

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WILLIAM DURLING, MICHAEL MORRIS, :  
JAMES MORTON, JR., RICHARD SOBOL, :  
MUHAMMAD SULTAN and TOM WOLFF for :  
themselves and all others similarly situated, :

Case No. 7:16 Civ. 03592

Plaintiff, :

Class/Collective Action

- against -

PAPA JOHN’S INTERNATIONAL, INC., :

Defendant. :

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**~~PROPOSED~~ ORDER GRANTING PRELIMINARY APPROVAL OF  
CLASS ACTION AND COLLECTIVE ACTION SETTLEMENT**

Plaintiffs William Durling, Michael Morris, James Morton, Jr., Richard Sobol, Muhammad Sultan, and Tom Wolff (collectively, “Plaintiffs”), individually and on behalf of others allegedly similarly situated, and Defendant Papa John’s International, Inc., (“Defendant”) (together with Plaintiffs “the Parties”), have moved for preliminary approval of a proposed class action and collective action settlement. After review of the Parties’ Class Action and Collective Action Settlement Agreement, together with the exhibits thereto, as well as Plaintiffs’ Unopposed Motion for Preliminary Approval and supporting documents, and after hearing arguments of counsel for the Parties, the Court finds and orders as follows:

1. The Court finds on a preliminary basis that the settlement (“Settlement”) memorialized in the “Class Action and Collective Action Settlement Agreement” (“Settlement Agreement”) is fair, reasonable, and adequate and resolves a *bona fide* dispute between, on the

one hand, the Opt-In Plaintiffs and Class Members, and on the other hand, Defendant. The Settlement is the result of arm's-length negotiations between experienced attorneys who are familiar with class action and collective action litigation in general and with the legal and factual issues of this case and its companion case *Hubbard, et al. v. Papa John's International, Inc.*, No. 19-CV-00022 (W.D. Ky.), in particular.

2. The Court has considered the pleadings and arguments made by the Plaintiffs in support of the motion for preliminary approval and finds that the proposed Rule 23 Settlement Class described in the Settlement Agreement is proper and should be provisionally certified for settlement purposes. The Court further finds that the Settlement was entered into at arm's length by highly experienced counsel providing excellent representation. Solely for the purposes of the proposed Settlement, the following Rule 23 Settlement Class is hereby provisionally certified for purposes of settlement only pursuant to Rule 23 of the Federal Rules of Civil Procedure, as follows: individuals who were employed as a delivery driver at a Papa John's corporate or joint venture restaurant in: (1) Kentucky at any time between February 12, 2014 and October 3, 2022; (2) Colorado at any time between February 12, 2016 and October 3, 2022; (3) Missouri at any time between February 12, 2014 and October 3, 2022; (4) Florida at any time between February 12, 2014 and October 3, 2022; (5) Maryland at any time between February 12, 2016 and October 3, 2022; (6) Minnesota at any time between February 12, 2013 and October 3, 2022; and (7) Illinois at any time between February 12, 2009 and October 3, 2022.

3. Solely for the purposes of settlement, the Court finds that: (1) the Rule 23 Settlement Class is so numerous that joinder is impracticable; (2) questions of law and fact are common to the Rule 23 Settlement Class; (3) the claims of the Class Representatives are typical of the claims of the Rule 23 Settlement Class; and (4) the Class Representatives will fairly and

adequately protect the interests of the Rule 23 Settlement Class. Further, for purposes of settlement only, the Court finds that the proposed Rule 23 Settlement Class meets the predominance and superiority requirements of Rule 23(b)(3) of the Federal Rules of Civil Procedure. Certification of the Rule 23 Settlement Class for settlement purposes is the best means of protecting the interests of all of the Class Members. Because Defendant has consented to jurisdiction for settlement purposes only, the Court has jurisdiction over all settled claims.

4. The Court further finds that notice of the Settlement Agreement to Opt-In Plaintiffs is justified because the Parties have shown that the Court will likely be able to approve the Settlement Agreement under 29 U.S.C. § 216(b) and will likely be able to show the appropriateness of final certification of the Collective Action for purposes of settlement.

5. The Court finds that it likely will be able to approve the Settlement Agreement under 29 U.S.C. § 216(b) because the Settlement Agreement is the result of arm's-length negotiations between highly experienced and able attorneys who are familiar with FLSA collective action litigation in general and with the legal and factual issues of this case and who have adequately represented the proposed membership of the collective action.

