UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

KENNETH MANNING, et al., Plaintiffs, v. MCDONALD'S USA, LLC, a Delaware limited liability company, and MCDONALD'S CORPORATION, a Delaware corporation, Defendants.	Case No. 1:23-cv-00210 Hon. Steven C. Seeger

MCDONALD'S USA, LLC AND MCDONALD'S CORPORATION'S MEMORANDUM IN SUPPORT OF RULE 12(B)(6) MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

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Defendants McDonald's USA, LLC and McDonald's Corporation (collectively "Defendants" or "McDonald's") hereby submit this memorandum in support of Defendant's motion to dismiss Plaintiffs' Second Amended Complaint ("SAC") pursuant to Rule 12(b)(6).

INTRODUCTION

Plaintiffs have now had three opportunities to state an actionable claim against McDonald's, yet, as with their previously dismissed complaint, they have failed to do so. Despite this Court's explicit admonition that if Plaintiffs were to re-file their claims they should not rely upon assertions of historical discrimination, should drop plainly time-barred claims, and must do more than simply allege adverse actions sprinkled with conclusory allegations of race, the SAC does exactly that. In short, the SAC confirms what has been evident since this action was initiated in 2020: Plaintiffs—independent business persons who owned and operated McDonald's restaurants at varying time periods throughout the last several decades, in different locations across the country, and each having very different circumstances and experiences—were not the victims of a decades-long, nationwide conspiracy by McDonald's to discriminate against all of its Black franchisees, and this third attempt to force substance out of a baseless suit must be dismissed with prejudice.

McDonald's is one of the largest and most successful franchise systems in the world. With 95% of its restaurants franchised, McDonald's success is inexorably linked to the success of its franchisees. McDonald's has a long history of providing opportunity to diverse communities, employees, suppliers, and franchisees in the United States and across the globe. Its commitment to diversity, equity, and inclusion in its business dealings is one of the core values that define the company and how it runs its business. Indeed, Plaintiffs' claims are wholly inconsistent with McDonald's commitment to DEI and its legacy of opportunity for diverse franchisees, including

Black franchisees such as the Plaintiffs here, and run counter to McDonald's vested interest in the success of its franchisees. Nothing in the SAC addresses these fundamental issues.

First, Plaintiffs' discrimination claims again rely upon vague and conclusory allegations that do not answer the foundational questions that this Court previously stated were necessary to state such a claim—namely, what, when, and who. Nor do Plaintiffs plausibly establish that race was the "but for" cause of the injuries of which they complain. And to the extent that Plaintiffs seek to proceed on a "pattern and practice" theory, they are foreclosed from doing so as private plaintiffs with individual claims. Additionally, despite this Court's clear directive to address the serious statute of limitations issues with their claims, many of the Plaintiffs' Section 1981 and Section 1982 claims are definitively time-barred.

Second, the breach of contract claim in the SAC is identical to the one previously dismissed by the Court, and it still fails as a matter of law. Specifically, the SAC fails to identify any contractual obligations of McDonald's that were breached and relies upon conclusory allegations insufficient to state a viable breach of contract claim. The breach of contract claim for many of the Plaintiffs also suffer from statute of limitations issues.

Third, the fraudulent misrepresentation claim is nothing more than an attempt to revive the previously dismissed fraudulent omission claim. But the SAC does not address either of fatal deficiencies identified by the Court in its dismissal order, as it does not plead the fraud with the specificity required by Rule 9(b), and the allegations remain expressly disclaimed by the terms of each Plaintiff's contracts with McDonald's. Along with these deficiencies, the claim is barred by the applicable five-year statute of limitations.

Fourth, Plaintiffs' newly concocted tortious interference claim fares no better than the other claims. The SAC fails to allege two essential elements: namely, that McDonald's interfered

with any contract or that it did so unjustifiably. This claim also suffers from a timeliness issue, as 35 out of the 48 Plaintiffs exited the McDonald's system before the start of the applicable five-year limitations period, and the 13 other Plaintiffs left within two years of it, limiting their claims to the alleged conduct that occurred during that short period.

Fifth, the unjust enrichment claim added to the SAC is dead on arrival. It is black-letter law that no such claim can be maintained where the conduct at issue is the subject of an express contract between the parties. And just as with the tortious interference claim, it is subject to a five-year limitations period, proving fatal for 35 of the Plaintiffs, and a significant limitation for the remaining 13.

Finally, Plaintiffs' newly pled claims should be dismissed for the independent reason that they were not previously part of this case and exceed the leave to amend contemplated by the Court in its dismissal of the prior complaint.

For all of the reasons discussed herein, Plaintiffs' SAC should be dismissed with prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

I. MCDONALD'S FRANCHISING MODEL.

McDonald's maintains a large franchise system (the "System") designed for the ongoing development, operation, and maintenance of McDonald's restaurants all over the country, with an emphasis on uniform and quality food products, prompt and courteous service, and a clean, wholesome atmosphere attractive to children and families. SAC ¶ 75;[1] *see also* Dkt. 30[2] at Ex. B

[1] Plaintiffs' allegations are taken as true only for purposes of this Motion and only to the extent that they do not contradict materials attached to the pleaderings or otherwise incorporated by reference. *See* Fed. R. Civ. P. 10(c); *Geinosky v. City of Chi.*, 675 F.3d 743, 745 n. 1 (7th Cir. 2012); *Bogie v. Rosenberg*, 705 F.3d 603, 609 (7th Cir. 2013).

[2] Unless otherwise noted, references to docket entries as used herein are to the action initially filed by Plaintiffs, *Crawford, et al. v. McDonald's USA, LLC, et al.*, Case No. 1:20-cv-05132.

(Franchise Disclosure Document (the "FDD")) at 1.[3] In 2019, there were approximately 14,000 McDonald's restaurants in the United States, 95% of which were owned and operated by franchisees. SAC ¶ 65; FDD at 39.

Most franchisees enter the standard Franchise Agreement, which is specific to a particular restaurant and for a limited period (typically 20 years). SAC ¶¶ 67, 73, 78; *see also id.* Ex. A and Dkt. 30 at Ex. A-1 (standard Franchise Agreement ("FA")) ¶ 2; FDD at 34. Defendant McDonald's USA, LLC, a wholly owned subsidiary of Defendant McDonald's Corporation, is the franchisor of McDonald's U.S. based restaurants. SAC ¶ 64; FDD at 1, 30; FA ¶ 1(b).

McDonald's provides prospective franchisees with a copy of the FDD before they purchase a restaurant.[4] Among other things, the FDD notes that "[b]uying a franchise is a complex investment," and advises prospective franchisees to consult with counsel or an accountant before investing. FDD at 1. To assist with their due diligence, prospective franchisees are also provided with contact information for various franchisee organizations (including the National Black McDonald's Operators Association, or "NBMOA") and franchisees who left the System in the prior fiscal year. *Id.* at 49; FDD Ex. R. The FDD further discloses that:

- The award of a franchise is not guaranteed, and if an initial franchise is granted, the term of that franchise is limited, with "no right to renew or extend." FDD at 15, 23, 29, 34; FDD Ex. J. (the "Preliminary Agreement") at ¶¶ 2, 3, 6; FDD Ex. K (the "Rewrite Policy") at 1; FA ¶ 28(a).

