should be entered approving the proposed settlement. The Court also will consider Class Counsel's application for an award of attorneys' fees and expenses.

You will be represented at the Final Approval Hearing by Class Counsel, unless you choose to enter an appearance in person or through your own attorney. The appearance of your own attorney is not necessary to participate in the Final Approval Hearing. Again, should you choose to engage your own attorney, it will be at your own expense.



**18. Do I have to come to the Final Approval Hearing?**

No. Class Counsel will represent the Settlement Class Members at the Final Approval Hearing, but you are welcome to attend the hearing at your own expense. If you file an objection, you do not have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay your own attorney to attend, if you wish.

**19. May I speak at the Final Approval Hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing. If you intend to attend and speak at the Final Approval Hearing, you must state this in your objection.

**Getting More Information**

**20. Are there more details about the Settlement?**

For more details regarding the lawsuit or the Settlement, you may refer to the papers filed in this case during regular business hours at the Clerk of the Court's office, United States Courthouse for the Southern District of Florida, Miami Division, 400 North Miami Avenue, Miami, Florida 33128.

You may also access papers filed in this case on-line through the Public Access to Court Electronic Records ("PACER") service at [www.pacer.gov](http://www.pacer.gov); however, you may need to create an account and certain fees may apply. You may also obtain a copy of the full Settlement Agreement and certain papers filed in this case by sending a written request to the Settlement Administrator, at the address above. You may also access the full Settlement Agreement and certain court filings in this case on this website.

**21. How may I get more information?**

You may contact the Settlement Administrator or Class Counsel. Mailing addresses and phone numbers for each are listed below.

Settlement Administrator: American Legal Claims Services, LLC, P.O. Box XX, Jacksonville, FL 32241-3459, (888) XXX-XXXX.

Class Counsel: Luis A. Cabassa, Esq. and Brandon J. Hill, Esq., Wenzel Fenton Cabassa, P.A., 1110 N. Florida Ave., Suite 300, Tampa, Florida 33602, (813) 244-0431.

# Exhibit C

PROPOSED SHORT FORM NOTICE  
FOR MAILING



**COURT ORDERED  
NOTICE**

*Johnson v. McDonald's Corp.*  
c/o Settlement Administrator  
PO Box 23459  
Jacksonville, FL 32241-3459

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

*Johnson*

v.

*McDonald's Corp.*

**Class Action Notice**

\*8131-ΦX-008638\*

Postal Service: Please do not mark barcode  
<<noticeid>> – <<keyline>>

1 \* 1

<<fname>> <<lname>>

<<businessname>>

<<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 of 1985 (“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 of 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 [REDACTED], 2022. 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 [REDACTED], 2022. 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 [REDACTED], 2022 at [REDACTED] a.m./p.m. 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 [REDACTED]. 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.XXXX.com](http://www.XXXX.com).

**How May I Get More Information?** For more information, contact the Settlement Administrator, PO Box 23459, Jacksonville, FL, 32241-3459, at (888) XXX-XXXX, via e-mail at [info@XXXX.com](mailto:info@XXXX.com), or visit [www.XXXX.com](http://www.XXXX.com).

***Please use this section to update your address***

<<noticeid>>

<<keyline>>

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

PLACE  
STAMP  
HERE

*Johnson v. McDonald's Corp.*

c/o Settlement Administrator

Jacksonville, FL 32241-3459

# Exhibit D

PROPOSED LONG FORM NOTICE FOR WEBSITE

**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.**

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**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING**

**A court authorized this Notice. This is not a solicitation from a lawyer.**

This **Notice of Proposed Class Action Settlement and Hearing** provides important information regarding your right to participate in or to opt out of a proposed settlement in a putative class action lawsuit (referred to in this notice as the "Settlement"). Named Plaintiff, Ashley Johnson ("Johnson" or "Plaintiff"), filed a lawsuit against Defendant McDonald's Corporation ("Defendant"), in which she alleges that 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 of 1985 ("COBRA"). Plaintiff and Defendant are referred to in this notice together as the "Parties." Defendant disputes the allegations and has asserted that the COBRA Notice complied with all applicable laws. That case is pending in the U.S. District Court, Southern District of Florida, Miami Division. The judge has not made any determination about who is right or wrong in the case. A summary of the claims asserted in the lawsuit and the proposed Settlement follows.

