

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
ADMINISTRATIVE LAW JUDGE LAUREN ESPOSITO**

**McDONALD'S USA, LLC, A JOINT EMPLOYER,  
et al.,**

**and**

**FAST FOOD WORKERS COMMITTEE AND  
SERVICE EMPLOYEES INTERNATIONAL  
UNION, CTW, CLC, et al.**

**Cases 02-CA-093893, et al.  
04-CA-125567, et al.  
13-CA-106490, et al.  
20-CA-132103, et al.  
25-CA-114819, et al.  
31-CA-127447, et al.**

**THE NEW YORK FRANCHISEES' BRIEF IN SUPPORT OF MCDONALD'S USA,  
LLC'S SPECIAL APPEAL FROM THE ADMINISTRATIVE LAW JUDGE'S JULY 17,  
2018 ORDER DENYING MOTIONS TO APPROVE SETTLEMENT AGREEMENTS**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 2

    A. Charging Parties Wanted to Change the Law On Joint Employment. .... 2

    B. The New York Franchisees Are Hostages to the Charging Parties’ Agenda. .... 2

II. SUMMARY OF THE CASE ..... 3

III. PROCEDURAL HISTORY ..... 4

IV. STANDARD OF REVIEW ..... 5

V. ALJ ABUSED HER DISCRETION IN REFUSING TO APPROVE SETTLEMENT ..... 6

    A. The Settlement is Reasonable. .... 6

        1. Justice Delayed is Justice Denied..... 6

            a. The Aggrieved Should be Made Whole Now. .... 6

            b. The New York Franchisees Tried to Settle Three Years Ago. .... 7

            c. The ALJ’s Denial of a Settlement Providing Full Relief Now is an Abuse of Discretion. .... 8

        2. ALJ’s Finding of Unreasonableness Based on Possible Unremedied Future Speculative Breach is an Abuse of Her Discretion. .... 8

        3. ALJ Inappropriately Defined Reasonableness Based on the Assumption General Counsel Would Prevail on His Original Hope To Create New Case Law – A New Joint Employer Test Applicable to Franchisees and Franchisors..... 10

        4. Finding Settlement Unreasonable Because Trial is Almost Complete is Abusive. .... 11

    B. The Parties Support Settlement. .... 12

        1. The Settlement Agreement is a Product of a Meeting of the Minds. .... 12

        2. The Overwhelming Majority of the Parties in the Case Support the Settlement. .... 13

VI. CONCLUSION ..... 15

**TABLE OF AUTHORITIES**

**Cases**

*Hy-Brand Industrial Contractors, Ltd.*, 365 NLRB No. 156 (2017)..... 3

*Independent Stave Co.*, 287 NLRB 740, 742 (1987) ..... 4

*McDonald’s USA, LLC*, Case No. 02-CA-093893, NLRB Order at \*2 (Jan. 16, 2018) ..... 5

*NLRB v. Domsey Trading Corp.*, 636 F.3d 33, 37 (2<sup>nd</sup> Cir. 2011) ..... 5

*Pueblo Sheet Metal Workers*, 292 NLRB 855 (1989) ..... 5

*U.S. Postal Serv.*, 364 NLRB 116 (2016)..... 10

*UPMC*, 365 NLRB No. 153 (2017)..... 10

**Other Authorities**

NLRB Bench Book § 9-500 (2018)..... 14

**UNITED STATES OF AMERICA**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD  
ADMINISTRATIVE LAW JUDGE LAUREN ESPOSITO**

**McDONALD’S USA, LLC, A JOINT EMPLOYER,  
et al.,**

**and**

**FAST FOOD WORKERS COMMITTEE AND  
SERVICE EMPLOYEES INTERNATIONAL  
UNION, CTW, CLC, et al.**

**Cases 02-CA-093893, et al.  
04-CA-125567, et al.  
13-CA-106490, et al.  
20-CA-132103, et al.  
25-CA-114819, et al.  
31-CA-127447, et al.**

**THE NEW YORK FRANCHISEES’ BRIEF IN SUPPORT OF MCDONALD’S USA,  
LLC’S SPECIAL APPEAL FROM THE ADMINISTRATIVE LAW JUDGE’S JULY 17,  
2018 ORDER DENYING MOTIONS TO APPROVE SETTLEMENT AGREEMENTS**

The New York Franchisees<sup>1</sup> respectfully submit this Brief in Support of McDonald’s USA, LLC’s Special Appeal From the Administrative Law Judge’s July 17, 2018 Order Denying Motions to Approve Settlement Agreements (“McDonald’s USA, LLC’s Special Appeal”). ALJ Lauren Esposito (“Judge” or “ALJ”) abused her discretion in her July 17, 2018 Order Denying Motions to Approve Settlement Agreements (“Order”).<sup>2</sup> Her Order should be reversed and the Settlement Agreements approved.

---

<sup>1</sup> The “New York Franchisees” or the “Franchisees” includes the following respondents: AJD, Inc.; Lewis Foods of 42nd Street, LLC; 18884 Food Corporation; 14 East 47th Street, LLC; John C Food Corp.; 1531 Fulton St., LLC; McConner Street Holding LLC’s store located at 2142 Third Avenue; McConner Street Holding LLC’s store located at 2049 Broadway; Mic-Eastchester, LLC’s store located at 341 Fifth Avenue; and Bruce C. Limited Partnership’s store located at 4259 Broadway.

<sup>2</sup> A copy of the ALJ’s Order is attached to McDonald’s USA LLC’s Special Appeal as Exhibit 1. The New York Franchisees have not attached a duplicative copy to avoid overburdening the record.

## I. INTRODUCTION

The New York Franchisees consist of ten separate and distinct small-business entities that own McDonald's-branded restaurants located throughout New York City.<sup>3</sup> They were owned and operated by six different small-business owners who each ran their respective restaurants on their own terms.<sup>4</sup> Each of these operators make their own independent decisions on who to hire, who to fire, the level of management needed to operate the restaurant, etc.

### A. Charging Parties Wanted to Change the Law On Joint Employment.

Over five and a half years ago, the Charging Parties launched an attack on the franchising system in the United States, and they chose McDonald's, one of the most recognized brands in the world, as their target to change the law on joint employment. The Charging Parties' goal was to establish that a franchisor is a joint employer with its franchisee. This finding would have changed franchising in the United States and been a seismic deviation from black letter law in place for decades.

### B. The New York Franchisees Are Hostages to the Charging Parties' Agenda.

Charging Parties began this orchestrated attack by filing unfair labor practice charges against the New York Franchisees at the end of 2012 asserting nothing more than minor 8(a)(1) and occasional 8(a)(3) violations of the National Labor Relations Act (the "Act"). While this orchestrated attack ultimately consisted of Charging Parties filing unfair labor practices against McDonald's-branded restaurants across the United States over a two year period, the attack began

---

<sup>3</sup> While the New York Franchisees' argument focuses on the Settlement in the Region 2 and 4 cases, we believe the arguments apply universally to the Severed Cases. The Severed Cases include the severed consolidated complaints in Regions 13, 20, 25, and 31.

<sup>4</sup> Since this case has dragged on for over five a half years, several of the stores have been sold to new owners during the life of the case.

in New York. Therefore, the New York Franchisees have been embroiled in this case for over half a decade, the longest of any franchisees in the case.

Although most of these minor alleged violations and 10 out of the 11 discharge allegations were dismissed at the investigation phase, the remaining ones are the type that are quickly settled, the New York Franchisees have been forced to continue to litigate these charges for over five and a half years because Charging Parties refuse to settle unless the law on joint employment is changed. Notably, they refuse this settlement even though the proposed Settlement Agreement resolves every single one of the substantive allegations in the case, pays a 100% of back pay, excess interest and taxes, and front pay to the alleged discriminatees eligible for monetary compensation in lieu of reinstatement. Concern for the alleged discriminatees was not a priority.

Charging Parties' untenable position has forced the New York Franchisees to expend their limited resources on this litigation for half a decade, interrupted their business operations repeatedly, and added unnecessary stress to their personal lives. The Judge's denial of the Settlement Agreement only further holds the New York Franchisees captive in the Charging Parties continued political effort to change the law. This hostage situation must stop and the Settlement Agreement should be approved.

## **II. SUMMARY OF THE CASE**

After five long years of investigation and trial, it became clear to all of the Parties, with the exception of Charging Parties, that this unprecedented case is a drain on respective resources, and it must be resolved to stop the proverbial bleeding. Further, the legal landscape at the Board changed as evidenced by the Board's decision in *Hy-Brand Industrial Contractors, Ltd.*, 365 NLRB No. 156 (2017). While *Hy-Brand* was later vacated, the decision made clear that the likelihood this case would change the law on joint employment for franchising was very low. The

Board's Chair's position on rule making for the joint employment standard buttresses this conclusion. Therefore, the current General Counsel appropriately pursued resolution with all of the Respondents.

Moreover, the *Independent Stave* factors, i.e, the test for assessing the appropriateness of settlement agreements once a hearing has begun, weigh in favor of approving the Settlement Agreement. The *Independent Stave* factors include:

- (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding settlement;
- (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation;
- (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and
- (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice charges.

*Independent Stave Co.*, 287 NLRB 740, 742 (1987). In her Order, the ALJ concedes the third and fourth factors weigh in favor of settlement. Order, 18. However, she wrongly weighed the first and second factors against settlement and abused her discretion in denying approval of the Settlement Agreement. Therefore, the ALJ's Order should be reversed and the Settlement Agreement approved.

### **III. PROCEDURAL HISTORY**

In their Special Appeal, McDonald's USA, LLC sets forth at great length the procedural history of this case. Therefore, the New York Franchisees will not tread the same ground. However, the unprecedented length and expense of this case for the New York Franchisees cannot be overstated. The record finally opened on March 30, 2015, and opening statements were given on March 10, 2016, after months of contentious litigation regarding subpoenaed document production. The former General Counsel then put on witnesses regarding alleged "nationwide" joint employer

evidence until January 30, 2017, when he finally began his case against the New York Franchisees.

The former General Counsel called witnesses against the ten New York Franchisees for almost four months until the end of May 2017. The Respondents then began to put on their respective defenses. When the Judge entered the Order Granting General Counsel's Motion to Stay Proceedings on January 19, 2018, i.e., almost three years after the record opened, additional witnesses were still remaining. The New York Franchisees have been trapped in trial proceedings for well over three years on minor 8(a)(1) and three 8(a)(3) violations that could have been resolved within six months of the original charges' filing dates. The Judge's Order only subjects the New York Franchisees to additional trial days, briefing, appeals, etc. and the extensive personal and professional expense associated with the inevitable additional litigation. Simply, the Judge's Order continues to trap the New York Franchisees in endless litigation that should have been resolved five years ago and with no end in sight.

#### **IV. STANDARD OF REVIEW**

The standard of review before the Board of the Judge's Order is an abuse of discretion. *See McDonald's USA, LLC*, Case No. 02-CA-093893, NLRB Order at \*2 (Jan. 16, 2018) (applying abuse of discretion standard of review to special appeal of Judge's ruling).<sup>5</sup> At the Board, discretion is abused if "the ruling [is based] on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or [if it] rendered a decision that cannot be located within the range of permissible decisions." *See NLRB v. Domsey Trading Corp.*, 636 F.3d 33, 37 (2d Cir. 2011). Put another way, an ALJ abuses her discretion when she acts arbitrarily, capriciously, or makes errors of law. *See Pueblo Sheet Metal Workers*, 292 NLRB 855 (1989).

---

<sup>5</sup> Available at <https://www.nlr.gov/case/02-CA-093893>.

**V. ALJ ABUSED HER DISCRETION IN REFUSING TO APPROVE SETTLEMENT**

**A. The Settlement is Reasonable.**

**1. Justice Delayed is Justice Denied.**

*a. The Aggrieved Should be Made Whole Now.*

The second *Independent Stave* factor, i.e., the reasonableness factor, weighs in favor of approval. Failure to approve the Settlement Agreement only further delays remedies for the alleged aggrieved who have already waited over five years for resolution of their unfair labor practice allegations. The proposed Settlement Agreement provides resolution now of every single substantive unfair labor practice allegation against all ten New York Franchisees through notice postings and mailings, and monetary relief. A chart setting forth each Complaint allegation against the New York Franchisees and the corresponding Notice posting language is attached as Exhibit A.

The Settlement Agreement further provides full monetary compensation now for the two alleged 8(a)(3) discriminatees in New York eligible for a monetary award. AJD, Inc. agreed to pay Jose Carrillo full compensation for his alleged unlawful three day suspension, interest and excess tax compensation. *See* Exhibit B (agreements settling Case Nos. 02-CA-093895 and 02-CA-097827) which was previously identified by the General Counsel as GC Exhibit Settlement 5. Compensation for Mr. Carrillo has already been deposited with Region 2 in the form of cashier's checks and references to his suspension have been removed from his personnel file. *See* Exhibit B (agreements settling Case Nos. 02-CA-093895 and 02-CA-097827).