- The grant of one franchise does not guarantee the award of additional franchises. FA ¶ 28(h).

[3] Plaintiffs attached the FDD to their prior operative complaint, Dkt. 30, and the Court considered it in connection with the prior motion to dismiss; therefore, it is properly considered in connection with this motion. Fed. R. Civ. P. 10(c).

[4] The FDD is provided pursuant to the FTC's Franchise Rule, 16 CFR Parts 436 and 437, which requires disclosure of certain information, including fees, the franchisee's obligations, financing, financial performance, financial statements, and contracts. *See, e.g.*, 16 CFR § 436.5.

- A franchisee is under no obligation to accept any franchise offered to it. Preliminary Agreement ¶ 13.
- Franchisees must operate in compliance with the entire McDonald's System, including through making renovations and remodeling. FDD at 23; FA ¶¶ 12(a), 12(d), 12(e).
- Franchisees must pay fees to McDonald's for the right to operate the franchise, including monthly rent. FDD at 11, 19.
- McDonald's neither provides guarantees of financial success to franchisees nor makes representations about individual restaurant performance. FDD at 37, 39; FA ¶ 28(c).
- Transfers of franchises require McDonald's approval, and it has a right of first refusal. FDD at 34–35; FA ¶¶ 15(c), 15(d).
- Franchisees have no right to terminate the franchise. FDD at 34.

The FDD also includes copies of "[a]ll agreements used by [McDonald's] regarding the offering of a franchise," FDD at 50, including the FA, FDD Ex. B, the Operator's Lease that is incorporated into the FA (the "Lease"), FDD Ex. G, the assignment agreement used when a franchise is transferred from one franchisee to another (the "Assignment"), FDD Ex. I, the Preliminary Agreement signed by prospective franchisees, and the Rewrite Policy (today called the New Term policy), which is McDonald's policy for the award of new franchises. *See also* SAC ¶ 17.

Most new McDonald's franchisees enter the McDonald's System through the purchase of an existing restaurant. Dkt. 39-1 at Page ID #1282.[5] Upon completion of McDonald's training program for new franchisees, interested buyers are provided with a list of available restaurants, and negotiate the terms of the purchase directly with the current owner of the restaurant. *Id.* The purchase price for a given location varies and is dependent upon (among other things) sales volume, profitability, reinvestment or improvement needs, and location. *Id.* Franchisees must pay

[5] Plaintiffs' prior complaint referenced materials for prospective franchisees from the McDonald's website (https://www.mcdonalds.com/us/en-us/about-us/franchising.html), including *Your Path to Becoming a McDonald's Franchisee* (*see* Dkt. 39-1), thereby incorporating them by reference into the pleadings in this matter. Fed. R. Civ. P. 10(c).

a minimum of 25% cash as a down payment, and may finance the remaining balance for a period of no more than seven years. SAC ¶¶ 25, 89.

II. THE FORMER FRANCHISEE PLAINTIFFS.

The *Manning* Plaintiffs are a group of former McDonald's franchisees. *See generally id*. ¶¶ 129, 165, 179, 201, 214, 225, 234, 247, 253, 262, 297, 307, 333, 339, 356, 384, 400, 413, 427, 441, 467, 485, 505, 528, 535, 549, 581, 605, 617, 657, 677, 704, 710, 718, 726, 734, 743, 763. Their restaurants were located in communities across the United States, they entered and exited the McDonald's System at varying times, and vastly different circumstances and facts are applicable to each of them. *See id.*; *see also* Ex. 1. For example, Sherman Claypool, the first *Manning* Plaintiff to become a franchisee, joined in 1971, remained in the McDonald's System for forty-three years, and operated restaurants in Milwaukee, Wisconsin, SAC ¶¶ 253–54, while the last, Plaintiff Yves Dominque, joined in 2008, and operated for less than ten years in Atlanta, Georgia. *Id.* ¶¶ 297, 300, 306; *see generally* Exs. 1, 2.[6]

III. PROCEDURAL HISTORY.

Plaintiffs filed the instant action on August 31, 2020, claiming intentional racial discrimination in violation of 42 U.S.C. § 1981 (Count I), breach of contract (Count II), fraudulent inducement and omission (Count III), and punitive damages (Count IV). Dkt. 1. After McDonald's first motion to dismiss, Dkts. 24, 25, Plaintiffs filed an Amended Complaint, Dkt. 30, dropping

[6] If any of Plaintiffs' claims survive Defendants' Motion, Defendants plan to move to sever the claims of each individual Plaintiff pursuant to Rules 20(a) and 21 of the Federal Rules of Civil Procedure because, as set forth in the SAC, Plaintiffs' claims involve numerous independently owned restaurants operating in different states, during different time periods, implicating separate decision makers, and with distinct injury and damages claims. *See, e.g.*, *McDowell v. Morgan Stanley & Co.*, 645 F. Supp. 2d 690, 695 (N.D. Ill. 2009) (severing plaintiffs' claims because "each individual Plaintiff was subject to different decisions, at different times, in different locations, and, presumably, in different contexts"); *Byers v. Ill. State Police*, No. 99 C 8015, 2000 WL 1808558, at *5 (N.D. Ill. Dec. 6, 2000) ("[P]laintiffs' claims involved individualized circumstances and did not constitute one logical transaction or occurrence for purposes of Rule 20(a).")

three Plaintiffs and adding twenty-eight new Plaintiffs.[7] *See* Dkt. 28-1 (redline). The Amended Complaint asserted claims for violation of § 1981 (Count I), breach of contract (Count II), and fraudulent omission (Count III). Dkt. 30. After Defendants moved to dismiss the Amended Complaint, the Court stayed all discovery in this matter, noting that it "would be burdensome and expensive, so the sufficiency of the complaint must come first." Dkt. 45. On September 28, 2022, the Court granted McDonald's motion to dismiss the Amended Complaint, and while Plaintiffs were granted leave to file an amended pleading, the Court noted that "Plaintiffs appear to be time-barred, at least in part, in raising their claims." Sept. 28, 2022 Tr. of Proceedings, Dkt. 68 ("MTD Order") at 22:19–22.