- The notice at issue is referred to as a "COBRA" Notice and the continuation of health insurance coverage after separation of employment is called "COBRA continuation coverage," after the Consolidated Omnibus Budget Reconciliation Act of 1985. The COBRA Notice is designed to provide former employees who were covered under employer sponsored group health care plans with information and details regarding their right to continue their healthcare coverage and the terms and conditions of that COBRA continuation coverage. 29 U.S.C. § 1166(a) (2), (a)(4), (c).

- The lawsuit generally alleges Defendant provided Plaintiff and other putative class members with a deficient COBRA Notice. More specifically, Plaintiff asserted that Defendant's COBRA Notice did not adequately inform her and the putative class how to exercise their rights to elect COBRA continuation coverage because Defendant's COBRA Notice: (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, Plaintiff sought statutory penalties, injunctive relief, attorneys' fees, costs and expenses on behalf of himself and all others similarly-situated.

- Defendant denies that its COBRA Notice was deficient in any manner and denies that it has any liability to Plaintiff or their putative class whatsoever. Rather, Defendant has asserted that its COBRA Notice complied with any and all relevant laws, including COBRA and the Employee Retirement Income Security Act.

- At this point in the case, the presiding judge has not made any determination about who is right or wrong. Rather, instead of proceeding with potentially years of litigation with uncertain outcomes, the parties have agreed to resolve the lawsuit through a Court-supervised settlement to avoid further cost and uncertainty.

- The Parties seek to settle this dispute on behalf of Plaintiff and a “Settlement Class,” which the Parties have agreed to define 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.”

- Membership in the Settlement Class will be determined based upon Defendant’s records reflecting who received the specific COBRA Notice at issue during the Class Period. It is estimated that the Settlement Class is comprised of 8,959 potential members.

- You received notice of this Settlement by mail which directed you to this website because Defendant’s records indicate that you are a “Settlement Class Member” and eligible to receive payment from this proposed class action settlement.

- Your rights and options—and the deadlines to exercise them—are explained in this Notice. Here is a brief summary of your rights and options.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Do Nothing</b>	If you do nothing and the Court approves this Settlement, you will receive a settlement payment (the amount of which is described below). As a member of the Settlement Class, you will release Defendant and others from any potential liability regarding the COBRA Notice in this lawsuit only. No other claims are impacted by this lawsuit.
<b>Ask to be Excluded by [REDACTED], 2022</b>	If you do not want to be included in the case and the Settlement, you must take action to exclude yourself. This is called “opting out.” To opt out, you must send a written opt-out request to the Settlement Administrator postmarked by [REDACTED], 2022. 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 elect to opt out, you may pursue your own individual action against Defendant for the claims raised in this case if you choose to do so.
<b>Object by [REDACTED], 2022</b>	If you do not like the Settlement, or any of its specific terms, you may “object.” To object, you must file a written objection with the Court and send a copy of your objection to the Settlement Administrator postmarked by [REDACTED], 2022. Your written objection must (i) state the case name and number; (ii) provide the specific grounds for your objection; (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 and speak at the Final Approval Hearing, either with or without your own counsel; and (vi) include your personal signature (and your counsel’s signature, if you have your own representation). You may not file an objection if you opt out of the settlement.
<b>Go to a Hearing on</b>	If you wish to be heard, you may attend the Final Approval Hearing and ask to speak

, 2022	in Court about the fairness of the Settlement. You are not required to attend the hearing. If you opt out, you may not present your opinions regarding the Settlement at the Final Approval Hearing.
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**The Court still has to decide whether to approve this settlement, which may take some time, as explained below.**

### Basic Information

#### **1. Why did I receive this notice?**

You were sent notice by mail of this proposed Settlement because you are currently a member of the Settlement Class. Composition of the Settlement Class is based upon Defendant's records. The Notice of Settlement you received by mail directed you to the Settlement Administrator's website which provides additional information regarding this Settlement, including this more detailed Notice of Proposed Class Action Settlement and Hearing. As a current member of the Settlement Class you have a right to know about the proposed settlement of this case as a class action and about your options to participate as a Settlement Class Member, your ability to object to the Settlement terms as a class member, or to opt out of the Settlement, before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after all objections or appeals relating to that settlement are resolved, the payment provided for by the Settlement will be available to all Settlement Class Members who have not elected to opt out.

This Notice explains the lawsuit, the proposed Settlement, your legal rights, the Settlement payment and who will be eligible to receive a payment from the Settlement Account, and the basis upon which payments will be made. A copy of the Class Action Settlement Agreement (referred to in this Notice as the "Agreement") is available to Settlement Class Members on this website.

