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## BLOGS

### Class Actions

# Class of McDonald's Workers Certified in California

A federal judge in California last week certified for class action treatment a case brought by a group of workers at five franchised McDonald's restaurants. *Ochoa v. McDonald's Corp.*, No. 3:14-cv-02098 (N.D. Cal. July 7, 2016). Because the franchisee in this closely-followed case has settled with the plaintiffs, the class was certified to pursue claims against only McDonald's Corp. and McDonald's USA, LLC, which remain in the case on the theory of "ostensible agency." As reported in Issue 198 of The GPMemorandum, summary judgment already has been denied on ostensible agency, although a direct "joint employer" theory was dismissed on summary judgment.

The court certified the class of "crew members" at the franchised outlets to continue their wage-related claims against the franchisor and attempt to prove they reasonably believed their franchisee-employer was an "agent" of McDonald's. The franchisor had argued it is impossible to determine this ostensible agency issue on a classwide basis. Citing non-franchise cases in which classes had been certified to pursue ostensible agency claims, however, the court agreed to allow the plaintiffs to proceed collectively on claims for miscalculated wages, overtime, maintenance of uniforms, and related derivative claims. The court held that the plaintiffs had "tendered substantial and largely undisputed evidence that the putative class was exposed to conduct in common that would make proof of ostensible agency practical and fair on a class basis." As examples of this evidence, the court cited declarations stating the plaintiffs were "required to wear McDonald's uniforms, packaged food in McDonald's boxes, received paystubs, orientation materials, shift schedules and time punch reports all marked with McDonald's name and logo, and in most cases applied for a job through a McDonald's website." The court noted that whether the plaintiffs ultimately will prevail based on this proof is the question for trial, rather than on class certification.

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