On November 11, 2022, certain of the Plaintiffs named in the Amended Complaint filed a motion for substitution of counsel. Dkt. 71. Thereafter, the Plaintiffs filed two separate Second Amended Complaints, Dkts. 78, 79, one for the 31 Plaintiffs represented by the Ferraro Law Firm (the "*King* Plaintiffs") in Dkt. 79, and one for the 48 Plaintiffs represented by the Loevy Firm (the "*Manning* Plaintiffs") in Dkt. 78. The Court subsequently severed the two groups, keeping the *King* Plaintiffs under the original case number, and assigning the *Manning* Plaintiffs to case number 23-cv-00210. As both sets of Plaintiffs have failed to state a claim upon which relief can be granted, McDonald's is moving to dismiss the Second Amended Complaints pursuant to Rule 12(b)(6) in both the *King* and the *Manning* matters.

[7] Prior to the filing of the original Complaint, the Parties entered into a tolling agreement effective as of June 8, 2020 for those Plaintiffs identified in the initial Complaint. Defendants did not, however, waive any defenses, including statute of limitations defenses, that existed as of that date, nor did Defendants agree to extend the tolling agreement to any subsequently identified Plaintiffs. Thus, the Plaintiffs added in the Amended Complaint or SAC are not subject to the terms of the tolling agreement.

LEGAL STANDARD

Although the Court must accept as true all well-pleaded allegations on a motion to dismiss, it need not credit conclusory assertions or legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007) (quoting *Twombly*, 550 U.S. at 555). The court is also "free to consider any facts set forth in the complaint that undermine the plaintiff's claim," including "exhibits attached to the complaint, Fed. R. Civ. P. 10(c), or documents referenced in the pleading if they are central to the claim." *Boige v. Rosenberg*, 705 F.3d 603, 609 (7th Cir. 2013) (citations omitted). Dismissal is appropriate where the complaint fails to "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also* MTD Order at 11:2–6 ("A claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged.").

Where, as here, the complexity of the matter indicates that "discovery is likely to be more than usually costly," the Court must take particular care to ensure that a plaintiff has provided "as much factual detail and argument as may be required to show that the plaintiff has a plausible claim." *Limestone Development Corp. v. Village of Lemont, Ill.*, 520 F.3d 797, 803–04 (7th Cir. 2008); *see also McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 887 (7th Cir. 2012) ("[T]he required level of factual specificity rises with the complexity of the claim."); *Iqbal*, 556 U.S. at 678–79 ("[A] plaintiff armed with nothing more than conclusions," cannot "unlock the doors of discovery."); Dkt. 45 (recognizing the potential for "burdensome and expensive" discovery given Plaintiffs' allegations, and requiring that "the sufficiency of the complaint" be assessed first). And a claim of a "complex discrimination *conspiracy*" demands "more than ordinary allegations." *Washington v. Hughes Socol Pipers Resnick & Dym, Ltd.*, No. 18-cv-05162, 2020 WL 1503652, at *4–5 (N.D. Ill. Mar. 29, 2020); *see also* MTD Order. at 12–13 (recognizing Plaintiffs' prior complaint as alleging a "complex, conspiracy-like scheme").

Finally, Plaintiffs' fraud claims are subject to Rule 9(b) and must be stated "with particularity" and identify the "who, what, when, where, and how" for the alleged fraud. *Rocha v. Rudd*, 826 F.3d 905, 911 (7th Cir. 2016). Rule 9(b) "requires the plaintiff to conduct a pre-complaint investigation in sufficient depth to assure that the charge of fraud is responsible and supported, rather than defamatory and extortionate," *Ackerman v. Nw. Mut. Life Ins. Co*., 172 F.3d 467, 469 (7th Cir. 1999), and serves to "protect[] a defendant's reputation from harm" and "minimize[s] strike suits and fishing expeditions." *Vicom, Inc. v. Harbridge Merchant Servs., Inc*., 20 F.3d 771, 777 (7th Cir. 1994); *see also Uni*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 924 (7th Cir. 1992) ("Accusations of fraud can seriously harm a business."); *Int'l Star Registry of Ill. v. ABC Radio Network, Inc.*, 451 F. Supp. 2d 982, 988 (N.D. Ill. 2006). The complaint must also set forth the specific dates of the fraud. *See Ackerman*, 172 F.3d at 470; *Int'l Star Registry*, 451 F. Supp. 2d at 988 (dismissing claim for failure to plead "any specific dates"); *Servpro Indus., Inc. v. Schmidt*, No. 94 C 5866, 1997 WL 361591, at *8 (N.D. Ill. June 20, 1997) (finding that allegations of "in or about 1991," "prior to March 1985," and "subsequent to the execution of the agreement" were insufficient under Rule 9(b)).

ARGUMENT

I. PLAINTIFFS' RACIAL DISCRIMINATION CLAIMS (COUNTS I, II, III, IV, V, AND VI) FAIL TO REMEDY THE DEFICIENCIES PREVIOUSLY IDENTIFIED BY THE COURT.

Just as in the Amended Complaint, Plaintiffs' racial discrimination claims still "rest on allegations of a complex, conspiracy-like scheme by McDonald's" whereby "McDonald's has consciously and covertly enacted policies to keep black franchisees across the country at the bottom of the barrel." MTD Order at 13:2–6. And just as with their prior pleading, "[t]he facts alleged . . . do little to bring that complex scheme to the land of plausibility." *Id.* at 13:9–10. Despite being given a third opportunity to plead a viable claim and adding ***hundreds*** of new

allegations, Plaintiffs still fail to address the fundamental deficiencies previously outlined by this Court: specifically, Plaintiffs cannot identify the "what," "who," and "when" of their case sufficiently "enough to create a plausible inference that [McDonald's] treated [them] adversely because of their race." *Id.* at 13:9–18 (quoting *Byrd v. McDonald's USA, LLC*, No. 20 C 6447, 2021 WL 2329369, at *4 (N.D. Ill. June 8, 2021) (Leinenweber, J.)), 16:13–16 ("Alleging that an entity treated someone adversely, without more, is not enough to create a plausible inference that an entity treated someone adversely because of their race.").

In the SAC, Plaintiffs once again attempt to assert a claim pursuant to 42 U.S.C. § 1981 ("Section 1981"), which protects against intentional discrimination in the making and enforcement of contracts. *See Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006); *Sampson v. Yellow Cab Co*., 55 F. Supp. 2d 867, 869 (N.D. Ill. 1999) (explaining that Section 1981 only pertains to contractual relationships). Plaintiffs also go one step further, reaching beyond the scope of the Court's leave (*see infra* Section VI) and alleging a brand new claim pursuant to 42 U.S.C. § 1982 ("Section 1982"), which protects against intentional discrimination with respect to property rights. The elements of these claims are similar, and courts often analyze them in sync. To state a claim under Section 1981, plaintiffs must allege that: "(1) they are members of a racial minority; (2) the defendant had an intent to discriminate on the basis of race; and (3) the discrimination concerned one or more of the activities enumerated in the statute (*i.e.*, the making and enforcing of a contract)." *Morris v. Office Max, Inc*., 89 F.3d 411, 413–14 (7th Cir. 1996). Similarly, asserting a Section 1982 claim requires a plaintiff to demonstrate that the defendant interfered with the plaintiff's property rights and that such interference was motivated by racial animus. *Lac Du Flambeau Band of Lake Superior Chippewa Indians* v. *Stop Treaty Abuse-Wisconsin, Inc.*, 991 F.2d 1249, 1257 (7th Cir. 1993). Because Sections 1981 and 1982 only protect against intentional