#### **2. What is the lawsuit about?**

The lawsuit generally alleges Defendant provided Plaintiff and other putative class members with a deficient COBRA Notice. More specifically, Plaintiff asserted that Defendant's COBRA Notice did not adequately inform her and putative class members how to exercise their rights to elect COBRA continuation coverage because Defendant's COBRA Notice: (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, Plaintiff sought statutory penalties, injunctive relief, attorneys' fees, costs and expenses on behalf of himself and all others similarly-situated.

Defendant disputes the Plaintiff's allegations and denies all liability to Plaintiff and the Settlement Class. Defendant has affirmatively asserted that the COBRA Notice at issue complied with any and all applicable laws. In the lawsuit, Defendant denied Plaintiff's allegations and asserted a number of defenses. Further, Defendant has, at all relevant times, asserted that Plaintiff's claims are not appropriate for class action treatment in the absence of a settlement.

Although the Court has authorized this Notice of Proposed Class Action Settlement and Hearing, the Court has not determined or ruled upon the merits of the claims or defenses asserted by either side in the lawsuit. The Court has not found Defendant violated the law in any way. The Court has not found that the Plaintiff would prevail in this case. The Court has not made any determination that Plaintiff will recover any damages in this litigation.

#### **3. Why is this case a class action?**

Class actions are lawsuits in which the claims and rights of many people are decided in a single proceeding. In a class action, as here, Plaintiff (“Class Representative”) seeks to assert claims on behalf of herself and all members of a putative class who received the same allegedly deficient COBRA Notice. In a class action, individuals with similar claims are generally treated alike. The Court supervises the prosecution of the class claims by Counsel for the Settlement Class (“Class Counsel”) to ensure that all members of the Settlement Class are adequately and fairly represented. Settlement Class Members are not individually responsible for the costs or fees of Class Counsel, which must be approved by the Court and which will be paid out of the Settlement Account.

#### **4. Why is there a settlement?**

The Court has not decided the merits of this case in favor of the Class Representative or in favor of Defendant. Instead, Class Counsel investigated the facts and applicable law regarding the Class Representative’s claims and Defendant’s defenses. The parties engaged in lengthy and arm’s-length negotiations to reach this settlement. The Class Representative and Class Counsel believe that the proposed settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class Members.

Both sides agree that, by settling, Defendant is not admitting any liability or that Defendant did anything wrong. Additionally, both sides want to avoid the uncertainties and expense of further litigation.

### **Who Is Included In The Settlement**

#### **5. How do I know if I am part of the Settlement?**

You are included in the Settlement if you fit the definition of “Settlement Class” above. If you received a notice of settlement in the mail, Defendant’s records indicate you are a member of the Settlement Class. If you are not certain as to whether you are or should be a member of the Settlement Class, you may contact the Settlement Administrator to find out (see contact information below). In all cases, the question of Settlement Class membership will be determined based on Defendant’s records.

### **The Settlement Payment—What You May Receive**

#### **6. What does the Settlement provide?**

If you are a member of the Settlement Class, you are eligible to receive a payment under the Settlement. Defendant has agreed to pay a total of \$156,782.50 into a Settlement Account. After deducting expenses, the Settlement Account 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, for Class Counsel’s attorneys’ fees and litigation costs, and the costs of settlement administration. If the Court awards the amounts sought for these awards and expenses, the net amount payable to each Settlement Class Member will be approximately \$7.00 to \$10.00.

Each Settlement Class Member shall have sixty (60) days from the date which appears on the face of check issued to him/her to negotiate his/her settlement check. If any funds remain in the Settlement Account after the 60-day deadline for Settlement Class Members to negotiate their settlement checks as a result of uncashed or undeliverable checks, the Settlement Administrator shall retain such funds in the Settlement Account for a period of ten (10) business days to allow for the processing and payment of any checks that may still be in the bank’s check clearing process. Thereafter, the Settlement Administrator shall close out the Settlement Account by issuing a check for any remaining balance to the Court-approved “*cy pres*” recipient. The Parties have asked the Court to name Bay Area Legal Services, a 501(c)(3) non-profit legal aid organization, as the *cy pres* recipient.