1531 Fulton St., LLC agreed to pay Tracee Nash full back pay for lost wages after mitigation in the amount of \$29,747.00, interest in the amount of \$2,207.00, and excess tax compensation in the amount of \$1,823.00 for her alleged unlawful discharge. *See* Exhibit C (agreements settling

Case Nos. 02-CA-103771 and 02-CA-112282) which was previously identified by the General Counsel as GC Exhibit Settlement 2. The Settlement also provides Ms. Nash with front pay in the amount of \$16,223.00 in exchange for a waiver of reinstatement. *See* Exhibit D (Nash Waiver of Reinstatement) which was previously identified by the General Counsel as GC Exhibit Waiver 1. This total compensation of \$50,000 has already been deposited with Region 2 as well.

The denial of the Settlement Agreement forces Mr. Carrillo and Ms. Nash to continue to wait for this compensation, if they ever receive it at all. If the trial resumes, we expect the Respondents will prevail and the alleged discriminatees will be entitled to nothing. It is not justice when the majority of the Parties want to resolve the case now and the settlement money is waiting for delivery. Simply put, justice delayed is justice denied.

***b. The New York Franchisees Tried to Settle Three Years Ago.***

Moreover, the New York Franchisees attempted to settle the case before the Complaint was even issued three years ago. While the underlying unfair labor practice allegations could be resolved, the former General Counsel refused to entertain any settlement that did not include an admission that McDonald's USA, LLC is a joint employer with the New York Franchisees. This mandate destroyed any possibility of settlement. Thus, the ten New York Franchisees were trapped in this case due to the former General Counsel's hopes to change the law on one legal issue – joint employment.

This is not justice for the New York Franchisees, small-business owners, who are hostages to the former General Counsel and Charging Parties' desire to change the law. This protracted litigation, which could have and should have been settled years ago, has forced the New York Franchisees to expend their resources and interrupted their business operations for well over half a decade. If these small-business owners were not associated with the most recognized brand in

the United States, these unfair labor practice allegations would be long resolved. This is not justice for the New York Franchisees.

*c. The ALJ's Denial of a Settlement Providing Full Relief Now is an Abuse of Discretion.*

Here, the Judge's refusal to approve a Settlement Agreement that provides full relief for the alleged discriminatees and resolves every single unfair labor practice allegation through notice postings is an abuse of discretion. There is no justifiable reason to deny a settlement that remedies each and every single alleged violation of the Act and provides full monetary compensation to the alleged discriminatees. Moreover, the Settlement Agreement provides more than that to which the aggrieved are entitled to since it includes a \$250,000 fund to compensate for future breaches of the Agreements. Simply put, the Settlement Agreement provides more than full relief and ends the case now. Justice delayed is justice denied.

**2. ALJ's Finding of Unreasonableness Based on Possible Unremedied Future Speculative Breach is an Abuse of Her Discretion.**

In her Order, the Judge contends the Settlement Agreement is not reasonable because the Settlement Agreement and, more specifically, the Settlement Fund, does not "constitute a significant deterrent to future conduct violating the Act or a meaningful remedial measure." Order, 30. First, the Settlement Fund is a creation of the Parties hard fought negotiations and is undisputedly not a remedy available under the Act. Therefore, withholding approval of a Settlement Agreement based on alleged shortcomings of a remedy to which the aggrieved are not legally entitled, is an abuse of the Judge's legal discretion.

Second, the New York Franchisees have already complied with most obligations required by the Settlement Agreement such as depositing funds for the alleged 8(a)(3) violations with Region 2 and removing write-ups from the personnel files of Ms. Nash and Mr. Carrillo. See Exhibits B

and C Notice Posting language (“WE HAVE expunged from our files all references to the suspension of Jose Carillo . . .;” “WE HAVE removed for our files all references to the discharge of Tracee Nash . . .”). The only obligation the New York Franchisees have not been able to complete is the actual posting and mailing of the notices. Therefore, the likelihood of violations during the compliance period by the New York Franchisees is minimal since the majority of the obligations have already been performed. In light of these circumstances, withholding approval of the Settlement is an abuse of discretion.

Further, there is no evidence whatsoever the New York Franchisees have engaged in unfair labor practices prior to the allegations in this case and thus no reasonable basis to presume they will do so in the future.<sup>6</sup> In fact, Counsel for the General Counsel stated succinctly on the record he could find no history of violations or breached settlements resolving unfair labor practices by a single one of the Respondents in the case. *See* Tr. 21239:8-21, Apr. 5, 2018.<sup>7</sup> Thus, there is no evidence in the record to suggest the New York Franchisees are likely to commit alleged unfair labor practices in the future as they have no past practice of such conduct. Furthermore, as discussed above, the allegations against the New York Franchisees in this case are almost exclusively minor 8(a)(1)’s with one 8(a)(3) discharge and one 8(a)(3) three day suspension. Thus, the Judge’s failure to approve the Settlement Agreement on this basis is an abuse of her discretion.

---

<sup>6</sup> The New York Franchisees adamantly dispute they have engaged in any unfair labor practice in this case.

<sup>7</sup> There is another 8(a)(3) allegation but it only involves a transfer from the cash register to the fry station with no economic loss. All Charging Party can offer is the assertion that all these allegations of wrong doing must mean there is a history of violations.

**3. ALJ Inappropriately Defined Reasonableness Based on the Assumption General Counsel Would Prevail on His Original Hope To Create New Case Law – A New Joint Employer Test Applicable to Franchisees and Franchisors.**

In denying the Settlement Agreement, the Judge abused her discretion because she evaluated the reasonableness of the Settlement through the lens of the General Counsel's stated purpose for the case. The Judge held "General Counsel's stated purpose in initiating this case was obtaining a finding that McDonald's USA, LLC was jointly and severally liable for all of the alleged unfair labor practices . . ." Order, 39. "[T]he proposed settlement is paltry and ineffective given the . . . case's ultimate purpose." *Id.* The appropriate standard of review was set forth in *Independent Stave*, which nowhere defines reasonableness as the General Counsel's underlying "purpose" for filing the case. Therefore, denying approval of the Settlement on this basis is erroneous and an abuse of discretion.

The Judge's disapproval of the Settlement Agreement because it does not include a finding that McDonald's USA, LLC is a joint employer with the Respondent Franchisees is abusive. She repeatedly declares in her Order the lack of this provision means the Settlement Agreement does not contain an "effective remedy" for the joint employment allegation. Order, 2. However, a joint employment finding is not a remedy, it is a legal doctrine. She has no authority to order creation of such a legal doctrine when reviewing the reasonableness of settlement.

Additionally, demanding a finding that McDonald's USA, LLC is a joint employer or guarantor of the Franchisees' conduct in the Settlement, is the equivalent of demanding a full remedy. It is undisputed the Settlement Agreement resolves the remaining allegations in the case. Moreover, *UPMC*, overruled the "fully remedy" standard adopted by the Board in the *Postal Service* case. *See, UPMC*, 365 NLRB No. 153 (2017) (overruling *U.S. Postal Serv.*, 364 NLRB 116 (2016)). Thus, a joint employer finding is not required for the Settlement Agreement to have

an effective remedy as the Judge contends. In fact, the \$250,000 Settlement Fund makes any guarantor unnecessary as compensation is already set aside for potential repeated future violations of the Act. This is the only purpose a guarantor would serve in this case as the majority of the settlement obligations are already complete.

#### **4. Finding Settlement Unreasonable Because Trial is Almost Complete is Abusive.**

The Judge also exceeded her authority and abused her discretion in refusing to approve the Settlement at this stage of the proceedings. In her Order, the Judge opines it is “simply baffling” and “incomprehensible” the General Counsel would pursue settlement “days before the close of the monumental record in this case.” Order, 37.

In essence, the Judge held that because the case has taken five years to get to this point it cannot be settled without completing the trial. Notably, the resources expended to develop the “monumental record” in this case are a sunk cost and cannot be recouped. Thus, using this past cost and avoidance of future costs, as a basis to deny approval is an abuse of discretion because the Judge is attempting to force the Parties to complete the trial. This is beyond her power. The Parties have the right to resolve the matter at any point to avoid the future expense and risk of litigation.

Moreover, while the hearing may arguably be two witnesses short of completion, the litigation is only in its infancy. Even if the trial record were to close this year, the Respondents who were not present in the courtroom for trial testimony, including the New York Franchisees (for a substantial number of trial days), are required to submit deferred evidentiary objections and General Counsel and Charging Parties have an opportunity to respond.<sup>8</sup> The Judge will then have

---

<sup>8</sup> The Respondents are required to submit standing and specific evidentiary objections. For each specific objection, the objecting party is required to identify the specific testimony or exhibit to which they object, state the basis for the objection in a concise manner, and provide legal support for their contentions. *See* ALJ Order on Deferred Objections Submissions. The objections are due 20 days after the testimony of the last witness in the case. In light of the size of

to rule on those objections. *See*, Exhibit E *July 12, 2017 ALJ Order on Deferred Objections Submissions*. This process will take months.

The Parties are also required to submit post hearing briefs once the record closes. The General Counsel has requested a six month briefing schedule. *See*, General Counsel's Request for an Extension of Time to File Briefs to Administrative Law Judge Lauren Esposito.<sup>9</sup> While the New York Franchisees have not yet responded to General Counsel's request due to the stay of proceedings, the case would not be fully briefed in any event until sometime in 2019. In light of the "monumental record" of the case, it would presumably take the Judge months more to issue her decision after briefing concludes. Once the Judge issues her decision on the merits, there are likely going to be exceptions to the Board, appeals to the Circuit Court, and potentially the United States Supreme Court. Thus, this case is reasonably five to ten years from true completion. The Judge, however, not once acknowledges any of the additional litigation that will take place if the Settlement Agreement is not approved. Notably, each step of these additional proceedings, will continue to be a drain on the resources of the Parties, including the NLRB. All of this additional expense is avoided by approving the Settlement Agreement. The Judge abused her discretion in holding the second *Independent Stave* factor weighed against approval.

**B. The Parties Support Settlement.**

**1. The Settlement Agreement is a Product of a Meeting of the Minds.**

Despite the Judge's suggestion to the contrary, there was a meeting of the minds after a hard fought settlement that produced the Settlement Agreement. McDonald's USA, LLC briefed this

---

the record in this case, these objections will be voluminous. Then, the Charging Party and General Counsel have 10 days to submit responses to the Respondents' submissions. *See* July 12, 2017 ALJ Order on Time For Submission of Deferred Objections.

<sup>9</sup> A copy of this Motion is attached to McDonald's USA, LLC's Special Appeal as Exhibit 16.

issue extensively in their Special Appeal. The New York Franchisees support their position and will not restate it here.

Moreover, it should be noted there is no evidence whatsoever that the New York Franchisees' understanding of the Settlement Agreement conflicts with the General Counsel's view (or anyone else's understanding). Nor is there any such evidence for any of the other Respondent Franchisees. The Judge did not even mention the Franchisees' understanding of the terms of the settlement when finding the first *Independent Stave* factor weighed against Settlement. *See generally*, Order.

Also, the Judge's main concern over the "lack" of a meeting of the minds involves the operation of the Settlement Fund. While we disagree with the Judge's conclusion, for the reason set forth in McDonald's USA's Special Appeal, her conclusion is nonetheless irrelevant. The purpose of the Fund is clearly stated and the funding is in Region 2's hands. Meeting of the minds or not, the steps are done and satisfy their intended purpose.

Not only is the Judge's factual conclusion unjustifiable, but it is based on unreasonable speculation. The Judge's other primary concern over this alleged lack of a meeting of the minds presumes a future breach of the Agreement. However, whether the Respondents will breach the Agreement and whether the Parties may later disagree over the interpretation of the Settlement Agreement is not relevant at this stage. Future breaches and disagreements about the terms of any contract are always a risk but they are not a legitimate basis to deny approval to the Settlement Agreement.

## **2. The Overwhelming Majority of the Parties in the Case Support the Settlement.**

The Judge also abused her discretion in holding the first *Independent Stave* factor, i.e., the position of the parties, did not weigh in favor of approval. Order, 18. In her Order, the Judge

acknowledged the General Counsel's position is significant and noted the General Counsel and all of the Respondents agreed to the settlement. *Id.* Yet, the Judge gave the fact that all but one of the Parties agreed to the Settlement nothing more than lip service. Instead, the Judge held the factor weighed against settlement because the Charging Parties "vehemently opposed." She also noted there was no evidence as to the position of the 17 additional alleged discriminatees receiving backpay to support her assessment this factor weighed against approval. Order, 18.

As for her latter concern, Counsel for the General Counsel stated on the record to his knowledge "no ... Discriminatees objected to these agreements." *See* Tr. 21238:18-21.<sup>10</sup> Charging Parties offered absolutely no evidence to the contrary but it was their burden to do so. *See* NLRB Bench Book § 9-500 (2018) (noting "In settlements involving discriminatees, their position(s) regarding approval of the settlement should also be put on the record, either directly or indirectly through the General Counsel or the charging party). In fact, Charging Parties presented no evidence at all to support their rejection of the Settlement Agreement. Thus, there simply is no evidence in the record that any of the alleged discriminatees opposed the Settlement. Finding the alleged discriminatees opposed the settlement and weighing this conclusion against approval of the settlement is factually untrue and legally an abuse of discretion.

Here, it is undisputed 13 of the 14 Parties active in the trial support the Settlement, including the General Counsel. Thus, the vast majority favor Settlement. In finding this factor weighed against approval, the Judge essentially determined she believed the Settlement was unreasonable and therefore the parties could not reasonably favor the settlement. The position of the parties and the reasonableness of the settlement, however, are independent from one another and should be assessed individually. For all these reasons, the Judge abused her discretion in holding the first

---

<sup>10</sup> All excerpts from the trial transcript are attached as Exhibit F.