discrimination, *General Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 391 (1982), Plaintiffs "must plead and prove that [McDonald's] acted with discriminatory purpose," *Iqbal*, 556 U.S. at 676, which requires the plaintiff to present "factual allegation[s] sufficient to plausibly suggest [defendant's] discriminatory state of mind." *Id*. at 683. Additionally, as the Court has already recognized, given that Plaintiffs allege a complex and wide-ranging scheme, "the required level of specificity rises with the complexity of the claims" and "[a] more complex case will require more detail." MTD Order at 12:19–13:6 (identifying that Plaintiffs Section 1981 claim rested on a complex, conspiracy-like scheme) (quoting *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011)).

The SAC fails to meet the standard set by the Court by, once again, "plead[ing] dots" that Plaintiffs "can't connect." MTD Order at 15:15–16. Plaintiffs still cannot plausibly allege that McDonald's intentionally discriminated against them as part of a complex, conspiracy-like scheme to steer Black franchisees into franchise locations that were less profitable on the basis of their race. Furthermore, Plaintiffs fail to allege the necessary causation element of both claims: "that ***but for*** race, [they] would not have suffered the loss of a legally protected right." *Comcast Corp. v. Nat'l Ass. of African American-Owned Media et al*., 140 S.Ct. 1009, 1019 (2020) (emphasis added); *James v. City of Evanston*, No. 20-cv-00551, 2021 WL 4459508 at *9–10 (N.D. Ill. Sept. 29, 2021) (analyzing *Comcast* and applying "but for" causation to Section 1982 claim). Just as with the Amended Complaint, "the generality of the [SAC] proves fatal." MTD Order at 18:20–21.

Because Plaintiffs have not followed the MTD Order and still cannot plausibly allege that McDonald's intentionally discriminated against Black franchisees, nor "but for" causation, their racial discrimination claims should be dismissed with prejudice. *See Standard v. Nygren*, 658 F.3d

792, 801 (7th Cir. 2011) (affirming decision to dismiss with prejudice where plaintiff was given multiple opportunities to replead and repeatedly failed to cure the pleadings' deficiencies).

A. Plaintiffs Again Fail to Plausibly Allege that McDonald's Intentionally Discriminates Against Black Franchisees.

The gravamen of the SAC is that McDonald's has allegedly engaged in intentional discrimination against Black franchisees by steering Plaintiffs to less-desirable restaurant locations, requiring Plaintiffs to make investments in their restaurants through rebuilds and renovations, denying opportunities for growth, refusing to give Plaintiffs rent relief and financial assistance, imposing unfair inspections and grading, and forcing them out of the McDonald's System. The SAC then makes a series of allegations regarding McDonald's so-called "History of Racial Discrimination" to support their claim. SAC ¶¶ 91–100.

Fatally for Plaintiffs, this theory is precisely the same as that alleged in the Amended Complaint, which the Court dismissed for failing to plausibly allege intentional discrimination against Black franchisees. MTD Order at 11:21–20:15. Indeed, the Court concluded that Plaintiffs "allege[d] a broad and complex discriminatory scheme with too few details to paint a plausible story that holds together." *Id.* at 4:22–5:1. And the Court held that general historical allegations are not enough to state a Section 1981 claim. *Id.* at 15:2–6. Plaintiffs' SAC fails for the same reason as it again contains no allegation that McDonald's implemented any policy with the specific intent to discriminate against Black franchisees.

Nor would such an allegation be plausible because, as the FA makes clear, "the foundation of the McDonald's System . . . is the adherence by Franchisee to standards and policies of McDonald's providing for the uniform operation of all McDonald's restaurants within the McDonald's System." FA ¶ 1(b). Accordingly, McDonald's requires all franchisees—not just Black franchisees—to comply with the requirements of the McDonald's System and explicitly

grants McDonald's the right to ensure that those standards are being met. *Id.* at ¶¶ 12(a)–(k) (detailing franchisees' obligations to operate their restaurants in compliance with "the entire McDonald's System"), ¶¶ 18(a), (j), (l) (stating that it is a material breach of the FA for failing to operate in compliance with the standards prescribed by the McDonald's System). Any allegation that a plaintiff was treated differently than a white franchisee might "only inch toward a plausible claim of intentional discrimination," but it is certainly "not enough." MTD Order at 16:10–12.

Bald, inflammatory allegations are not sufficient; Plaintiffs must "plead sufficient factual matter to show that [defendant] adopted and implemented the . . . policies at issue not for a neutral reason . . . but for the purpose of discriminating on account of race." *Iqbal*, 556 U.S. at 676–77 (internal citations omitted). Despite the Court's warning, Plaintiffs continue to allege in conclusory fashion that Black franchisees were treated worse than white franchisees. *See* SAC ¶¶ 82–82 (white franchisees were allowed to purchase restaurants more than 40 miles from each other); ¶ 87 (Black franchisees face disproportionately higher initial reinvestment costs than white franchisees); ¶ 88 (selective application of NRBES standards to Black franchisees); ¶ 106 (Black franchisees were deprived of franchise opportunities offered to white franchisees); ¶¶ 112–113 (Black franchisees were limited to purchasing stores in majority Black communities); ¶ 117 (Black franchisees were forced to spend more money than white counterparts on security and maintenance measures). But "saying it is so does not make it so," and such bare conclusions cannot support Plaintiffs Section 1981 and Section 1982 claims. *See Linda Constr. Inc. v. City of Chicago*, No. 15-cv-8714, 2016 WL 4429893, at *2 (N.D. Ill. Aug. 22, 2016).

McReynolds remains instructive on the pleading standard required for such claims of intentional discrimination. 694 F.3d 873, 877 (7th Cir. 2012). That court held that a race-neutral policy "could be challenged only if it was adopted with intent to discriminate, not mere awareness

that the program would disfavor black brokers based on the residual effects of past discrimination." *Id.* at 878–79. Allegations that a policy had a disparate impact on Black brokers are insufficient as they lack "enough factual content to support an inference that the retention program itself was adopted because of its adverse effects." *Id*. at 885. The Seventh Circuit affirmed the district court's decision to dismiss because allegations of discriminatory intent at a high "level of generality" that amounted to "merely a conclusion" did not satisfy the requisite pleading standards. *Id.* at 887; *see also Thurmon v. Mount Carmel High Sch*., 191 F. Supp. 3d 894, 897 (N.D. Ill. 2016).