**7. How do I receive a payment from the Settlement?**

To receive a check with your settlement payment, you do not have to do anything. Your interest in this matter will be represented by Plaintiff as Class Representative and Class Counsel. As a Settlement Class Member, you will be bound by the terms of the Agreement and any judgment arising from the Settlement. If the Court approves the Settlement at or after the Final Approval Hearing and you have not elected to opt out of the Settlement, you will automatically receive a settlement check for your share of the funds remaining in the Settlement Account after deduction for Court-approved awards (attorneys' fees and costs, and settlement administration costs).

**8. When would I receive my payment?**

The Court will hold the Final Approval Hearing on [REDACTED], 2022 at [REDACTED] a.m./p.m. 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 [REDACTED]. 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.XXXX.com](http://www.XXXX.com).

**9. What am I giving up to receive a payment or stay in the class?**

Upon the Court's approval of the Settlement, 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.

**10. Do I have to participate in the Settlement?**

No. You may choose to be excluded from the Settlement (in other words "opt out") and you will not be bound by the Agreement or any judgment or other final disposition of the lawsuit. If you opt out, you will retain any individual claims you may have against Defendant, and Defendant will retain any defenses it has to your claims. To request exclusion, you must state in writing your desire to opt out and to be excluded from the Settlement Class, and see page 3 above for requirements for your opt-out request. **Your request to opt out which will exclude you from the Settlement must be sent by first class U.S. Mail, postmarked on or before [REDACTED], 2022. You must send your written opt out request to:**

*Johnson v. McDonald's Corporation*  
c/o Settlement Administrator  
P.O. Box XX  
Jacksonville, FL 32241-3459  
**(888) XXX-XXXX**

**If your written opt out request is not postmarked on or before [REDACTED], 2022, your request for exclusion will be invalid, and you will be bound by the terms of the Settlement approved by the Court, including without**

limitation, the terms of the Agreement and the judgment ultimately rendered in the case, and you will be barred from bringing any claims against Defendant which arise out of or relate in any way to the claims described in Section 9 above.

**11. If I don't exclude myself, can I sue Defendant for the same thing later?**

No. If you do not opt out of the Settlement, you will give up any right to sue Defendant for the described in Section 9 above.

**12. If I exclude myself, will I receive any payment from this Settlement?**

No. If you opt out and thereby exclude yourself, you are not part of the Settlement and will get no money from it.

**The Lawyers Representing the Settlement Class**

**13. Will I have a lawyer in this case?**

The Court has appointed Ashley Johnson as the Class Representative. The Court has also appointed Luis A. Cabassa and Brandon J. Hill of Wenzel Fenton Cabassa, P.A. as Class Counsel. Class Counsel's contact information is as follows:

Luis A. Cabassa, Esq.  
Brandon J. Hill, Esq.  
WENZEL FENTON CABASSA, P.A.  
1110 North Florida Ave., Suite 300  
Tampa, FL 33602  
(813) 224-0431  
lcabassa@wfcclaw.com  
bhill@wfcclaw.com

Class Counsel represent the interests of all of the Settlement Class Members. You may hire your own attorney to advise you regarding this matter and the proposed settlement if you so choose, but you are not required to do so and if you hire your own attorney, you will be responsible for paying that attorney's fees and costs.

**14. How will Class Counsel be paid?**

Class Counsel will apply to the Court for an award of attorneys' fees, in an amount not to exceed one-third (33.33%) of the Settlement Account, which totals \$52,260.83, plus litigation costs totaling \$5,000 or less. The Court may award less than the amounts Class Counsel are requesting. Costs of administration incurred by the Settlement Administrator (estimated at between \$30,000 and \$40,000) will also be paid from the Settlement Account. The amounts approved by the Court for these awards, fees, and costs will be paid directly from the Settlement Account, and not by you or the other Settlement Class Members.

**Objecting to the Settlement**

**15. How do I tell the Court that I don't like the settlement?**

If you decide not to opt out of the Settlement, you may still object to any aspect of the proposed Settlement by filing and serving a written objection. Your written objection must include the information listed on page 3 above.

**You must file any objection with the Clerk of the Court at the address below within sixty (60) days of the postmarked date on the Notice of Settlement that you received by mail:**

United States Courthouse for the Southern District of Florida, Miami Division  
400 North Miami Avenue, Miami, Florida 33128

In any mailing to the Court, be sure to include the case number (1:21-cv-24339), and the case name (*Johnson v. McDonald's Corporation*).