*Independent Stave* factor weighed against approval.

## VI. CONCLUSION

Simply put, the Settlement Agreement provides full relief on all of the substantive unfair labor practice allegations and monetary compensation to all those alleged discriminatees who were eligible. These undisputed facts alone warrant approval of the Settlement Agreement.

Furthermore, the first and second *Independent Stave* factors weigh in favor of approval of the Settlement. As for the position of the parties, it is undisputed that the overwhelming majority of the parties support the Settlement. General Counsel whose position is to be given significant weight – supports the deal. Charging Parties are the only one objecting because they refuse to settle unless this case changes the test for joint employment for franchisors and franchisees. These type of litigation tactics and holding the New York Franchisees hostage throughout this war does not further the purposes of the Act and do not remedy violations of the Act.

The Settlement is reasonable. It remedies every alleged violation, provides full monetary compensation, and provides a \$250,000 fund for compensation for future violations, something no judge has the power to order. The Judge abused her discretion in failing to find the Settlement reasonable.

If the Settlement is not approved, the New York Franchisees will continue to be held hostage in the Charging Parties political war to change the law. This is not an appropriate use of Agency resources, is unfair to both the alleged discriminatees and the New York Franchisees and does not further the purposes of the Act. Therefore, the New York Franchisees respectfully request the Judge's Order Denying Motions To Approve Settlement Agreements is reversed and the Settlement approved.

Dated: August 24, 2018

Respectfully submitted,

AJD, INC.; LEWIS FOODS OF 42ND STREET, LLC  
18884 FOOD CORPORATION; 14 EAST 47TH STREET,  
LLC; JOHN C FOOD CORP.;  
1531 FULTON ST., LLC; MCCONNER STREET  
HOLDING LLC'S STORE LOCATED AT 2142 THIRD  
AVENUE; MCCONNER STREET HOLDING LLC's  
STORE LOCATED AT 2049 BROADWAY;  
MICEASTCHESTER,  
LLC'S STORE LOCATED AT 341  
FIFTH AVENUE; AND BRUCE C. LIMITED  
PARTNERSHIP'S STORE LOCATED AT 4259  
BROADWAY

By s/ Robert G. Brody \_\_\_\_\_

Robert G. Brody, Esq.

Katherine M. Bogard, Esq.

Alexander Friedman, Esq.

Lindsay M. Rinehart, Esq.

Brody and Associates, LLC

120 Post Road West, Suite 101

Westport, Connecticut 06880

Tel: (203) 454-0560

Fax: (203) 454-0569

Email: [rbrody@brodyandassociates.com](mailto:rbrody@brodyandassociates.com)

Email: [kbogard@brodyandassociates.com](mailto:kbogard@brodyandassociates.com)

Email: [afriedman@brodyandassociates.com](mailto:afriedman@brodyandassociates.com)

Email: [lrinehart@brodyandassociates.com](mailto:lrinehart@brodyandassociates.com)

## CERTIFICATE OF SERVICE

I, the undersigned attorney, affirm under penalty of perjury, that, on August 24, 2018, I caused a true and correct copy of The New York Franchisees' Brief in Support of McDonald's USA, LLC's Special Appeal from the Administrative Law Judge's July 17, 2018 Order Denying Motions to Approve Settlement Agreements filed on behalf of AJD, Inc.; Lewis Foods of 42nd Street, LLC; 18884 Food Corporation; 14 East 47th Street, LLC; John C Food Corp.; 1531 Fulton St., LLC; McConner Street Holding LLC's store located at 2142 Third Avenue; McConner Street Holding LLC's store located at 2049 Broadway; Mic-Eastchester, LLC's store located at 341 Fifth Avenue; and Bruce C. Limited Partnership's store located at 4259 Broadway, to be served upon the parties and/or counsel for the parties, by e-mail (where indicated), as follows:

Jonathan M. Linas  
Michael S. Ferrell  
Michael Rossman  
JONES DAY  
77 W Wacker Dr., Suite 3500  
Chicago, IL 60606-7592  
jlinas@jonesday.com  
mferrell@jonesday.com  
mrossman@jonesday.com

Jamie Rucker  
Alejandro Ortiz  
Zachary Herlands  
Nicholas Rowe  
Jacob Frisch  
Nicole Lancia  
National Labor Relations Board, Region 02  
26 Federal Plaza, Suite 3614  
New York, NY 10278-3699  
jamie.rucker@nlr.gov  
alejandro.ortiz@nlrb.gov  
zachary.herlands@nlrb.gov  
nicholas.rowe@nlrb.gov  
jacob.frisch@nlrb.gov  
Nicole.Lancia@nlrb.gov

Willis J. Goldsmith  
Matthew W. Lampe  
Ilana Yoffe  
Justin Martin  
JONES DAY  
222 East 41<sup>st</sup> Street  
New York, NY 10017  
wgoldsmith@jonesday.com  
mwlampe@jonesday.com  
iyoffe@jonesday.com  
jmartin@jonesday.com

Gwynne Wilcox  
Micah Wissinger  
David Slutsky  
Alexander Rabb  
LEVY RATNER, P.C.  
80 Eighth Avenue, 8<sup>th</sup> Floor  
New York, NY 10011  
gwilcox@levyratner.com  
mwissinger@levyratner.com  
dslutsky@levyratner.com  
arabb@levyratner.com

George S. Howard  
Mhairi L. Whitton  
JONES DAY  
12265 El Camino Real, Suite 300  
San Diego, CA 92130  
gshoward@jonesday.com  
mwhitton@jonesday.com

Aaron L. Agenbroad  
JONES DAY  
555 California Street, 26<sup>th</sup> Floor  
San Francisco, CA 94104  
alagenbroad@jonesday.com

Michael J. Healy  
HEALEY & HORNACK, P.C.  
247 Fort Pitt Blvd., 4th Floor  
Pittsburgh, PA 15222  
mike@unionlawyers.net

Deena Kobell  
National Relations Labor Board, Region 04  
615 Chestnut Street, 7th Floor  
Philadelphia, PA 19106-4404  
Deena.kobell@nlrb.gov

Steve A. Miller  
James M. Hux, Jr.  
Craig R. Annunziata  
FISHER & PHILLIPS LLP  
10 S Wacker Dr., Ste 3450  
Chicago, IL 60606-7592  
smiller@laborlawyers.com  
jhux@laborlawyers.com  
cannunziata@laborlawyers.com

Pennsylvania Workers Organizing Committee  
846 N. Broad Street  
Philadelphia, PA 19130  
Mike@unionlawyers.net

Mary Joyce Carlson  
1100 New York Avenue, Suite 500 West, NW  
Washington, DC 20005  
carlsonmjj@yahoo.com

Joseph A. Hirsch  
HIRSCH & HIRSCH  
Two Bala Plaza  
Third Floor, Suite 300  
Bala Cynwyd, PA 19004  
jahirsch@hirschfirm.com

Judith A. Scott  
General Counsel  
Service Employees International Union  
1800 Massachusetts Avenue, NW  
Washington, DC 20036-1806  
judy.scott@seiu.org

Edward Castillo  
Christina Hill  
Kevin McCormick  
Sylvia Taylor  
National Labor Relations Board, Region 13  
209 South La Salle Street, Suite 900  
Chicago, IL 60604-1443  
edward.castillo@nlrb.gov  
christina.hill@nlrb.gov  
kevin.mccormick@nlrb.gov  
sylvia.taylor@nlrb.gov

Louis P. DiLorenzo  
Tyler T. Hendry  
Patrick V. Melfi  
BOND, SCHOENECK & KING, PLLC  
600 Third Avenue  
New York, NY 10016  
ldilorenzo@bsk.com  
thendry@bsk.com  
pmelfi@bsk.com

Barry M. Bennett  
George A. Luscombe, III  
DOWD, BLOCH, BENNETT & CERVONE  
8 S. Michigan Ave, Fl 19  
Chicago, IL 60603-3315  
bbennett@dbb-law.com  
gluscombe@dbb-law.com

Claude Schoenberg  
SCHOENBERG LAW OFFICE  
2 Bala Plaza, Suite 300  
Bala Cynwyd, PA 19004  
claudio.schoenberg@me.com

David P. Dean  
Kathy L. Krieger  
Ryan E. Griffin  
JAMES & HOFFMAN, PC  
1130 Connecticut Ave, NW, Suite 950  
Washington, DC 20036  
dpdean@jamhoff.com  
klkrieger@jamhoff.com  
regriffin@jamhoff.com

Fredric Roberson  
National Labor Relations Board, Region 25  
575 N Pennsylvania St. Ste 238  
Indianapolis, IN 46205-1520  
fredric.roberson@nlrb.gov

Jeffrey A. Macey  
Robert A. Hicks  
MACEY SWANSON AND ALLMAN  
445 N Pennsylvania St., Ste 401  
Indianapolis, IN 46204-1893  
jmacey@maceylaw.com  
rhicks@maceylaw.com

Thomas O'Connell  
Ashley Ratliff  
Alyssa Eisenberg  
BEST, BEST & KRIEGER  
3390 University Avenue, 5th Floor  
Riverside CA, 92501  
thomas.oconnell@bbklaw.com  
ashley.ratliff@bbklaw.com  
Alyssa.Eisenberg@bbklaw.com

Workers Organizing Committee of Chicago  
850 W. Jackson, Ste. 275  
Chicago, IL 60607  
*(This is not the correct address but we have  
yet to determine the correct address.)*

Sean Graham  
WEINBERG ROGER & ROSENFELD  
800 Wilshire Boulevard, Suite 1320  
Los Angeles, CA 90017-2623  
sgraham@unioncounsel.net

Roger Crawford  
BEST, BEST & KRIEGER  
2855 E. Guasti Road, Suite 400  
Ontario CA, 91761  
Roger.Crawford@bbklaw.com

Jonathan Cohen  
Eli Naduris-Weissman  
ROTHNER, SEGALL & GREENSTONE  
510 South Marengo Avenue  
Pasadena, CA 91101-3115  
jcohen@rsglabor.com  
enaduris-weissman@rsglabor.com

Richard McPalmer  
Regional Director  
National Labor Relations Board, Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103  
richard.mcpalmer@nlrb.gov

Brian D. Gee  
John Rubin  
Rudy Fong-Sandoval  
National Labor Relations Board, Region 31  
11500 W. Olympic Boulevard, Suite 600  
Los Angeles, CA 90064  
brian.gee@nlrb.gov  
john.rubin@nlrb.gov  
rudy.fong-sandoval@nlrb.gov

Fast Food Workers Committee  
2-4 Nevins St., Second Floor  
Brooklyn, NY 11217  
Kendall.fells@seiu.org

Honorable Lauren Esposito  
National Labor Relations Board  
Division of Judges  
26 Federal Plaza, Suite 1703  
New York, New York 10278

Dated: August 24, 2018

s/ Katherine M. Bogard

An Attorney for Respondents AJD, Inc.; Lewis Foods of 42<sup>nd</sup> Street, LLC; 18884 Food Corporation; 14 East 47<sup>th</sup> Street, LLC; John C Food Corp.; 1531 Fulton St., LLC; McConner Street Holding LLC's store located at 2142 Third Avenue; McConner Street Holding LLC's store located at 2049 Broadway; Mic-Eastchester, LLC's store located at 341 Fifth Avenue; and Bruce C. Limited Partnership's store located at 4259 Broadway.

# **EXHIBIT A**

**Exhibit A – Settlement Remedies for Alleged Discriminatees and Notice Posting Language<sup>1</sup>**

<b>Lewis Foods of 42 Street, LLC</b>	
Compl. ¶ 7(a) <sup>2</sup>	About September 2012, Respondent McDonald's at 220 W. 42 <sup>nd</sup> St., by James R. Lewis, at 220 W. 42 <sup>nd</sup> St., New York, NY (a) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union organizational activity
<b>Notice Posting</b>	<b>WE WILL NOT ask you about your complaints and grievances and imply we will fix them in order to discourage you from supporting a union.</b>
Compl. ¶ 7(b)	About September 2012, Respondent McDonald's at 220 W. 42 <sup>nd</sup> St., by James Lewis, at 220 W. 42 <sup>nd</sup> St., New York, NY (b) promised its employees that terms and conditions of employment would improve, if the employees rejected union organizing efforts.
<b>Notice Posting</b>	<b>WE WILL NOT promise you increased wages or other benefits in order to discourage you from supporting a union.</b>
Compl ¶ 8(a)(i)	About December 2012, Respondent McDonald's at 220 W. 42 <sup>nd</sup> St. by James R. Lewis (i) ceased posting employees' work schedules. Respondent McDonald's at 220 W. 42 <sup>nd</sup> St. took the actions identified in subparagraph (a) in response to union organizing.
<b>Notice Posting</b>	<b>WE WILL NOT change the way the schedule is communicated to employees in order to discourage employees from participating in a union or to inhibit union activity by limiting employees' knowledge of their co-workers schedules.</b>
Compl. ¶ 8(a)(ii)	About December 2012, Respondent McDonald's at 220 W. 42 <sup>nd</sup> St. by James R. Lewis (ii) removed employee name tags. Respondent McDonald's at 220 W. 42 <sup>nd</sup> St. took the actions identified in subparagraph (a) in response to union organizing.
<b>Notice Posting</b>	<b>WE WILL NOT instruct you to remove your employee name tags in order to discourage employees from participating in a union or to inhibit union activity by limiting employees' knowledge of their co-workers' schedules.</b>
Compl. ¶ 9(a)	About October 2012, Respondent McDonald's at 220 W. 42 <sup>nd</sup> St., by John McDonnell, at 220 W. 42 <sup>nd</sup> St. New York, NY (a) threatened its employees with unspecified reprisals for engaging in union activity;
<b>Notice Posting</b>	<b>WE WILL NOT threaten you with unspecified reprisals because you support a union.</b>
Compl. ¶ 9(b)	About October 2012, Respondent McDonald's at 220 W. 42 <sup>nd</sup> St., by John McDonnell, at 220 W. 42 <sup>nd</sup> St. New York, NY (b) created an impression among its employees that their union activities were under surveillance
<b>Notice Posting</b>	<b>WE WILL NOT make it appear that we are watching out for your union activities.</b>
Compl. ¶ 10(a)-(b)	(a)About December 2, 2012, Respondent McDonald's at 220 W. 42 <sup>nd</sup> St. imposed more onerous and rigorous terms and conditions of

<sup>1</sup> Counsel for the General Counsel orally withdrew the Complaint allegations in Paragraphs 46-53; 77(a)-77(b) and 88 on the record on March 20, 2017. See Tr. Vol. 99, 14312-14314.