Plaintiffs' continued reliance on general, nonspecific allegations is particularly stark in relation to their Section 1982 claims, which are based entirely upon the "steering" theory: that McDonald's allegedly refused to allow Plaintiffs to purchase more profitable restaurant locations, which were made available to white franchisees, and steered them into less profitable, lower quality restaurant locations. *See* SAC ¶¶ 4, 8, 11. The Court, however, has already rejected this theory, holding that "vague allegations [] that at some unspecified time, Plaintiffs and other African-American franchisees were steered to economically unattractive locations" are insufficient to state a discrimination claim. MTD Order at 15:15–20 (quoting *Byrd*, No. 20 C 6447, 2021 WL 2329369, at *4). Nothing in the SAC justifies a different conclusion here.

The addition of Plaintiff-specific allegations in the SAC does not remedy the pleading defects for either their Section 1981 or 1982 claims. While Plaintiffs have added hundreds of allegations relating to their individual experiences in the McDonald's System, many of them fall well outside of the relevant limitations period. Furthermore, the timely allegations fail to establish the requisite "what," "who," and "when" required of intentional discrimination claims. *Id.* at 13:12–18 (quoting *Byrd*, 2021 WL 2329369, at *4). As set forth in further detail in Exhibit 2, which outlines the new allegations in the SAC:

- For 26 of the Plaintiffs, the new allegations fall entirely or almost entirely outside of the relevant limitation period (*see* Exs. 1, 2): Annis Alston-Staley and Harry Staley (SAC ¶¶ 214–224); Robert Bonner (SAC ¶¶ 225–233); Glenda Claypool (*id.* at ¶¶ 253–261); Jacqueline and Anthony George (*id.* at ¶¶ 333–338); Wesley Hall (*id.* at ¶¶ 339–355); Lawrence Holland (*id.* at ¶¶ 384–399); Glenna and Douglas Hollis (*id.* at ¶¶ 400–412); Harold and Jeremy Lewis (*id.* at ¶¶ 427–440); Joseph Mbanefo (*id.* at ¶¶ 441–466); Lois and Mitchell McGuire (*id.* at ¶¶ 467–484); William Rasul (*id.* at ¶¶ 528–534); Dwayne Richard Johnson (*id.* at ¶¶ 535–548); Jeffery Rogers (*id.* at ¶¶ 549–580); Carrie Salone (*id.* at ¶¶ 581–604); Jeremiah Simmons (*id.* at ¶¶ 605–616); Serge and Karen Tancrede (*id.* at ¶¶ 677–703); Gordon Thornton (*id.* at ¶¶ 704–709); Errol Thybulle (*id.* at ¶¶ 718–725); Lance Williams (*id.* at ¶¶ 734–742); and Jacqueline Wynn (*id.* at ¶¶ 763–779). These new allegations cannot support a viable discrimination claim. *See* MTD Order, 21:17–19 ("Almost half of the Section 1981 plaintiffs seem to allege pre-contractual conduct that predates the permissible period.").

- Other than alleging that they exited the system after June 1, 2016 and that they were generally discriminated against, 6 Plaintiffs do not allege when any discriminatory acts took place or what the discriminatory practices were: Van Jakes (SAC ¶¶ 201–213); Yves Dominique (*id.* at ¶¶ 297–306); Wise Finley (*id.* at ¶¶ 307–332); Laetitia Johnson (*id.* at ¶¶ 413–426); Dawn Mussenden (*id.* at ¶¶ 505–527); and Norman Williams (*id.* at ¶¶ 743–762). Without alleging the "what" or the "when" of their intentional discrimination claim, their additional factual allegations are insufficient to state a claim. MTD Order, 13:12–18.

- Only 3 Plaintiffs allege that they were denied a new franchising term after they failed to meet franchising standards while suggesting that white owner/operators were not held to the same standards: Juneth Daniel (SAC ¶¶ 262–296); and Scott and Dwight Miller (*id.* at ¶¶ 485–504). But these Plaintiffs do not allege "sufficient detail to point to discrimination." MTD Order at 16:13–16 ("Alleging that an entity treated someone adversely without more, is not enough to create a plausible inference that an entity treated someone adversely because of their race.").

- Only 3 Plaintiffs allege that McDonald's required them to pay renovation costs disproportionate to other white owner/operators: Keith Manning (SAC ¶¶ 165–78); Allen Stafford (*id.* at ¶ 665); and Ronnie Thornton (*id.* at ¶¶ 710–717). As this Court has already found, these generalized allegations that Plaintiffs were required to perform restaurant renovations (which were explicitly required by the terms of their FA with McDonald's) are insufficient to establish that McDonald's treated them differently because of their race. MTD Order, 15:24–16:4.

- Only 4 Plaintiffs allege that McDonald's generally interfered in the sale of their restaurants. Some allege that McDonald's did not allow them to sell their stores to the buyer they wanted: Kenneth Manning (SAC ¶¶ 129–64); and Delores and Christine Crawford (SAC ¶¶ 179–200). And 1 Plaintiff alleges, without explaining who or when, that McDonald's instructed a white owner/operator to offer to purchase his stores for less than they were worth: Larry Brown (SAC ¶¶ 234–246). Again, these generalized

allegations are insufficient to establish that McDonald's intentionally treated them differently because of their race. MTD Order, 15:24–16:4.

- Only 3 Plaintiffs allege that McDonald's subjected them to inspections while suggesting that non-Black owner/operators were not subject to the same treatment: Benny and Eleanor Clark (SAC ¶¶ 247–252); and Floyd Sims (SAC ¶¶ 617–656). They do not explain who conducted the inspections, when each occurred, or what the basis was for each. These allegations are insufficient to support a claim for discrimination. MTD Order, 16:13–16 ("Alleging that an entity treated someone adversely without more, is not enough to create a plausible inference that an entity treated someone adversely because of their race.").

- Only 1 Plaintiff alleges that he was denied rent relief "solely because he was Black": William (Pete) Washington (SAC ¶¶ 726–733). But Plaintiffs were not guaranteed any financial assistance from McDonald's, including rent relief. MTD Order, 26:4–23. Without more, a conclusory allegation that discretionary assistance was not provided does not suffice to infer intentional discrimination. He does not explain who engaged in the conduct, specifically when it occurred (other than 2016), how they denied rent relief, or in what way their conduct related to his race.

- Finally, only 2 Plaintiffs allege that they were subject to harassment on the part of people other than McDonald's. Al and Kristen Harris (SAC ¶¶ 356–383) allege that a business consultant inadvertently texted them making critical comments about their business—none of which related to their race, nor did they claim such comments led to disparate treatment based on their race.

These new allegations do not plausibly allege that McDonald's intentionally discriminated against Plaintiffs. Therefore, even with these new allegations, Plaintiffs have failed to plead facts in support of the first element of their Section 1981 and Section 1982 claims.