6. The Court also finds that the Settlement Agreement provides adequate relief to Opt-In Plaintiffs, considering the costs, risks, and delay associated with trial and appeal, as well as the effectiveness of the proposed distribution of Settlement Payments to Claimants.

7. Solely for the purposes of the proposed Settlement, the Court preliminarily approves Jeremiah Frei-Pearson and Andrew C. White of Finkelstein, Blankenship, Frei-Pearson & Garber LLP and Mark Potashnick of Weinhaus & Potashnick as Class Counsel on behalf of the Class Members and Opt-In Plaintiffs.

8. The Court also hereby preliminarily approves Amanda Hubbard, Joshua Boyland, Edgar Bustamante, Milton Dearry, Aaron Nelson, Jacob Pontow, Renard Webb as Class Representatives, and Richard Sobol and Muhammed Sultan as Collective Action Representatives.

9. The Court appoints RG/2 Claims Administration as the Settlement Claims Administrator.

10. The Court approves, as to form and content, (i) the proposed Notice Plan, which includes three distinct Notices and a Claim Form, including the Notice of Class Action Settlement, Notice to Opt-in Plaintiffs, and Notice of Class Action and Collective Action Settlement; and (ii) the General Release and Waiver attached to the Settlement Agreement as Exhibits. The Court finds that the procedures for notifying the Class Members and Opt-In Plaintiffs about the Settlement as described in the Settlement Agreement provide the best notice practicable under the circumstances and therefore meet the requirements of due process, and therefore directs distribution of the Notice Packet to Class Members and Opt-In Plaintiffs as set forth in the Settlement Agreement.

11. A hearing, for purposes of determining whether the Settlement should be finally Approved for purposes of Rule 23, shall be held before this Court on May 23, 2023, at 10:30 a.m., in Courtroom 621, U.S. District Court for the Southern District of New York, The Hon. Charles L. Briant Jr. Federal Building and United States Courthouse, 300 Quarropas St., White Plains, NY, 10601-4150. At the hearing, the Court will hear arguments concerning whether the proposed Settlement of the Class Action and Collective Action Litigation on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court. The Court will also consider Class Counsel's request for an award of

attorneys' fees and costs and for Service Payments to be made to the Named Plaintiffs and Service Award Recipients.

12. No later than thirty (30) calendar days after the Court enters the Preliminary Approval Order, Defendant shall transmit the payment required by the Settlement Agreement by wire transfer (or other appropriate means) to the Qualified Settlement Fund ("QSF"). If the Court decides not to enter a Final Approval Order and Judgment for any reason, then the entire amount in the Settlement Account, including any interest earned on that amount, will be returned to Defendant, less any Administration Costs expended up to that point. No other funds shall be added to or comingled with the QSF except as provided for by the Settlement Agreement. In no event shall the Claims Administrator withdraw, transfer, pledge, impair, or otherwise make use of the funds in the QSF except as expressly provided in the Settlement Agreement.

13. With respect to the QSF, the Claims Administrator shall comply with all of the duties and requirements set forth in the Settlement Agreement and all applicable federal, state, and local law.

14. The QSF, including all interest or other income generated therein, shall be in *custodia legis* and immune from attachment, execution, assignment, hypothecation, transfer, or similar process by any third party, including any Class Member.

15. Pending the Court's decision on final approval of the Settlement and entry of the Court's Final Approval Order and Judgment, the Named Plaintiffs, Opt-in Plaintiffs, and all Class Members who do not timely submit valid Requests for Exclusion, and anyone acting on any of their behalf, shall be barred and enjoined from: (a) further litigation in this case; and (b) filing or taking any action directly or indirectly to commence, prosecute, pursue, or participate on an individual or class action or collective action basis any action, claim, or proceeding against

Defendant in any forum in which any of the claims released in the Settlement Agreement are asserted, or which in any way would prevent any such claims from being extinguished.

16. As of the Effective Date, each and every claim released in the Settlement Agreement by each of the Named Plaintiffs, Opt-in Plaintiffs, and Class Members who have not timely submitted valid Requests for Exclusion shall be deemed to be conclusively and forever released as against Defendant. As of the Effective Date, all Opt-In Plaintiffs, and Class Members who have not timely submitted valid Requests for Exclusion, are hereby forever barred and enjoined from prosecuting the claims released in the Settlement Agreement against Defendant.