<sup>2</sup> Compl. refers to the Complaint issued on December 19, 2014 against the New York Franchisees.

	employment on its employee Linda Archer by assigning her more arduous and less agreeable job assignments. (b) Respondent McDonald's at 220 W. 42 <sup>nd</sup> St. engaged in the conducted described in subparagraph (a) because Linda Archer assisted the FFWC and engaged in concerted activities, and to discourage employees from engaging in these activities.
<b>Notice Posting</b>	<b>WE WILL NOT change employees' job duties because of their union membership or support.</b>
Compl. ¶ 11(a)	Respondent McDonald's at 220 W. 42 <sup>nd</sup> St. by the individuals named below, about the dates at the locations opposite their names, threatened its employees with discharge if they engaged in union activity: (a) Rosa Second Week of November 2012 220 W. 42 <sup>nd</sup> St. New York, NY (b) Mark J. Gray November 24, 2012 220 W. 42 <sup>nd</sup> St. New York, NY
<b>Notice Posting</b>	<b>WE WILL NOT threaten to fire you because you support a union.</b>
<b>AJD, Inc.</b>	
Compl. ¶ 18	Respondent McDonald's at 1188 Sixth Avenue, by the individuals named below, on about the dates and at the locations listed opposite their names, interrogated employees about those employees' union activities and sympathies: (a) Daisy Perez and Elaine Diekmann Third Week of November 2012 1188 Sixth Ave. New York, NY (b) Daisy Perez November 20, 2012 1188 Sixth Ave., New York, NY (c) Daisy Perez and Elaine Diekmann November 21, 2012 1188 Sixth Ave., New York, NY (d) Daisy Perez December 2, 2012 1188 Sixth Ave. New York, NY
<b>Notice Posting</b>	<b>WE WILL NOT ask you about employee support for a union.</b>
Compl. ¶ 19(a)	About November 21, 2012 Respondent McDonald's at 1188 Sixth Ave., by Daisy Perez at 1188 Sixth Ave., New York, NY (a) engaged in surveillance of employees to discover their union activities.
<b>Notice Posting</b>	<b>WE WILL NOT watch out for your union activities.</b>
Compl. ¶ 19(b)	About November 21, 2012, Respondent McDonald's at 1188 Sixth Ave., by Daisy Perez at 1188 Sixth Ave., New York, NY (b) created an impression among its employees that their union activities were under surveillance.
<b>Notice Posting</b>	<b>WE WILL NOT make it appear to you that we are watching out for your union activities.</b>
Compl. ¶ 19(c)	About November 21, 2012, Respondent McDonald's at 1188 Sixth Ave., by Daisy Perez at 1188 Sixth Ave., New York, NY (c) threatened to more strictly enforce rules regarding lateness and theft because of employees' union activities.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to more strictly enforce rules regarding lateness and theft because of your union activities.</b>
Compl. ¶ 20(a)-(b)	On about November 21, 2012, Respondent McDonald's at 1188 Sixth Avenue suspended its employee Jose Carillo. Respondent McDonald's at 1188 Sixth Avenue engaged in conduct described in subparagraph (a) because employee Jose Carillo assisted the FFWC and engaged in concerted activities, and to discourage employees from engaging in those activities.

<b>Notice Posting</b>	<p><b>WE WILL NOT suspend you because of your union membership or support.</b></p> <p><b>WE HAVE paid employee Jose Carillo for the wages and other benefits he lost because we suspended him in November 2012.</b></p> <p><b>WE HAVE expunged from our files all references to the suspension of Jose Carillo in November 2012, and WE HAVE notified him in writing that we have done so and that the suspension will not be used against him in any way.</b></p>
<b>Additional Remedy</b>	<p><b>Jose Carillo</b></p> <ul style="list-style-type: none"> <li>• <b>Back pay 100% as calculated by General Counsel</b></li> <li>• <b>Total \$217</b></li> <li>• <b>Backpay: \$178</b></li> <li>• <b>Excess Tax: \$5</b></li> <li>• <b>Interest \$34</b></li> </ul>
<b>John C Food Corp.</b>	
Compl. ¶ 27(a)	About November 30, 2012, Respondent McDonald's at 280 Madison Ave., by Richard R. Cisneros, Bruny Martinez, and Jeannette Checo at 280 Madison Ave., New York, NY (a) threatened employees with discharge if they engaged in union activity.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to fire you because you support a union or engage in union activity.</b>
Compl. ¶ 27(b)	About November 30, 2012, Respondent McDonald's at 280 Madison Ave., by Richard R. Cisneros, Bruny Martinez, and Jeannette Checo at 280 Madison Ave., New York, NY (b) threatened to reduce employees' hours of work if they engaged in union activity.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to reduce your hours of work because you support a union or engage in union activity.</b>
Compl. ¶ 27(c)	About November 30, 2012, Respondent McDonald's at 280 Madison Ave., by Richard R. Cisneros, Bruny Martinez, and Jeannette Checo at 280 Madison Ave., New York, NY (c) threatened employees with discharge if they engaged in union activity.
Notice Posting	<b>WE WILL NOT threaten to fire you because you support a union or engage in union activity.</b>
Compl. ¶ 27(d)	About November 30, 2012, Respondent McDonald's at 280 Madison Ave., by Richard R. Cisneros, Bruny Martinez, and Jeannette Checo at 280 Madison Ave., New York, NY (d) promised employees unspecified improvements in terms and conditions of employment if they rejected the FFWC as their collective bargaining representative.
<b>Notice Posting</b>	<b>WE WILL NOT promise you unspecified improvements in your terms and conditions of employment in order to discourage you from supporting any union, including the Fast Food Workers' Committee.</b>
Compl. ¶ 28(a)	About December 3, 2012, Respondent McDonald's at 280 Madison Ave., by Bruny Martinez and Jeannette Checo at 280 Madison New York, NY (a) threatened employees with discharge if they engaged in union activity.

<b>Notice Posting</b>	<b>WE WILL NOT threaten to fire you because you support a union or engage in union activity.</b>
Compl. ¶ 28(b)	About December 3, 2012, Respondent McDonald's at 280 Madison Ave., by Bruny Martinez and Jeannette Checo at 280 Madison New York, NY (b) threatened to reduce employees' hours of work if they engaged in union activity.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to reduce your hours of work because you support a union or engage in union activity.</b>
<b>18884 Food Corporation</b>	
Compl. ¶ 34	About late October or early November 2012, Respondent McDonald's at 1651 Broadway, by Arlene Raymond, at 1651 Broadway New York, NY threatened employees with discharge if they engaged in union activity.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to fire you because you support a union.</b>
Compl. ¶ 35	About November 29, 2012, Respondent McDonald's at 1651 Broadway by Arlene Raymond at 1651 Broadway New York, NY threatened employees with discharge if they engaged in union activity.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to fire you because you support a union.</b>
Compl. ¶ 36(a)	About December 17, 2012, Respondent McDonald's at 1651 Broadway by Rene Perez and Winston Joseph at 1651 Broadway New York, NY (a) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union activity.
<b>Notice Posting</b>	<b>WE WILL NOT ask you about your complaints and grievances and imply that we will fix them in order to discourage you from supporting a union.</b>
Compl. ¶ 36(b)	About December 17, 2012, Respondent McDonald's at 1651 Broadway by Rene Perez and Winston Joseph at 1651 Broadway New York, NY (b) promised employees a raise if they refrained from union activity.
<b>Notice Posting</b>	<b>WE WILL NOT promise you increased wages in order to discourage you from supporting a union.</b>
Compl. ¶ 37(a) –(b)	(a) On about December 21, 2012, Respondent McDonald's at 1651 Broadway ceased posting employees' work schedules. (b) Respondent McDonald's at 1651 Broadway took the action identified in (a) in response to union organizing.
<b>Notice Posting</b>	<b>WE WILL NOT change the way the schedule is communicated to employees in order to discourage employees from participating in a union or to inhibit union activity by limiting employees' knowledge of their co-workers' schedules.</b>
<b>14 East 47<sup>th</sup> Street, LLC</b>	
Compl. ¶ 43(a)	On about December 1, 2012, Respondent McDonald's at 14 E. 47 <sup>th</sup> by Peter Paulino at 14 E. 47 <sup>th</sup> St. New York, NY (a) threatened employees with unspecified reprisals because of their union activity.
<b>Notice Posting</b>	<b>WE WILL NOT threaten you with unspecified reprisals because you engage in union activity.</b>
Compl. ¶ 43(b)	On about December 1, 2012, Respondent McDonald's at 14 E. 47 <sup>th</sup> by Peter Paulino at 14 E. 47 <sup>th</sup> St. New York, NY (b) interrogated employees about their union activities.
<b>Notice Posting</b>	<b>WE WILL NOT ask you about employee support for a union.</b>
<b>McConner Street Holding, LLC's store at 2142 Third Avenue</b>	

Compl. ¶ 57	About November 30, 2012, Respondent McDonald's at 2142 Third Ave., by Mike Ortiz and Leilani Carr, in the office located in the basement of 2142 Third Avenue, New York, NY interrogated its employees about their union activities.
<b>Notice Posting</b>	<b>WE WILL NOT ask you about employee support for a union.</b>
Compl. ¶ 58	About December 1, 2012, Respondent McDonald's at 2142 Ave., by Mike Ortiz, in the office located in the basement of 2142 Third Avenue, New York, NY interrogated its employees about their union activities.
<b>Notice Posting</b>	<b>WE WILL NOT ask you about employee support for a union.</b>
Compl. ¶ 59	About December 1, 2012, Respondent McDonald's at 2142 Third Ave., by Mike Ortiz, at 2142 Third Avenue, New York, NY, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union activity.
<b>Notice Posting</b>	<b>WE WILL NOT ask you about your complaints and grievances and imply that we will fix them in order to discourage you from supporting a union.</b>
<b>McConner Street Holding, LLC's store at 2049 Broadway</b>	
Compl. ¶ 65(a)	Respondent McDonald's at 2049 Broadway by Manny Vera at 2049 Broadway New York, NY (a) about February 18, 2013, interrogated its employees about their union activity.
<b>Notice Posting</b>	<b>WE WILL NOT ask you about employee support for a union.</b>
Compl. ¶ 65(b)	Respondent McDonald's at 2049 Broadway by Manny Vera at 2049 Broadway New York, NY (b) about March 2013, interrogated its employees about their union activity.
<b>Notice Posting</b>	<b>WE WILL NOT ask you about employee support for a union.</b>
Compl. ¶ 65(c)	Respondent McDonald's at 2049 Broadway by Manny Vera at 2049 Broadway New York, NY (c) about March 2013, threatened its employees with unspecified reprisals because they engaged in union activity.
<b>Notice Posting</b>	<b>WE WILL NOT threaten you with unspecified reprisals because you engage in union activity.</b>
<b>Mic-Eastchester, LLC's store at 341 Fifth Avenue</b>	
Compl. ¶ 71	About March 2013, Respondent McDonald's at 341 Fifth Ave by Vicky Munoz at 341 5 <sup>th</sup> Avenue New York, NY told employees they were prohibited from talking with the union after working hours.
<b>Notice Posting</b>	<b>WE WILL NOT prohibit you from talking with the union after working hours.</b>
<b>1531 Fulton Street, LLC</b>	
Compl. ¶ 77(c)(i)	Respondent McDonald's at 1531 Fulton St., by Carlos Roldan, at 1531 Brooklyn, NY about April 6, 2013 told employees they were prohibited from: (c)(i) engaging in union activities.
<b>Notice Posting</b>	<b>WE WILL NOT prohibit you from engaging in union activities.</b>
Compl. ¶ 77(c)(ii)	Respondent McDonald's at 1531 Fulton St., by Carlos Roldan, at 1531 Brooklyn, NY about April 6, 2013 told employees they were prohibited from: (c)(ii) talking with coworkers about union activities.
<b>Notice Posting</b>	<b>WE WILL NOT prohibit you from talking with coworkers about union activities.</b>