The *Manning* Plaintiffs also add newly pled claims of discrimination pursuant to a "pattern and practice" (Counts II and IV). These claims are dead on arrival. It is black-letter law that an individual plaintiff cannot bring individual pattern or practice claims, as such claims can only be pursued by a private individual on behalf of a class. *See Matthews v. Waukesha Cnty*., 759 F.3d 821, 829 (7th Cir. 2014). But Plaintiffs have already unequivocally stated on the record that they do not intend to pursue a class action in this matter. Dkt. 76 at 2 ("Plaintiffs do not seek to represent a putative class of former McDonald's franchisees ."). The Court should therefore dismiss Counts II and V with prejudice for this additional reason.

B. Plaintiffs Have Not Plausibly Alleged "But For" Causation as Required to State a Viable Section 1981 or Section 1982 Claim.

Just as the Court held was the case in the Amended Complaint, MTD Order at 18:13–25, Plaintiffs have also failed to allege "but for" causation, which is an essential element of their Section 1981 and Section 1982 claims. *Comcast*, 140 S.Ct. at 1019 ("To prevail, a [Section 1981] plaintiff must initially plead and ultimately prove that, ***but for*** race, it would not have suffered the loss of a legally protected right.") (emphasis added); *James*, 2021 WL 4459508 at *9–10 (N.D. Ill. Sept. 29, 2021) ("[A] § 1982 plaintiff must also plead that his race was the but-for cause of the defendant's conduct"). Despite the addition of numerous Plaintiff-specific allegations, the SAC again relies entirely on vague and conclusory statements that they would have been treated differently if they were not Black. MTD Order at 18:13–19:19 ("Here, too, the generality of the complaint proves fatal."). As discussed above and detailed in Exhibit 2, the Plaintiff-specific allegations fail to establish factual circumstances beyond boilerplate allegations that white franchisees were treated differently.

Plaintiffs cannot state a Section 1981 or Section 1982 claim simply by alleging that race played a role in the defendant's conduct; rather they must plausibly allege facts that establish that their race was the actual cause of the injury for which they seek redress. Any inference that Plaintiffs were deprived opportunities on the basis of discrimination as opposed to a failure to comply with the terms of the FA rests on nothing but speculation. *Naserallah v. Full Circle Terminal, LLC*, No. 19-cv-232, 2021 WL 1176046, at *2–3 (N.D. Ill. March 29, 2021) (dismissing § 1982 claim because "any inference that Plaintiff was evicted on the basis of discrimination – as opposed to a failure to comply with the terms of the lease agreement – thus rests on nothing but speculation") (citing *Comcast Corp.*, 140 S. Ct. at 1015–19); *see also Astre v. McQuaid*, 804 F. App'x 665, 666–68 (9th Cir. 2020) (affirming dismissal where "complaint identifie[d] independent

non-discriminatory reasons" for challenged conduct); *Rubert v. King*, No. 19-CV-2781 (KMK), 2020 WL 5751513, at *7 (S.D.N.Y. Sept. 25, 2020) (holding that but-for causation was not pleaded where complaint showed non-discriminatory reasons for termination); *Domino v. Kentucky Fried Chicken*, No. 19-CV-08449-HSG, 2020 WL 5847306, at *2 (N.D. Cal. Oct. 1, 2020) (same). Indeed, just as with the prior complaint, Plaintiffs themselves admit that many allegations in the SAC are actually explained by non-discriminatory reasons. *See, e.g.*, SAC ¶ 332 (McDonald's encouraged store closure due to loss of sales); ¶¶ 381–383 (Plaintiffs were forced out of system after failing a company visit and were unable to find an operator interested in purchasing their failing stores); ¶¶ 495–502 (Plaintiffs denied rewrite after failing review).

C. The SAC Fails to Address the Statute of Limitations Issues Identified by the Court.[8]

Separate from their failure to plead the essential elements of a Section 1981 or Section 1982 claim, many of the named Plaintiffs' claims are barred by the applicable statutes of limitations. The Court recognized this deficiency when it dismissed Plaintiffs' prior complaint, noting that "Plaintiffs appear to be time-barred, at least in part, in raising their claims." MTD Order, 22:19–22. Plaintiffs have failed to address the Court's concerns. On the face of the SAC, many of the Plaintiffs' Section 1981 and Section 1982 claims are definitively time-barred and therefore should be dismissed. *Logan v. Wilkins*, 644 F.3d 577, 582 (7th Cir. 2011) ("While a

[8] The Court directed the parties to engage in a meet and confer process regarding the statute of limitations periods for the claims in this case and to come to a consensus regarding the date when each Plaintiff left the McDonald's System. *See* Dkt. Nos. 87 & 91. Plaintiffs and McDonald's do not have any disputes about Plaintiffs' exit dates. In light of those efforts and the Court's acknowledgement that a motion to dismiss may be granted on statute of limitations grounds "where the allegations of the complaint itself set forth everything necessary to satisfy the affirmative defense," MTD Order, 31:10–13 (quoting *Chicago Building Design, P.C. v. Mongolian House, Inc.*, 770 F.3d 610, 613–14 (7th Cir. 2014)), McDonald's has limited its statute of limitations arguments in this Motion to the face of the SAC and the exit dates agreed upon and confirmed by both McDonald's and Plaintiffs. *See* Ex. 1. To the extent that the Court requires additional argument or briefing, McDonald's can and will provide additional support for its position that Plaintiffs' claims should be dismissed as untimely.

statute of limitations defense is not normally part of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), when the allegations of the complaint reveal that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim."); *Rivas v. Levy*, No. 11-C-02738, 2015 WL 718271, *4 (N.D. Ill. Feb. 18, 2015) (granting 12(b)(6) motion to dismiss Section 1981 claims where the allegations in complaint "reveal[ed] that relief is barred by the applicable statute of limitations"); *Cui v. Elmhurst Police Dept.*, No. 14 C 8330, 2015 WL 2375252, at *2 (N.D. Ill. May 14, 2015) (same).

First, the two-year statute of limitations bars many of Plaintiffs' pre-contractual Section 1981 claims and their Section 1982 claims. *See Dandy v. United Parcel Serv., Inc*., 388 F.3d 263, 269 n.4 (7th Cir. 2004); *Byrd*, 2021 WL 2329369, at *5; *see also* MTD Order at 20–21. A pre-contractual Section 1981 claim is one based upon a claim for failure to contract, as opposed to a breach of an existing contract (including all claims for failure to be granted an additional franchise, which would require the execution of a new franchise agreement, or conduct that occurred prior to the execution of a franchise agreement). The statute of limitations period for pre-contractual Section 1981 claims began on June 8, 2018 for Plaintiffs that were parties to the original Complaint and November 16, 2018 for Plaintiffs added for the first time in the Amended Complaint (two years prior to the filing of the original Complaint and Amended Complaint, respectively), and the statute of limitations period for Section 1982 claims began on December 16, 2020 (two years prior to the filing of the SAC, where Section 1982 claims were first alleged). MTD Order at 21:5–16; *see also Brown v. Goodyear Tire & Rubber Co*., No. 99 C 1641, 1999 WL 569543, at *3 (N.D. Ill. July 28, 1999) (citations omitted). Significantly, ***not a single*** Plaintiff asserts a pre-contractual claim that accrued after December 16, 2020, and thus their Section 1982 claims are untimely. Further, ***all*** of the Plaintiffs asserting Section 1982 claims exited before the start of the statute of

limitations period and ***39 out of 48*** of the Plaintiffs asserting Section 1981 claims exited before the start of the two-year statute of limitations period. *See* Ex. 1; *see also* MTD Order at 22:9–12 ("If they left the McDonald's franchisee network before 2018, it might be unlikely that they're going to be able to plead in a claim for unlawful pre-contractual conduct that took place during that time period.").