**You must also send your objection by first class U.S. Mail, postmarked on or before [REDACTED], 2022, to the Settlement Administrator at this address:**

American Legal Claims Services, LLC  
P.O. Box XX  
Jacksonville, FL 32241-3459

Any member of the Settlement Class who does not file and serve an objection in the time and manner described above will not be permitted to raise an objection later.

**16. Is there a difference between objecting and opting out?**

Yes. By objecting, you are simply telling the Court that you don't like something about the Settlement and would like the Settlement to be changed, but you are agreeing to be bound by the Settlement as approved by the Court. You may object only if you stay in the Settlement Class. If you elect to opt out of the Settlement Class, you are telling the Court that you do not want to be part of the Settlement. If you opt out and thereby exclude yourself from the settlement, you will have no basis to object because the lawsuit and Settlement no longer affect you or any potential claims you may have.

**17. Where and when will the Court decide whether to approve the settlement?**

The Court will hold the Final Approval Hearing on [REDACTED], 2022 at [REDACTED] a.m./p.m. 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 [REDACTED]. 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.XXXX.com](http://www.XXXX.com).

The purpose of the hearing is to determine the fairness, reasonableness, and adequacy of the terms of the Settlement; whether the Settlement Class is adequately represented by the Class Representative and Class Counsel; and whether an order and final judgment should be entered approving the proposed settlement. The Court also will consider Class Counsel's application for an award of attorneys' fees and expenses.

You will be represented at the Final Approval Hearing by Class Counsel, unless you choose to enter an appearance in person or through your own attorney. The appearance of your own attorney is not necessary to participate in the Final Approval Hearing. Again, should you choose to engage your own attorney, it will be at your own expense.

**18. Do I have to come to the Final Approval Hearing?**

No. Class Counsel will represent the Settlement Class Members at the Final Approval Hearing, but you are welcome to attend the hearing at your own expense. If you file an objection, you do not have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay your own attorney to attend, if you wish.

**19. May I speak at the Final Approval Hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing. If you intend to attend and speak at the Final Approval Hearing, you must state this in your objection.

**Getting More Information**

**20. Are there more details about the Settlement?**

For more details regarding the lawsuit or the Settlement, you may refer to the papers filed in this case during regular business hours at the Clerk of the Court's office, United States Courthouse for the Southern District of Florida, Miami Division, 400 North Miami Avenue, Miami, Florida 33128.

You may also access papers filed in this case on-line through the Public Access to Court Electronic Records ("PACER") service at [www.pacer.gov](http://www.pacer.gov); however, you may need to create an account and certain fees may apply. You may also obtain a copy of the full Settlement Agreement and certain papers filed in this case by sending a written request to the Settlement Administrator, at the address above. You may also access the full Settlement Agreement and certain court filings in this case on this website.

**21. How may I get more information?**

You may contact the Settlement Administrator or Class Counsel. Mailing addresses and phone numbers for each are listed below.

Settlement Administrator: American Legal Claims Services, LLC, P.O. Box XX, Jacksonville, FL 32241-3459, (888) XXX-XXXX.

Class Counsel: Luis A. Cabassa, Esq. and Brandon J. Hill, Esq., Wenzel Fenton Cabassa, P.A., 1110 N. Florida Ave., Suite 300, Tampa, Florida 33602, (813) 244-0431.

**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 500+ 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);
- *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL- TBM (M.D. Fla.) (Fair Credit Reporting Act class action settlement involving 20,000 individuals presided over by Judge Lazzara);
- *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).
- *George v. Primary Care Holding Inc.*, Case No. 0:17-cv-60217-BB (S.D. Fla.) (appointed as class counsel in FCRA class action);

- *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);
- *Hicks v. Lockheed Martin Corporation*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 54,000+ class members);
- *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);
- *Ali v. Laser Spine Institute, LLC*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel WARN Act case involving 500 class members);
- *Rigney et al v. Target Corporation*, Case No.: 8:19-cv-01432-MSS-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 92,000+ class members)
- *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 al.*, 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);
- *McNamara v. Brenntag Mid-South, Inc.*, Case No.: 8:21-cv-00618-MSS-JSS (M.D. Fla.) (appointed as class counsel in deficient COBRA notice case with 800+ class members);
- *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).



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.

11. 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.

12. 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.

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).

14. 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).

15. 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).

16. 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.

17. 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.

18. 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.

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 approved.

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

Dated this 22<sup>nd</sup> day of September, 2022.

A handwritten signature in black ink, appearing to read "Brandon J. Hill", written in a cursive style.

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**Brandon J. Hill**