Compl. ¶ 77(d)	Respondent McDonald's at 1531 Fulton St., by Carlos Roldan, at 1531 Brooklyn, NY (d) about April 6, 2013, asked employees to sign a document acknowledging they were told, and that they understood, that they were not to engage in union activities.
<b>Notice Posting</b>	<b>WE WILL NOT issue you written reprimands because of your union membership or support.</b>
Compl. ¶ 77(e)	Respondent McDonald's at 1531 Fulton St., by Carlos Roldan, at 1531 Brooklyn, NY (e) about early August 2013, threatened its employees with discharge because they engaged in union activities.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to fire you if you choose to be represented by or support a union.</b>
Compl. ¶ 78	About July 30, 2013, Respondent McDonald's at 1531 Fulton St., by Mery G. Diaz threatened its employees with discharge for engaging in Union activity.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to fire you if you choose to be represented by or support a union.</b>
Compl. ¶ 79	About July 30, 2013, Respondent McDonald's at 1531 Fulton St., by Veronica Stuart, threatened its employees with unspecified reprisals for engaging in Union activity.
<b>Notice Posting</b>	<b>WE WILL NOT threaten you with unspecified reprisals if you choose to be represented by or support a union.</b>
Compl. ¶ 80(a) – (b)	(a) About April 6, 2013, Respondent McDonald's at 1531 issued a written reprimand to its employee David Curry. (b) Respondent at McDonald's at 1531 Fulton St. engaged in the conduct described above in subparagraph (a) because David Curry assisted the FFWC and engaged in concerted activities, and to discourage employees from engaging in these activities.
<b>Notice Posting</b>	<b>WE WILL NOT issue you written reprimands because of your union membership or support.</b>  <b>WE HAVE removed from our files all references to the April 6, 2013 written reprimand issued to David Curry and WE HAVE notified him in writing that this has been done and that the written reprimand will not be used against him in any way.</b>
Compl. ¶ 81(a)-(b)	(a) About August 8, 2013, Respondent McDonald's at 1531 Fulton St. discharged its employee Tracee Nash. (b) Respondent McDonald's at 1531 Fulton St. engaged in the conduct described above in subparagraph (a) because Tracee Nash assisted the FFWC and engaged in concerted activities, and to discourage employees from engaging in these activities.
<b>Notice Posting</b>	<b>WE WILL NOT fire you because of your union membership or support.</b>  <b>WE HAVE paid Tracee Nash, who has waived reinstatement, for the wages and other benefits he lost because we fired her in August 2013.</b>  <b>WE HAVE removed from our files all references to the discharge of Tracee Nash in August 2013 and WE HAVE</b>

	<b>notified her in writing that this has been done and that the discharge will not be used against her in anyway.</b>
<b>Additional Remedy</b>	<ul style="list-style-type: none"> <li>• <b>Backpay 100% as calculated by General Counsel and Frontpay</b></li> <li>• <b>Total: \$50,000</b></li> <li>• <b>Backpay: \$29,747</b></li> <li>• <b>Excess Tax: \$1,823</b></li> <li>• <b>Interest: \$2,207</b></li> <li>• <b>Front Pay: \$ 16,223</b></li> </ul>
<b>Bruce C. Limited Partnership's store at 4259 Broadway</b>	
Compl. ¶ 89(a)	About January 2013, Respondent McDonald's at 4259 Broadway, by Dominga DeJesus (a) threatened its employees with reduced work hours if they selected a union as their bargaining representative.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to reduce employees' work hours if they choose to join a union.</b>
Compl. ¶ 89(b)	About January 2013, Respondent McDonald's at 4259 Broadway, by Dominga DeJesus (b) threatened its employees with restaurant closure if they selected a union as their bargaining representative.
<b>Notice Posting</b>	<b>WE WILL NOT threaten to close the restaurant if employees choose to join a union.</b>
Compl. ¶ 90(a) – (b)	(a)About January 2013, Respondent McDonald's at 4259 Broadway ceased posting employees' work schedules. (b) Respondent McDonald's at 4259 Broadway took the action identified in subparagraph (a) in response to union organizing.
<b>Notice Posting</b>	<p><b>WE WILL NOT change the way the schedule is communicated to employees in order to discourage employees from participating in a union or to inhibit union activity by limiting employees' knowledge of their co-workers' schedules.</b></p> <p><b>Since November 26, 2017, WE HAVE posted the weekly employee schedule in an area viewable to all employees.</b></p>
Compl. ¶ 91	About April 5, 2013, Respondent McDonald's at 4259 Broadway, by Dominga DeJesus, told employees they were prohibited from accepting literature from union representatives.
<b>Notice Posting</b>	<b>WE WILL NOT tell you that you cannot accept literature from union representatives.</b>

# **EXHIBIT B**

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT  
APPROVED BY AN ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF

AJD, Inc. d/b/a McDonald's and  
MCDONALD'S USA, LLC

Cases 02-CA-093895  
02-CA-097827

Subject to the approval of an Administrative Law Judge of the National Labor Relations Board, the Charged Parties, the Charging Party and Counsel for the General Counsel **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING AND MAILING OF NOTICE** — After the Administrative Law Judge has approved this Agreement, the Regional Office will send copies of the approved Notice to AJD, Inc. ("Charged Franchisee") in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Franchisee will then sign and date those Notices, which will be posted at the McDonald's brand restaurant at 1188 6th Avenue, New York, New York in the places where notices to employees are usually maintained. The Notices will remain posted for 60 consecutive days after the initial posting. To the extent possible, the Charged Franchisee will also copy and mail, at its own expense, a copy of the attached Notice to the last known address of those former employees who were employed at any time since November 20, 2012 through March 2, 2013. Those Notices will be signed by a responsible official of the Charged Franchisee and show the date of mailing. The Charged Franchisee will provide the Regional Director written confirmation of the date of mailing and the names of employees.

**COMPLIANCE WITH NOTICE** — The Charged Franchisee will comply with all the terms and provisions of said Notice.

**BACKPAY** — Within 14 days from approval of this Agreement, the Charged Franchisee will make whole the employee named below by payment to him of the amount opposite his name. Such payment shall be accomplished by delivery of a certified or cashier's check at the time of signing to the Regional Director of Region 2, who shall hold such check. After approval of this Agreement by the Administrative Law Judge, the Regional Director shall deliver the certified or cashier's check to the alleged discriminatee, Jose Carillo. If the Regional Director is unable to deliver the certified or cashier's check within one year after approval of this Agreement by the Administrative Law Judge, the Regional Director shall return the certified or cashier's check to the Charged Franchisee. The Charged Franchisee will make appropriate withholdings from that backpay. No withholdings should be made from the Excess Tax and Interest portions of the backpay. The Charged Franchisee will also file a report with the Regional Director allocating the payment(s) to the appropriate calendar year(s).

<u>Discriminatee</u>	<u>Backpay</u>	<u>Excess Tax</u>	<u>Interest</u>	<u>Total</u>
Jose Carillo	\$178	\$5	\$34	\$217

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned cases, contained in GC Exhibit 1(eee), paragraphs 1(b)-(c), 1(i)-(k), and 15 through 23, and does not settle any other cases or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved, regardless of whether General Counsel knew of those matters or could have easily found them out. Subject to the terms of the Protective Order as applicable in light of the parties' subsequent stipulations as to the confidentiality designations of certain documents, General Counsel reserves the right to seek to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any

relevant purpose in the litigation of these or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence. Neither this Agreement nor any conduct taken in connection with this Agreement is an admission by the Charged Parties that they are or have ever been joint employers or liable under the Act, and shall not be considered, offered, or admitted as evidence of joint employer status between McDonald's USA, LLC and any of its franchisees.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Administrative Law Judge determines that it will promote the policies of the National Labor Relations Act, the Administrative Law Judge, after providing such party an opportunity to state on the record or in writing its reasons for opposing the Agreement, may approve the Settlement Agreement. If that occurs, this Agreement shall be between the Charged Parties and the Counsel for the General Counsel. Any party aggrieved by the ruling of the Administrative Law Judge approving the Agreement may ask for leave to appeal to the Board as provided in Sections 101.9(d)(2) and 102.26 of the Board's Rules and Regulations.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTIES** — Counsel for the Charged Franchisee authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Franchisee. If such authorization is granted, Counsel will be simultaneously served with courtesy copies of these documents.

Yes \_\_\_\_\_ No  \_\_\_\_\_ AJD, Inc.  
Initials Initials

**PERFORMANCE** — Performance by the Charged Parties with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Administrative Law Judge. The Regional Director shall advise the Charged Parties of any charge alleging non-compliance with this Agreement as soon as practicable after the filing of such charge.

The Charged Parties agree that in case of non-compliance with any of the terms of this Agreement by the Charged Franchisee, based on alleged activities which take place within nine months after the date of the approval of this Agreement by the Administrative Law Judge, and after 14 days' notice from the Regional Director of the National Labor Relations Board to the Charged Parties of such non-compliance without remedy by the Charged Franchisee, the Regional Director:

1. May issue a complaint ("Merits Complaint") against the Charged Franchisee if the allegations contained in GC Exhibit 1(eee), paragraphs 1(b)-(c), 1(i)-(k), 2, 3, and 15 through 23 have been withdrawn. The Merits Complaint would include the allegations in the above-captioned cases, contained in GC Exhibit 1(eee), paragraphs 1(b)-(c), 1(i)-(k), 2, 15, and 17 through 23, previously issued on December 19, 2014 in the instant case, including allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Such Merits Complaint shall not include allegations that McDonald's USA, LLC is a joint employer with the Charged Franchisee. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Merits Complaint.
2. Will promptly provide McDonald's USA LLC the approved Special Notices, in the form set forth below, and then provide 14 days to McDonald's USA, LLC to mail the approved Special Notices directly to the last known address of current employees employed by the Charged Franchisee. The Charged Franchisee agrees to provide McDonald's USA, LLC such employees' names and last known addresses as a condition of the Agreement.



3. In the event both the Charged Franchisee and McDonald's USA, LLC fail to cure the breach of the Agreement, the Regional Director may amend the Merits Complaint identified in paragraph 1 of this section to include McDonald's USA, LLC as a party, and include all the allegations in the above-captioned cases, contained in GC Exhibit 1(eee), paragraphs 1(b)-(c), 1(i)-(k), 2, 3, and 15 through 23, previously issued on December 19, 2014 in the instant case ("Default Complaint") as well as allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Default Complaint.
4. Notwithstanding any of the above, the Regional Director assigned the responsibility of investigating any alleged breach of this settlement will not allege or find a violation of this settlement based on conduct that contravenes only the broad "We Will Not do anything to prevent you from exercising the above rights" provision of the Notice to be posted by the Charged Franchisee.

In the event that the General Counsel files a motion for default judgment with the Board on the allegations of the Merits Complaint, the Charged Franchisee understands and agrees that all of the allegations of the Merits Complaint will be deemed admitted and that it will have withdrawn its answer to the allegations contained in GC Exhibit 1(eee), paragraphs 1(b)-(c), 1(i)-(k), 2, 15, and 17 through 23, and waive its right to file an Answer to such Merits Complaint. In the event that the General Counsel files a motion for default judgment with the Board on the allegations of the Default Complaint, the Charged Parties understand and agree that all of the allegations of the Default Complaint will be deemed admitted and that they will have withdrawn their answer to the allegations contained in GC Exhibit 1(eee), paragraphs 1(b)-(c), 1(i)-(k), 2, 3, and 15 through 23, and waive their right to file an Answer to such Default Complaint. The only issue that may be raised before the Board is whether the Charged Franchisee alone or both of the Charged Parties defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Merits or Default Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Parties on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon the Charged Parties at the last addresses provided to the General Counsel.

**SETTLEMENT FUND** — Upon execution of this Agreement, McDonald's USA, LLC shall deliver to the National Labor Relations Board ("Board") funds provided by franchisees in the amount of \$250,000, which shall be transferred by the Board into a "Settlement Fund" for the benefit of any and all potential discriminatees who may be entitled to a monetary remedy as a result of an alleged breach of the settlement in this case or any of the other cases which were consolidated as of May 2015. No party to this Agreement shall have any obligation to contribute additional funds to the Settlement Fund after the one-time contribution specified above. All parties to this Agreement and their counsel shall cooperate with the Board to execute any documents reasonably necessary to effectuate the terms of this Agreement.

In the event of:

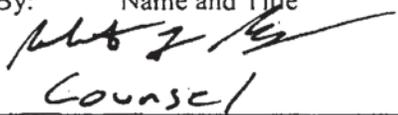
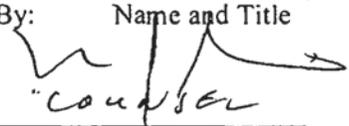
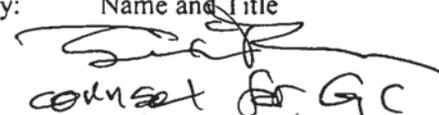
- (1) a written notice from a Regional Director of a breach of this Settlement by virtue of a violation of Section 8(a)(3) of the Act arising from a Charged Franchisee employee's suspension because of his or her union membership or support during the nine month period following approval of the Agreement by the Administrative Law Judge and
- (2) later failure or refusal by the Charged Franchisee to cure that breach of the Settlement Agreement, this Settlement Fund shall be used to implement McDonald's USA, LLC's support of the remedies provided under this Agreement.