Second, the four-year statute of limitations bars many of Plaintiffs' post-contractual Section 1981 allegations. *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382 (2004); MTD Order at 21:1–4. To the extent that Plaintiffs' Section 1981 claims seek to recover for post-contractual acts of discrimination that arose prior to June 8, 2016 for Plaintiffs to the original Complaint and November 16, 2016 for Plaintiffs added in the Amended Complaint, their claims are untimely and must be dismissed. In fact, 26 out of 48 of the Plaintiffs asserting Section 1981 claims exited before the start of the four-year statute of limitations period, barring those claims entirely. *See* Ex. 1. Additionally, 15 other Plaintiffs exited two years or less after the start of the limitations period, meaning that their claims are limited to that short time period and the Court should limit the post-contractual Section 1981 claim for those Plaintiffs accordingly. *See id.*

II. PLAINTIFFS REASSERT THE SAME BREACH OF CONTRACT CLAIM THAT THE COURT ALREADY DISMISSED (COUNT VII).

This Court has already dismissed Plaintiffs' breach of contract claim. In its MTD Order, the Court held that Plaintiffs could not maintain a breach of contract claim based on Sections 3 and 12 of the FA because "plaintiffs have failed to allege any breach of any contractual obligation." MTD Order at 25:25–26:1. Incomprehensibly, the *Manning* Plaintiffs continue to assert a breach of contract claim based on the ***exact same contractual provisions that the Court already dismissed***. For all of the same reasons the Court found these claims were legally insufficient in its MTD Order, the claims fail once again and should be dismissed with prejudice.

A. Plaintiffs Still Cannot Identify Any Contractual Obligation of McDonald's that Was Allegedly Breached.

It is axiomatic that "[a] breach of contract claim requires an identifiable breach of a contract term" and "cannot result from a party's performance of a contract term." *Sevugan v. Direct Energy Servs., LLC*, 931 F.3d 610, 614–15, 616–17 (7th Cir. 2019) (internal citation omitted); *see also Ruebe v. PartnerRe Ireland Ins. DAC*, 470 F.Supp.3d 829, 838–39 (N.D. Ill. 2020). Plaintiffs allege that McDonald's breached Sections 3, 12, and 15 of the FA, SAC ¶¶ 817–20, but the plain language of those sections clearly impose obligations only on Plaintiffs, not McDonald's, and McDonald's enforcement of its contractual rights was contemplated by, and consistent with, the terms of the FAs. *See Villa Health Care, Inc. v. Ill. Health Care Mgmt. II, LLC*, No. 12-3205, 2013 WL 3864418, at *2 (C.D. Ill. July 25, 2013) ("Under Illinois law, when construing a contract, the primary objective is to give effect to the intention of the parties.") (citation omitted).

1. As the Court Already Held, McDonald's Has No Obligations Under Section 3 of the Franchise Agreement.

Section 3, titled "General Services of McDonald's," states that McDonald's will, among other things, "make available to Franchisee all additional services, facilities, rights, and privileges relating to the operation of the Restaurant, which McDonald's makes generally available, from time to time, to all its franchisees operating McDonald's restaurants." FA ¶ 3. As in the prior complaint, Plaintiffs allege that McDonald's was obligated pursuant to Section 3 to provide them with rent relief, loans, and other financial assistance, conduct reviews and inspections, and give notice of stores opening nearby as McDonald's allegedly did for white franchisees.[9] SAC ¶ 817.

[9] Similar arguments regarding the obligations of McDonald's under Section 3 of the FA have been rejected by other courts because, by its express terms, this provision relates to the "operation of the Restaurant," and thus, only extends to "details of restaurant operations such as food, service and the supplying of standardized equipment." *McDonald's Corp. v. C.B. Mgmt. Co.,* 13 F. Supp. 2d 705, 711–12 (N.D. Ill. 1998) (citation omitted). This Court should similarly decline to extend the language of Section 3 beyond its plain meaning.

As the Court previously held, "[t]hose allegations, aside from their problematic vagueness, are unrelated to any obligation McDonald's had." MTD Order at 26:15–16. "In fact, the franchise disclosure document made clear to franchisees '***McDonald's is not required to provide you with any assistance***' . . . . [l]let me read that again . . . . '***McDonald's is not required to provide you with any assistance***.'" *Id.* at 26:16–20 (emphasis added) (quoting FDD at 24 (emphasis in original)). Indeed, the exact issues upon which Plaintiffs base their breach of contract claim are explicitly disavowed by the franchise documents:

- McDonald's makes no promises of future growth or renewal of existing franchise. FA ¶¶ 28(a), 28(h); FDD at 15, 34; Rewrite Policy at 1; *see also* MTD Order at 26:25–27:2 (emphasizing FA 28(h) in showing McDonald's lack of obligation under Section 3).

- Franchises must make all payments owed to McDonald's including monthly rent FDD at 14, 16; Lease ¶ 3.01; FA ¶ 1(f), and no representations are made regarding the profitability of a given restaurant FA ¶ 28(c). *See* MTD Order at 27:2–8 (emphasizing FA 28(c) in showing McDonald's lack of obligation under Section 3).

- McDonald's has the right to enter the franchisee's restaurant at all times during reasonable business hours for the purpose of inspections. FA ¶ 12; Lease ¶ 7.01.

Thus, at the time Plaintiffs became franchisees, they agreed they were not entitled to the "services, facilities, rights, and privileges" they now claim, and there can similarly be no breach by McDonald's for failing to provide those things. *See Thompson v. Ill. Dept. of Prof'l Regulation*, 300 F.3d 750, 754 (7th Cir. 2002) (holding that if plaintiffs "rel[y] upon the documents to form the basis for a claim or part of a claim, dismissal is appropriate if the document negates the claim."); *LaSalle Bank Nat'l Assoc. v. Paramount Props.*, 588 F. Supp. 2d 840, 856 (N.D. Ill. 2008) (dismissing breach of contract claim with prejudice where no provision of the contract required the actions plaintiff alleged were required of defendant).