17. All Class Members who do not opt out of the Settlement by submitting a timely Request for Exclusion shall be bound by all determinations and judgments in the Class Action and Collective Action Litigation concerning the Settlement, whether favorable or unfavorable to the Settlement Class or Class Member. Furthermore, all Opt-In Plaintiffs shall be bound by all determinations and judgments in the Class Action and Collective Action Litigation concerning the Settlement, whether favorable or unfavorable to the Settlement Class or Class Member.

18. To receive a Settlement Payment under the Settlement, Class Members and Opt-In Plaintiffs must complete, execute, and mail or electronically submit a Claim Form to the Claims Administrator no later than the Claim Deadline, (the "Claim Deadline") as specified in the Settlement Agreement. Any Class Member or Opt-In Plaintiff who does not submit a timely, complete, and fully executed Claim Form may not receive a Settlement Payment.

19. All Class Members or Opt-In Plaintiffs objecting to the terms of the Settlement must do so in writing no later than the Claim Deadline and subject to the terms and conditions set forth in the Settlement Agreement. The written objection must be filed with the Clerk of the Court and served upon counsel for both Parties on or before this date.

20. Any Class Member who wishes to be excluded (“Opt Out”) from the Settlement Class and not participate in the proposed Settlement must complete and submit a Request for Exclusion to the Claims Administrator no later than the Claim Deadline, as specified in the Settlement Agreement.

21. Any Class Member or Opt-In Plaintiff may enter an appearance in the Class Action and Collective Action Litigation, at his or her own expense, individually or through counsel of his or her own choice. Any Class Member who does not enter an appearance or Opt-Out of the Settlement Class will be represented by Class Counsel.

22. Any Class Member or Opt-In Plaintiff may appear at the Final Approval Hearing and show cause, if he or she has any, why the proposed Settlement of the Class Action and Collective Action Litigation should or should not be approved as fair, reasonable, and adequate, or why a judgment should or should not be entered thereon; provided, however, that (i) no Class Member or Opt-In Plaintiff or any other person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Judgment to be entered thereon approving the same, unless that Class Member or Opt-In Plaintiff has, no later than the Claim Deadline, filed with the Clerk of the Court and served upon counsel for both Parties written objections explaining the basis of the objection; and (ii) no Class Member or Opt-In Plaintiff or any other person shall be heard or entitled to comment in favor of the proposed Settlement unless that Class Member or Opt-In Plaintiff has, no later than the seven (7) days prior to the Final Approval Hearing, filed with the Clerk of the Court and served upon counsel for both Parties written notice of his or her comments and/or intent to appear and comment in favor of the Settlement at the Final Approval Hearing. All timely filed and served objections shall be considered and ruled upon by the Court at the Final Approval Hearing. Any Class Member or Opt-

In Plaintiff who does not timely file and serve his or her objection in the manner provided in the Settlement Agreement shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as incorporated in the Settlement Agreement.

13. In the event that the Effective Date (as defined in the Settlement Agreement) does not occur, the Settlement and the Settlement Agreement shall be deemed null and void and shall have no effect whatsoever.

20. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

21. To the extent any prior order of this Court related to this Class Action and Collective Action Litigation is inconsistent with any of the terms or provisions contemplated by this Order or the Settlement Agreement, the terms in this Order and the Settlement Agreement shall govern, and such prior orders shall be hereby modified so as to allow the terms, provisions, and activities contemplated by the Settlement Agreement until such time as the Settlement is finally approved or deemed null and void.

22. To effectuate the Settlement, and for purposes of the Settlement only, Plaintiffs are granted leave to file an amended complaint for the sole purpose of adding the Named Plaintiffs from *Hubbard, et al. v. Papa John's International Inc.*, No. 19-CV-00022 (W.D. Ky.) (“Hubbard Named Plaintiffs”) as parties to this case, as well as the state law Rule 23 class claims asserted in *Hubbard, et al. v. Papa John's International Inc.*, No. 19-CV-00022 (W.D. Ky.). For settlement purposes only, Defendant agrees to waive any personal jurisdiction challenge related to the amendment described in this Paragraph 22. In the event that the Effective Date (as explained in



the Settlement Agreement) does not occur, the Parties agree that the *Hubbard* Named Plaintiffs and their Rule 23 class claims shall be dismissed from his action.

23. The Court therefore preliminarily approves the proposed Settlement.

IT IS SO ORDERED on this 19<sup>th</sup> day of December, 2022



United States District Judge