Disbursement from the Settlement Fund to the alleged discriminatee(s) will be triggered when McDonald's USA, LLC notifies the Regional Director that McDonald's USA will issue the approved Special Notice, in the form set forth below, to employees to cure such a breach. Upon such notification, disbursement from the Settlement Fund will be in the amount equal to the backpay owed to any discriminatee from the date of the violation through the date of the written notice of breach from the Regional Director, as calculated by the Regional Director. Such disbursement shall be in lieu of any other remedies, the relevant charge allegation(s) will be dismissed, and General Counsel will take no further action on those allegation(s).

After 15 months from the approval of the Agreement by the Administrative Law Judge and a determination from the Regional Director that there are no pending charges alleging a breach of the Agreement, the Board shall return to McDonald's USA, LLC, for distribution to the appropriate franchisee, the balance of any unused funds in the Settlement Fund. If there are pending charges after 15 months, the Board shall return the balance of any unused funds in the Settlement Fund after those pending charges are resolved.

**NOTIFICATION OF COMPLIANCE** — The General Counsel shall, no later than ten days after approval of this Agreement by the Administrative Law Judge, move the Administrative Law Judge for an order approving the withdrawal of the allegations of the Consolidated Complaint against the Charged Parties contained in GC Exhibit 1(eee), paragraphs 1(b)-(c), 1(i)-(k), and 15 through 23, as well as any answers, or portions of answers, filed in response to these allegations. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken with respect to those allegations of the above-captioned cases. Each party to this Agreement will notify the Regional Director in writing what steps the Charged Parties have taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement by the Administrative Law Judge.

<b>Charged Party</b> AJD, Inc.		<b>Charging Party</b> Fast Food Workers' Committee	
By: Name and Title  Counsel	Date 3-16-18	By: Name and Title	Date
<b>Charged Party</b> McDonald's USA, LLC		<b>General Counsel</b>	
By: Name and Title  Counsel	Date 3/16/18	By: Name and Title  Counsel for GC	Date 19 March 2018
		Approved By:  Lauren Esposito, Administrative Law Judge	Date



(To be printed and posted on official Board notice form)

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

**WE WILL NOT** threaten to more strictly enforce rules regarding lateness and theft because of your union activities.

**WE WILL NOT** ask you about employee support for a union.

**WE WILL NOT** watch out for your union activities.

**WE WILL NOT** make it appear to you that we are watching out for your union activities.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

**WE WILL NOT** suspend you because of your union membership or support.

**WE HAVE** paid employee Jose Carillo for the wages and other benefits he lost because we suspended him in November 2012.

**WE HAVE** expunged from our files all references to the suspension of Jose Carillo in November 2012, and **WE HAVE** notified him in writing that we have done so and that the suspension will not be used against him in any way.

AJD, Inc.

(Employer)

Dated: \_\_\_\_\_

By: \_\_\_\_\_

(Representative)

(Title)

---

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).*

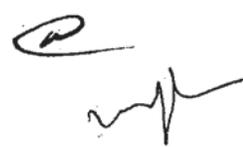
26 Federal Plaza, Suite 3614  
New York, NY 10278

Telephone: 212.264.0300  
Hours of Operation: 8:45 a.m. to 5:15  
p.m.

---

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

A handwritten signature in black ink, consisting of a stylized initial 'P' followed by a series of loops and a long horizontal stroke.

**SPECIAL NOTICE TO EMPLOYEES  
PROVIDED PURSUANT TO AGREEMENT BETWEEN THE NATIONAL LABOR  
RELATIONS BOARD AND MCDONALD'S USA, LLC**

A Regional Director of the National Labor Relations Board has investigated an unfair labor practice charge alleging that [insert franchisee name] violated the National Labor Relations Act by [insert action at issue]. The Regional Director has determined that, by that conduct, [insert franchisee name] has violated the National Labor Relations Act and is not in compliance with a settlement agreement. That lack of compliance is the reason for this Notice.

McDonald's USA, LLC is party to the Settlement Agreement between the National Labor Relations Board and [insert franchisee name]. Under the terms of that Settlement Agreement, McDonald's USA, LLC is required to provide this Notice, via U.S.Mail, to support the remedies provided by that Settlement where [insert franchisee name] fails to fulfill its obligations under the Settlement Agreement.

McDonald's USA, LLC is not [insert franchisee name] and McDonald's USA, LLC's representatives did not breach the Settlement. Further, McDonald's USA, LLC's issuance of this Special Notice does not constitute an admission by it of any agency or joint employer status between McDonald's USA, LLC and any of its franchisees. Solely in its role as party to the Settlement Agreement, however, McDonald's USA, LLC disavows that [insert unlawful conduct] and advises you such action is unlawful under the National Labor Relations Act.

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**McDonald's USA, LLC**

\_\_\_\_\_  
(Franchisor)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Representative) (Title)

---

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).*



# **EXHIBIT C**

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT  
APPROVED BY AN ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF

1531 FULTON STREET, LLC d/b/a McDonald's and  
McDONALD'S USA, LLC

Cases 02-CA-103771  
02-CA-112282

Subject to the approval of an Administrative Law Judge of the National Labor Relations Board, the Charged Parties, the Charging Party and Counsel for the General Counsel **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING AND MAILING OF NOTICE** — After the Administrative Law Judge has approved this Agreement, the Regional Office will send copies of the approved Notice to 1531 Fulton Street, LLC ("Charged Franchisee") in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Franchisee will then sign and date those Notices, which will be posted at the McDonald's brand restaurant at 1531 Fulton Street, Brooklyn, New York in the places where notices to employees are usually maintained. The Notices will remain posted for 60 consecutive days after the initial posting. To the extent possible, the Charged Franchisee will also copy and mail, at its own expense, a copy of the attached Notice to the last known address of those former employees who were employed at any time since April 6, 2013 through November 8, 2013. Those Notices will be signed by a responsible official of the Charged Franchisee and show the date of mailing. The Charged Franchisee will provide the Regional Director written confirmation of the date of mailing and the names of employees.

**COMPLIANCE WITH NOTICE** — The Charged Franchisee will comply with all the terms and provisions of said Notice.

**BACKPAY** — Within 14 days from approval of this Agreement, the Charged Franchisee will make whole the employee named below by payment to her of the amount opposite her name. Such payment shall be accomplished by delivery of a certified or cashier's check at the time of signing to the Regional Director of Region 2, who shall hold such check. After approval of this Agreement by the Administrative Law Judge, the Regional Director shall deliver the certified or cashier's check to the alleged discriminatee, Tracee Nash. If the Regional Director is unable to deliver the certified or cashier's check within one year after approval of this Agreement by the Administrative Law Judge, the Regional Director shall return the certified or cashier's check to the Charged Franchisee. The Charged Franchisee will make appropriate withholdings from that backpay and front pay. No withholdings should be made from the Excess Tax and Interest portions of the payments. The Charged Franchisee will also file a report with the Regional Director allocating the payment(s) to the appropriate calendar year(s).

<u>Discriminatee</u>	<u>Backpay</u>	<u>Excess Tax</u>	<u>Interest</u>	<u>Front Pay</u>	<u>Total</u>
Tracee Nash	\$29747	\$1823	\$2207	\$16223	\$50000

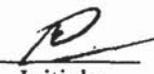
**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned cases, contained in GC Exhibits 1(eee), paragraphs 1(v and z), 74 through 76, 77(c)-(e), and 78 through 84 and does not settle any other cases or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved, regardless of whether General Counsel knew of those matters or could have easily found them out. Subject to the terms of the Protective Order as applicable in light of the parties' subsequent stipulations as to the confidentiality designations of certain documents, General Counsel



reserves the right to seek to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of these or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence. Neither this Agreement nor any conduct taken in connection with this Agreement is an admission by the Charged Parties that they are or have ever been joint employers or liable under the Act, and shall not be considered, offered, or admitted as evidence of joint employer status between McDonald's USA, LLC and any of its franchisees.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Administrative Law Judge determines that it will promote the policies of the National Labor Relations Act, the Administrative Law Judge, after providing such party an opportunity to state on the record or in writing its reasons for opposing the Agreement, may approve the Settlement Agreement. If that occurs, this Agreement shall be between the Charged Parties and the Counsel for the General Counsel. Any party aggrieved by the ruling of the Administrative Law Judge approving the Agreement may ask for leave to appeal to the Board as provided in Sections 101.9(d)(2) and 102.26 of the Board's Rules and Regulations.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTIES** — Counsel for the Charged Franchisee authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Franchisee. If such authorization is granted, Counsel will be simultaneously served with courtesy copies of these documents.

Yes \_\_\_\_\_ No  1531 Fulton Street, LLC  
Initials Initials

**PERFORMANCE** — Performance by the Charged Parties with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Administrative Law Judge. The Regional Director shall advise the Charged Parties of any charge alleging non-compliance with this Agreement as soon as practicable after the filing of such charge.

The Charged Parties agree that in case of non-compliance with any of the terms of this Agreement by the Charged Franchisee, based on alleged activities which take place within nine months after the date of the approval of this Agreement by the Administrative Law Judge, and after 14 days' notice from the Regional Director of the National Labor Relations Board to the Charged Parties of such non-compliance without remedy by the Charged Franchisee, the Regional Director:

1. May issue a complaint ("Merits Complaint") against the Charged Franchisee if the allegations contained in GC Exhibit 1(eee), paragraphs 1(v and z), 2, 3, 74 through 76, 77(c)-(e), and 78 through 84 have been withdrawn. The Merits Complaint would include the allegations in the above-captioned cases, contained in GC Exhibit 1(eee), paragraphs 1(v and z), 2, 74, 76, 77(c)-(e), and 78 through 84, previously issued on December 19, 2014 in the instant case, including allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Such Merits Complaint shall not include allegations that McDonald's USA, LLC is a joint employer with the Charged Franchisee. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Merits Complaint.
2. Will promptly provide McDonald's USA LLC the approved Special Notices, in the form set forth below, and then provide 14 days to McDonald's USA, LLC to mail the approved Special Notices directly to the last known address of current employees employed by the Charged Franchisee. The Charged Franchisee agrees to provide McDonald's USA, LLC such employees' names and last known addresses as a condition of the Agreement.



3. In the event both the Charged Franchisee and McDonald's USA, LLC fail to cure the breach of the Agreement, the Regional Director may amend the Merits Complaint identified in paragraph 1 of this section to include McDonald's USA, LLC as a party, and include all the allegations in the above-captioned cases, contained in GC Exhibit 1(eee), paragraphs 1(v and z), 2, 3, 74 through 76, 77(c)-(e), and 78 through 84, previously issued on December 19, 2014 in the instant case ("Default Complaint") as well as allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Default Complaint.
4. Notwithstanding any of the above, the Regional Director assigned the responsibility of investigating any alleged breach of this settlement will not allege or find a violation of this settlement based on conduct that contravenes only the broad "We Will Not do anything to prevent you from exercising the above rights" provision of the Notice to be posted by the Charged Franchisee.

In the event that the General Counsel files a motion for default judgment with the Board on the allegations of the Merits Complaint, the Charged Franchisee understands and agrees that all of the allegations of the Merits Complaint will be deemed admitted and that it will have withdrawn its answer to the allegations contained in GC Exhibit 1(eee), paragraphs 1(v and z), 2, 74, 76, 77(c)-(e), and 78 through 84, and waive its right to file an Answer to such Merits Complaint. In the event that the General Counsel files a motion for default judgment with the Board on the allegations of the Default Complaint, the Charged Parties understand and agree that all of the allegations of the Default Complaint will be deemed admitted and that they will have withdrawn their answer to the allegations contained in GC Exhibit 1(eee), paragraphs 1(v and z), 2, 3, 74 through 76, 77(c)-(e), and 78 through 84, and waive their right to file an Answer to such Default Complaint. The only issue that may be raised before the Board is whether the Charged Franchisee alone or both of the Charged Parties defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Merits or Default Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Parties on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon the Charged Parties at the last addresses provided to the General Counsel.

**SETTLEMENT FUND** — Upon execution of this Agreement, McDonald's USA, LLC shall deliver to the National Labor Relations Board ("Board") funds provided by franchisees in the amount of \$250,000, which shall be transferred by the Board into a "Settlement Fund" for the benefit of any and all potential discriminatees who may be entitled to a monetary remedy as a result of an alleged breach of the settlement in this case or any of the other cases which were consolidated as of May 2015. No party to this Agreement shall have any obligation to contribute additional funds to the Settlement Fund after the one-time contribution specified above. All parties to this Agreement and their counsel shall cooperate with the Board to execute any documents reasonably necessary to effectuate the terms of this Agreement.

In the event of:

- (1) a written notice from a Regional Director of a breach of this Settlement by virtue of a violation of Section 8(a)(3) of the Act arising from a Charged Franchisee employee's discharge because of his or her union membership or support during the nine month period following approval of the Agreement by the Administrative Law Judge and
- (2) later failure or refusal by the Charged Franchisee to cure that breach of the Settlement Agreement, this Settlement Fund shall be used to implement McDonald's USA, LLC's support of the remedies provided under this Agreement.

Disbursement from the Settlement Fund to the alleged discriminatee(s) will be triggered when McDonald's USA, LLC notifies the Regional Director that McDonald's USA will issue the approved Special Notice, in the form set forth below, to employees to cure such a breach. Upon such notification, the alleged discriminatee may elect either:

- (1) to waive reinstatement and instead receive a disbursement from the Settlement Fund in an amount equal to 500 hours of pay plus backpay for the period from the date of the violation through the date of the written notice of breach from the Regional Director, as calculated by the Regional Director or
- (2) to receive a disbursement from the Settlement Fund of the pay s/he would have earned during the period from the date of the violation through the date of the written notice of breach from the Regional Director, as calculated by the Regional Director.

If the alleged discriminatee elects to waive reinstatement and receive disbursement from the Settlement Fund, such disbursement shall be in lieu of any other remedies, the relevant charge allegation(s) will be dismissed, and General Counsel will take no further action on those allegation(s). If the discriminatee elects not to waive reinstatement, the General Counsel may issue complaint based on the alleged violation(s) of the Act, but shall not pursue default proceedings against McDonald's USA, LLC based on those violation(s).

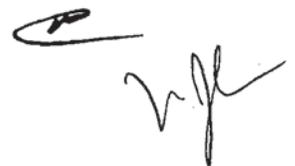
After 15 months from the approval of the Agreement by the Administrative Law Judge and a determination from the Regional Director that there are no pending charges alleging a breach of the Agreement, the Board shall return to McDonald's USA, LLC, for distribution to the appropriate franchisee, the balance of any unused funds in the Settlement Fund. If there are pending charges after 15 months, the Board shall return the balance of any unused funds in the Settlement Fund after those pending charges are resolved.

**NOTIFICATION OF COMPLIANCE** — The General Counsel shall, no later than ten days after approval of this Agreement by the Administrative Law Judge, move the Administrative Law Judge for an order approving the withdrawal of the allegations of the Consolidated Complaint against the Charged Parties contained in GC Exhibit 1(eee), paragraphs 1(v and z), 74 through 76, 77(c)-(e), and 78 through 84, as well as any answers, or portions of answers, filed in response to these allegations. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken with respect to those allegations of the above-captioned cases. Each party to this Agreement will notify the Regional Director in writing what steps the Charged Parties have taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement by the Administrative Law Judge.

<b>Charged Party</b> <b>1531 Fulton Street, LLC</b>		<b>Charging Party</b> <b>Fast Food Workers' Committee</b>	
By: Name and Title	Date	By: Name and Title	Date
<i>[Signature]</i> Counsel	3-16-18		
<b>Charged Party</b> <b>McDonald's USA, LLC</b>		<b>General Counsel</b>	
By: Name and Title	Date	By: Name and Title	Date
<i>[Signature]</i> COUNSEL	3/16/18	<i>[Signature]</i> COUNSEL FOR GC	Date 19 March 2018

*[Handwritten mark]*

		Approved By:  Lauren Esposito, Administrative Law Judge	Date
--	--	--	------

A handwritten signature in black ink, consisting of a stylized first name and a last name, located in the bottom right corner of the page.

(To be printed and posted on official Board notice form)

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

**WE WILL NOT** prohibit you from engaging in union activities.

**WE WILL NOT** prohibit you from talking with coworkers about union activities.

**WE WILL NOT** threaten you with unspecified reprisals if you choose to be represented by or support a union.

**WE WILL NOT** threaten to fire you if you choose to be represented by or support a union.

**WE WILL NOT** issue you written reprimands because of your union membership or support.

**WE HAVE** removed from our files all references to the April 6, 2013 written reprimand issued to David Curry and **WE HAVE** notified him in writing that this has been done and that the written reprimand will not be used against him in any way.

**WE WILL NOT** fire you because of your union membership or support.

**WE HAVE** paid Tracee Nash, who has waived reinstatement, for the wages and other benefits he lost because we fired her in August 2013.

**WE HAVE** removed from our files all references to the discharge of Tracee Nash in August 2013 and **WE HAVE** notified her in writing that this has been done and that the discharge will not be used against her in any way.

**1531 Fulton Street, LLC**

\_\_\_\_\_  
(Employer)

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_

(Representative)

(Title)

---

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine*

*whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/ty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

26 Federal Plaza, Suite 3614  
New York, NY 10278

**Telephone: 212.264.0300**

**Hours of Operation: 8:45 a.m. to 5:15 p.m.**

---

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

**SPECIAL NOTICE TO EMPLOYEES  
PROVIDED PURSUANT TO AGREEMENT BETWEEN THE NATIONAL LABOR  
RELATIONS BOARD AND MCDONALD'S USA, LLC**

A Regional Director of the National Labor Relations Board has investigated an unfair labor practice charge alleging that [insert franchisee name] violated the National Labor Relations Act by [insert action at issue]. The Regional Director has determined that, by that conduct, [insert franchisee name] has violated the National Labor Relations Act and is not in compliance with a settlement agreement. That lack of compliance is the reason for this Notice.

McDonald's USA, LLC is party to the Settlement Agreement between the National Labor Relations Board and [insert franchisee name]. Under the terms of that Settlement Agreement, McDonald's USA, LLC is required to provide this Notice, via U.S. Mail, to support the remedies provided by that Settlement where [insert franchisee name] fails to fulfill its obligations under the Settlement Agreement.

McDonald's USA, LLC is not [insert franchisee name] and McDonald's USA, LLC's representatives did not breach the Settlement. Further, McDonald's USA, LLC's issuance of this Special Notice does not constitute an admission by it of any agency or joint employer status between McDonald's USA, LLC and any of its franchisees. Solely in its role as party to the Settlement Agreement, however, McDonald's USA, LLC disavows that [insert unlawful conduct] and advises you such action is unlawful under the National Labor Relations Act.

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**McDonald's USA, LLC**

(Franchisor)

**Dated:** \_\_\_\_\_ **By:** \_\_\_\_\_  
(Representative) (Title)

---

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).*



# **EXHIBIT D**

Certification

I hereby certify that I am fluent in English and Spanish and that the attached Spanish translation is an accurate translation of the attached English document.

Flor M. Burgos

Flormarina Burgos

Language Specialist

April 9, 2018

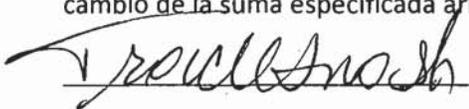
Como usted sabe, la Región ha litigado la cuestión de si usted fue despedida contra la Ley por su antiguo patrón la compañía 1531 Fulton Street, LLC (McDonald's). Recientemente, las discusiones para llegar a un acuerdo en este asunto se han intensificado.

Como se le explico, la Región ha calculado que la suma de paga retroactiva que le debe la 1531 Fulton Street/McDonald's suma un total de \$33,777. Esto incluye el interés acumulado a partir del año 2013, y cualquier suma adicional para cubrir el exceso de penalidades por impuestos. Los impuestos serán descontados de la porción de paga retroactiva de esa cantidad (\$29,747) como si fuera sueldos de pago normal.

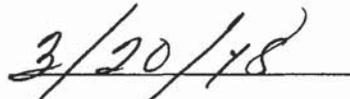
Yo le he explicado que nuestro remedio tradicionales se requeriría que la compañía 1531 Fulton Street/McDonald's le ofrezca reintegro a una puesto igual o similar al tenia. Al mismo tiempo, alguien podría renunciar al derecho que tiene de reintegro si él/ella no estuviera interesado. Yo le explique que en ocasiones las compañías algunas veces pagan dinero extra para asegurarse de obtener renuncia al reintegro al trabajo.

Después de ciertas discusiones, se me ha comunicado que la compañía 1531 Fulton Street/McDonald's está dispuesta a pagarle \$50,000. Esa suma incluye \$16,223 adicionales para asegurar que usted renuncie al reintegro, pero tenga en cuenta que se descontaran impuestos igual que si fueran sueldos del cheque normal. Tengo entendido que usted está dispuesta a renunciar a su derecho de reintegro ofrecido por la compañía 1531 Fulton Street/McDonald's a cambio de esa suma.

Si desea renunciar a su derecho de reintegro ofrecido por la 1531 Fulton Street/McDonald's por la suma especificada anteriormente, haga el favor de firmar este documento en el cual está admitiendo que usted está renunciando a su derecho de reintegro ofrecido por la 1531 Fulton Street/McDonald's a cambio de la suma especificada arriba.



Tracee Nash



Fecha

As you know, the Region has litigated the question of whether you were unlawfully terminated by your former employer, 1531 Fulton Street, LLC (McDonald's). Recently, discussions to settle this matter have intensified.

As explained, the Region has calculated that the back pay owed to you by 1531 Fulton Street/McDonald's totals \$33777. This includes interest accrued since 2013 and some additional moneys to cover excess tax liabilities. Taxes will be deducted from the back pay portion of this amount (\$29747) similar to a normal paycheck.

I have explained that our traditional remedy would require 1531 Fulton Street/McDonald's to offer reinstatement to you to the same or similar position you held. At the same time, someone may agree to waive the right to an offer of reinstatement if s/he is not interested. I explained that employers will sometimes pay additional money to secure such waivers.

After discussions, I have communicated that 1531 Fulton Street/McDonald's is willing to pay you \$50000. That total includes a \$16223 premium to secure your waiver of reinstatement, taxes to be withheld similar to a normal paycheck. My understanding is that you are willing to waive your right to a reinstatement offer from 1531 Fulton Street/McDonald's in exchange for this amount.

If you wish to waive your right to a reinstatement offer from 1531 Fulton Street/McDonald's for the amount specified above, please sign this document acknowledging that you are waiving your right to a reinstatement offer from 1531 Fulton Street/McDonald's in exchange for the premium specified above.

\_\_\_\_\_  
Tracee Nash

\_\_\_\_\_  
Date

# **EXHIBIT E**

**FACSIMILE COVER SHEET**

**National Labor Relations Board  
Division of Administrative Law Judges  
26 Federal Plaza, 17<sup>th</sup> Floor, Suite 1703  
New York, New York 10278  
Phone 212-944-2943, Fax 212-944-4904**

**From: Lauren Esposito, Administrative Law Judge**

**Date: 7/12/17**

**Pages: 5 (including 2 cover sheets)**

**Comments: Re: McDonald's  
Case No. 02-CA-93893 et. al**

**ALJ Order On Deferred Objections Submissions**

---

**Service To:**

**Jamie Rucker, Esq. & Geoffrey Dunham, Esq.  
NLRB – Region 2**

**Fax - 212.264.2450**

**Willis Goldsmith, Esq., Doreen Davis, Esq.  
Joshua M. Grossman, Esq. & Ilana Yoffe, Esq.  
Jones Day (New York)**

**Fax - 212.755.7306**

**Barry Bennett, Esq., George Luscombe, Esq.  
Dowd, Bloch, Bennett & Cervone**

**Fax - 312.372.6599**

**Robert Brody, Esq. & Katherine M. Bogard, Esq.  
Brody and Associates**

**Fax - 203.454.0569**

**Gwynne Wilcox, Esq. & Micah Wissinger, Esq.  
Levy Ratner, P.C.**

**Fax - 212.627.8182**

**Michael Ferrell, Esq., Jonathan Linus, Esq. &  
Jones Day (Chicago)**

**Fax - 312.782.8585**

**Charles P. Roberts, Esq.  
Constangy, Brooks & Smith, LLP**

**Fax - 336.283.0380**

**Steve Miller, Esq., James Hux, Esq.  
& Craig Annunziata, Esq.  
Fisher & Phillips, LLP**

**Fax - 312.346.3179**

**Jeffrey Macey, Esq.  
Macey, Swanson & Allman**

**Fax - 317.637.2369**

**Jonathan Cohen, Esq. & Eli Naduris-Weisman, Esq.  
Rothner, Segall & Greenstone**

**Fax - 626.577.0124**

**Sean Graham, Esq.  
Weinberg, Roger & Rosenfeld**

**Fax - 510.337.1023**

**Roger Crawford, Esq., Thomas O' Connell, Esq.  
& Sarah Mohammadi, Esq.  
Best & Best & Kreger, LLP**

**Fax - 951.686.3083**

**Fax - 909.944.1441**

**Michael Healey, Esq.  
Healy & Hornack, P.C**

**Fax - 412.281.9509**

**Claude Schoenberg, Esq.  
Schoenberg Law Office**

**Fax - 215.359.2741**

**Nicole Berner  
c/o James & Hoffman, P.C.,**

**Fax - 202.429.5565**

**Regina Petty, Esq.  
Fisher & Phillips, LLP**

**Fax - 858.597.9601**

**Joseph Hirsch, Esq.  
Hirsch & Hirsch**

**Fax - 610.645.9223**

**Louis P. DiLorenzo, Esq., Tyler Hendry, Esq.  
Allison Gottlieb Zullo, Esq., Patrick Melfi, Esq.  
Bond, Schoeneck & King, PLLC**

**Fax - 315.218.8100**

**646.253.2301**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**McDONALD'S USA, LLC, A JOINT EMPLOYER,  
et al.**

**Case No. 02-CA-093893, et al.**

**and**

**FAST FOOD WORKERS COMMITTEE and SERVICE  
EMPLOYEES INTERNATIONAL UNION, CTW, CLC,  
et al.**

**ORDER ON DEFERRED OBJECTIONS SUBMISSIONS**

This Order addresses the process and format for the filing of deferred objections pursuant to the parties' March 14, 2016 Stipulation modifying my March 3, 2015 Case Management Order. In their March 14, 2016 Stipulation, the parties agreed to a procedure, in lieu of the participation of certain Franchisee Respondents by videoconference, whereby Franchisee Respondents submit written objections to testimony and exhibits proffered during periods of the hearing where they did not appear on the record. Pursuant to Paragraph 6 of the March 14, 2016 Stipulation, Franchisee Respondents who did not appear on the record at the time evidence was introduced are entitled to raise such objections to "testimony or exhibits relevant to the allegations concerning [them], including nationwide or corporate joint employer evidence."

Because the March 3, 2015 Case Management Order provided for three phases of the hearing, each in a different location, Paragraph 6 of the March 14, 2016 Stipulation stated that deferred objections were to be submitted in writing within twenty business days "after issuance of the final transcript at the close of each phase of the proceeding." However, on October 12, 2016, I issued an Order severing the cases and approving the parties' Stipulation Regarding Proceedings in Severed Cases. Subsequently a dispute arose between the parties regarding the time for submission of deferred objections, and in an Order dated January 18, 2017, I directed that deferred objections be submitted 20 days after the date that the testimony concludes in the instant case, which addresses allegations against Franchisee Respondents located in New York and Philadelphia.<sup>1</sup>

---

<sup>1</sup> Some of the Franchisee Respondents in the cases severed by my October 12, 2016 Order argue that they should not be required to submit deferred objections until the severed cases in which they are Respondents proceed to trial. I rejected these arguments in my January 18, 2017 Order, finding that the

Pursuant to Paragraph 6 of the March 14, 2016 Stipulation, parties may raise objections regarding the proceedings on any hearing date where they did not appear on the record. Counsel representing more than one Franchisee Respondent shall submit one document containing the deferred objections being raised on behalf of all Franchisee Respondents they represent, and shall make deferred objections on behalf of more than one Franchisee Respondent simultaneously whenever possible. The deferred objections submissions shall consist of two parts, the first addressing standing objections and the second addressing specific objections.

### **I. Standing Objections**

Non-appearing parties may raise standing objections in their deferred objections submissions. Part I of the deferred objections submission will address any standing deferred objections that non-appearing parties wish to assert. Non-appearing parties may raise standing objections based upon the following arguments:

- A. Evidence involving any individual Franchisee Respondent is irrelevant with respect to any other Franchisee Respondent;
- B. Evidence involving any particular McDonald's USA, LLC Region is irrelevant with respect to any other Region;
- C. Hearsay statements offered for their truth as party admissions pursuant to Federal Rule of Evidence 801(d)(2) are admissible and/or pertinent only with respect to the party having made such statements; and
- D. Any out of court statement offered for its truth is inadmissible hearsay, regardless of the purpose for which the statement is offered and/or the provisions of Federal Rules of Evidence 801(d) and 803.

Non-appearing parties may assert standing objections in addition to those discussed above. Non-appearing parties shall provide a concise explanation of each of their standing deferred objections, together with specific legal support for their contentions, in Part I of the deferred objections submission.

### **II. Specific Objections**

Non-appearing parties may also raise specific deferred objections to testimony or exhibits introduced on any hearing date where they did not appear on the record. Part II

---

simultaneous submission of all deferred objections would constitute the most efficient manner for adjudicating the deferred objections process. I further found that simultaneous submission of all deferred objections would provide substantial advance notice to the Franchisee Respondents in the severed cases as to the substance of the record which could be subsequently introduced pursuant to the parties' Stipulation Regarding Proceedings in Severed Cases. I see no reason to revisit that ruling here.

---

of the deferred objections submission will address specific deferred objections. Each specific objection will begin with a statement identifying the testimony or exhibit to which the non-appearing party objects. All specific deferred objections will be grouped by transcript volume and listed in order of transcript page in the deferred objections submission. Relevant transcript material shall be identified by page and line number in each deferred objection.

**A. Specific deferred objections joining objections made on the record.**

Non-appearing parties may join in objections raised to testimony or exhibits introduced on any hearing date where they did not appear on the record. These deferred objections will be marked with the statement "**Joining Objection**" (in bold type) immediately after the objection is identified in the deferred objections submission. If no non-appearing party raises specific grounds for their objections in addition to those raised on the record during the hearing, I will make no ruling in addition to the ruling previously made on the record.

**B. Specific deferred objections to testimony and exhibits not previously made on the record.** In both of the circumstances described below, non-appearing parties shall identify the specific testimony or exhibit to which they object, state the basis for the objection in a concise manner, and provide legal support for their contentions.

1. Non-appearing parties may raise specific grounds for objections to testimony and exhibits that were not articulated on the record by parties that appeared and objected at the hearing. Objections involving additional specific grounds which were not raised on the record during the hearing will be marked with the statement "**New Grounds**" (in bold type) after the objection is identified in the deferred objections submission.

2. Non-appearing parties may assert objections to testimony and exhibits where no party that appeared on the record on the hearing date in question objected on any basis. Objections involving material to which no party appearing on the record objected on any basis will be marked with the statement "**New Objection**" (in bold type) after the objection is identified in the deferred objections submission.

Dated: July 13, 2017  
New York, New York

  
\_\_\_\_\_  
Lauren Esposito  
Administrative Law Judge

HP LaserJet 3055

# Fax Call Report



HP LASERJET FAX

Jul-12-2017 12:24PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
771	7/12/2017	12:23:06PM	Receive	NLRB	1:00	5	OK

07/12/2017 12:40:18 (Eastern Time) NLRB Fax-on-Demand from dana.brown@nrb.gov for NLRB

**FACSIMILE COVER SHEET**

National Labor Relations Board  
Division of Administrative Law Judges  
26 Federal Plaza, 17<sup>th</sup> Floor, Suite 1703  
New York, New York 10278  
Phone 212-944-2943, Fax 212-944-4904

**From:** Lauren Esposito, Administrative Law Judge

**Date:** 7/12/17

**Pages:** 5 (including 2 cover sheets)

**Comments:** Re: McDonald's  
Case No. 02-CA-93893 et. al

ALJ Order On Deferred Objections Submissions

**Service To:**

Jamie Rucker, Esq. & Geoffrey Dunham, Esq.  
NLRB - Region 2 Fax - 212.264.2450

Willis Goldsmith, Esq., Doreen Davis, Esq.  
Joshua M. Grossman, Esq. & Ilana Yoffe, Esq.  
Jones Day (New York) Fax - 212.755.7306

Barry Bennett, Esq., George Luscombe, Esq.  
Dowd, Bloch, Bennett & Cervone Fax - 312.372.6599

Robert Brody, Esq. & Katherine M. Bogard, Esq.  
Brody and Associates Fax - 203.454.0569

Gwynne Wilcox, Esq. & Micah Wissinger, Esq.  
Levy Ratner, P.C. Fax - 212.627.8182

Michael Ferrell, Esq., Jonathan Linus, Esq. &  
Jones Day (Chicago) Fax - 312.782.8585

Charles P. Roberts, Esq.  
Constangy, Brooks & Smith, LLP Fax - 336.283.0380

# **EXHIBIT F**

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 2

In the Matter of:

McDonalds U.S.A, LLC, A Joint Employer.	Case No.	02-CA-093893
		04-CA-125517
		13-CA-106490
and		20-CA-132103
		25-CA-114819
Fast Food Workers Committee,		31-CA-127447
and		
Service Employees International Union, CTW, CLC.		

---

---

Place: New York, New York

Dates: April 5, 2018

Pages: 21231 through 21330

Volume: 155

OFFICIAL REPORTERS  
eScribers, LLC  
E-Reporting and E-Transcription  
7227 North 16th Street, Suite 207  
Phoenix, AZ 85020  
(602) 263-0885



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2

In the Matter of:

MCDONALD'S U.S.A, LLC , A JOINT  
EMPLOYER,

and

FAST FOOD WORKERS COMMITTEE,

and

SERVICE EMPLOYEES INTERNATIONAL  
UNION, CTW, CLC.

Case No. 02-CA-093893  
04-CA-125517  
13-CA-106490  
20-CA-132103  
25-CA-114819  
31-CA-127447

The above-entitled matter came on for hearing, pursuant to notice, before **LAUREN ESPOSITO**, Administrative Law Judge, at the National Labor Relations Board, Region 2, 26 Federal Plaza, Room 3614, New York, NY 10278-0104, on **Thursday, April 5, 2018, 10:02 a.m.**



**A P P E A R A N C E S****On behalf of the General Counsel:****JAMIE RUCKER, ESQ.****ALEJANDRO ORTIZ, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 2  
26 Federal Plaza, Suite 3614  
New York, NY 10278-0104  
Tel. 212-264-0300

**On behalf of the Charging Party:****MICAH WISSINGER, ESQ.**

LEVY RATNER, P.C.  
80 Eighth Avenue, 8th Floor  
New York, NY 10011  
Tel. 212-627-8100

**KATHY KRIEGER, ESQ.**

JAMES & HOFFMAN, P.C.  
1130 Connecticut Avenue, NW, Suite 950  
Washington, District of Columbia 20036  
Tel. 202-496-0500

**On Behalf of The Philadelphia Franchises / Jo-Dan MadAlisse:****JOSEPH A. HIRSCH, ESQ.**

HIRSCH & HIRSCH  
One Belmont Avenue, 8th Floor, Suite 8001  
Bala Cynwyd, PA 19004

**On Behalf Of The Joint Employer / McDonald's U.S.A, LLC****WILLIS GOLDSMITH, ESQ.****ILANA YOFFE, ESQ.**

JONES DAY  
250 Vesey Street  
New York, NY 10281

**JONATHAN M. LINAS, ESQ.****MIKE FERRELL, ESQ.**

JONES DAY  
77 West Wacker Drive, Suite 3500  
Chicago, Il 60601-1692  
312-269-4245

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**A P P E A R A N C E S (Continued)**

**On Behalf Of The Joint Employer / McDonald's U.S.A,LLC**

**E.MICHAEL ROSSMAN, ESQ.**  
JONES DAY  
325 John H. McConnell Blvd, Suite 600  
Columbus, OH 43216-2673  
Tel. 614-469-3939

**On Behalf Of New York Franchisees**

**ROBERT BRODY, ESQ.**  
**KATHERINE BOGARD, ESQ.**  
BRODY AND ASSOCIATES, LLC  
120 Post Road,  
Westport, CT 06880  
Tel. 203-454-0560



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
<b>General Counsel:</b>		
GC Settlement-1 through 30	21326	
GC Settlement-1 through 3	21326	



1 opposition by one or more parties. The question then is  
2 whether the settlements are reasonable.

3 Under UPMC, the Board analyzes reasonableness of all  
4 settlements under the four factors identified in Independent  
5 Stave 287 NLRB 740 decided in 1987. The first factor is  
6 whether the Charging Parties, Respondents, and discriminatees  
7 agree to be bound in the General Counsel's position. While the  
8 Charging Parties here oppose the settlements reached, the  
9 Respondents have agreed to be bound.

10 Settlement discussions over the last two months resulted  
11 in settlement agreements between all Respondents, including  
12 McDonald's USA and the General Counsel to settle the 30 cases  
13 making up the original consolidated case. As to  
14 discriminatees, the three were -- the three who were, in the  
15 General Counsel's view, unlawfully fired, agreed to written  
16 waivers of reinstatement, which we'll offer into evidence  
17 today.

18 To the General Counsel's knowledge, no other  
19 Discriminatees objected to these agreements, and no others are  
20 entitled to the remedy of reinstatement unless no other waivers  
21 were needed. As to the General Counsel's position, he supports  
22 the settlements and moves for you to approve them. The General  
23 Counsel maintains that doing so advances the Act's policy of  
24 promoting prompt resolution of unfair labor practices while  
25 conserving agency resources.

1           The settlements also vindicate Worker's Section 7 rights  
2 by providing make-whole remedies for the employees who were, in  
3 the General Counsel's view, unlawfully discriminated against  
4 because of their Union activity and by requiring the  
5 Respondents here, including if necessary, McDonald's USA to  
6 inform employees of their Section 7 rights while disavowing  
7 violations of those rights.

8           Factor 3 of Independent Stave is whether there has been  
9 any fraud, coercion, or duress by any parties in reaching a  
10 settlement. There's no evidence for this.

11           Factor number 4, whether the Respondents have engaged in  
12 history of violations or breach settlements resolving unfair  
13 labor practices. There's no history of breached settlement  
14 agreements by Respondents here. Indeed the opposite is true,  
15 as I'll discuss in a moment. There's no history of proven or  
16 admitted violations of the National Labor Relations Act. The  
17 General Counsel undertook a review of its internal database of  
18 cases recently, and found four other cases that are not in this  
19 litigation that involve franchisee owners with stores that are  
20 involved in this case. Those four others, however, all involve  
21 different restaurant locations.

22           One was owner/operator Nick Karavites, involving a store  
23 not involved in this case. That case was resolved by an  
24 informal settlement agreement where there was a non-admissions  
25 clause, and the case was April 3rd, 2018, just two days ago,