2. <u>The Court Already Held that Section 12 of the Franchise Agreement Confers Obligations Only on Plaintiffs, Not McDonald's.</u>

Plaintiffs assert the exact same alleged breaches of Section 12 of the FA as they did in the

Amended Complaint: that McDonald's supposedly conducted unreasonable reviews and imposed unreasonable renovation requirements. SAC ¶¶ 818–19. The Court has already addressed this exact legal issue and, thus, the law of the case has been set. As held by the Court:

> [Section 12] only imposed obligations on the plaintiffs to maintain up-to-date and compliant restaurants. It did not require McDonald's to inspect or not inspect the properties. It did not require McDonald's to impose or not impose certain renovation requirements. It left all that to the company's discretion.

MTD Order at 27:9–15. Because Section 12 imposes obligations upon only Plaintiffs, not McDonald's, McDonald's cannot possibly have breached Section 12. *See TAV Distrib. Co., Inc. v. Cummins Engine Co., Inc.*, 491 F.3d 625, 631 (7th. Cir. 2007) ("Only a duty imposed by the terms of a contract can give rise to a breach."); *Ruebe*, 470 F.Supp.3d at 838–39. Indeed, Plaintiffs admit that under their contracts, "McDonald's reserves the right to inspect a franchisee's restaurant." SAC ¶ 77; Lease ¶ 7.01; FA ¶¶ 1(b), 12, 18(l) (stating that McDonald's has the right to conduct inspections and denial of that right constitutes a material breach); *see also Sirius Computer Sols., Inc. v. Sachs*, No. 20-cv-1432, 2020 WL 5253872, at *2–3 (N.D. Ill. Sept. 3, 2020) (in assessing a claim of breach, the court should not look at any one contract provision in isolation, but rather read the document as a whole). Plaintiffs also admit that under the FA, "Franchisees may be required to renovate their stores in compliance with McDonald's standard building plans." SAC ¶ 77; FA ¶¶ 1(a), 1(c) (obligating Plaintiffs to keep their restaurants "constructed and equipped in accordance with" the standards of the McDonald's System, which "may be reasonably changed from time to time by McDonald's"). These admissions regarding McDonald's contractual rights render Plaintiffs' allegations that McDonald's "unreasonably" conducted reviews and imposed renovations inconsequential and, even if they did not, the conclusory allegations are not supported by facts and need not be accepted as true. *See Iqbal*, 556 U.S. at 678.

3. Section 15 of the Franchise Agreement Also Does Not Impose Any Obligations on McDonalds.

Plaintiffs attempt to craft a new breach based on Section 15(d) of the Franchise Agreement by claiming that McDonald's allegedly "arbitrarily refused to accept the terms of sale proposed by Plaintiffs when they attempted to sell their stores" and "insisted that Plaintiffs sell their stores to buyers hand-picked by Defendants." SAC ¶ 820. However, not only do Plaintiffs fail to describe how any of McDonald's actions relating to sales were arbitrary or a breach of the FA, but the Court already dismissed Plaintiffs' prior claim that McDonald's denial of Plaintiffs' growth, sales, and transfer requests was a breach of Section 3 of the FA. *See* MTD Order at 26:2–27:8. Like Section 3, Section 15(d) of the FA imposes no obligations on McDonald's, and makes clear that "[f]ranchisee shall not sell, transfer, or assign this Franchise to any person or persons without McDonald's prior written consent." FA ¶ 15; *see also* FDD at 24 ("McDonald's is not required to provide you with any assistance."); FA ¶¶ 28(a), 28(h); FDD at 15, 34–35; Rewrite Policy at 1 (McDonald's makes no promises of future growth and has the right of first refusal). As Section 15(d) does not impose any obligations on McDonald's and, even if it did, those obligations are disclaimed by the express language in the parties' agreed-upon contracts, any breach of contract claim based on Section 15 should be dismissed.

B. Plaintiffs' Conclusory Allegations Are Still Insufficient to State a Viable Breach of Contract Claim.

A viable breach of contract claim requires that each Plaintiff identify, with well-pleaded facts, the precise FA that was purportedly breached, the specific breaches committed by which Defendant against which Plaintiff, and when such breaches occurred. *See Loup Logistics Co. v. Windstar, Inc.*, No. 17 C 9045, 2018 WL 5619454, at *2 (N.D. Ill. Oct. 30, 2018); *Sevugan*, 931 F.3d at 614 ("A breach of contract claim requires an identifiable breach"); *Marcial v. Rush Univ. Med. Ctr.*, No. 16-cv-6109, 2017 WL 2180503, at *5 (N.D. Ill. May 18, 2017) (dismissing breach

of contract claim where breach allegations were "too conclusory and vague"); *see also Mohammed v. Sidecar Techs. Inc.*, No. 16 C 2538, 2016 WL 6647946, at *9 (N.D. Ill. Nov. 10, 2016) ("group pleading is improper, and it is reason enough to dismiss the complaint."). The Court previously dismissed Plaintiffs' breach of contract claim because "[i]t is not appropriate to allow the plaintiff to go forward with dozens and dozens of plaintiffs at such a high degree of generality" and "[t]his deficiency is only magnified when you consider the . . . . dozens of individuals" because "it's unclear who allegedly suffered from unreasonable inspections, who had to make unfair renovations, et cetera, and who did not . . . . [s]uch vagueness undermines the claim." MTD Order at 29:23–30:7.

While the SAC adds vague allegations for some of the Plaintiffs about rent relief, loans, reviews, renovations, and sales, the same language is cut and pasted throughout the SAC, and details regarding when and where any breaches took place, which McDonald's individuals committed them, and actions taken against each Plaintiff specifically are omitted for the vast majority of the Plaintiffs. *See* SAC ¶¶ 129–779 (repeating verbatim for multiple Plaintiffs, without further detail, that: "McDonald's denied [Plaintiff] financial assistance in the form of rent relief routinely offered to white owners/operators;" "McDonald's deployed its tactic of forcing Black operators out of the system by increasing their inspections;" and "McDonald's enforced its renovation standards more stringently on [Plaintiff], as compared to white owner/operators"); *see also Servpro v. Schmidt*, No. 94 C 5866, 1996 WL 400066, at *4 (N.D. Ill. July 15, 1996) (dismissing breach of contract claim based on conclusory allegations, noting that "*Twombly* and *Iqbal* require 'some specific factual detail to color . . . bare conclusory allegations'") (citation omitted). Additionally, although the FAs are specific to each restaurant, and many of the Plaintiffs claim to have operated multiple franchises, no Plaintiff specifically identifies the contracts at issue,

the dates when those contracts were formed and terminated, and which, if any, were breached. *See* SAC ¶¶ 129–779.

Finally, McDonald's has previously raised Plaintiffs' failure to plead substantial performance on two occasions: first with the Complaint and then with the Amended Complaint. Dkt. 25 at 24; Dkt. 39 at 25 n.14. Other than one vague and conclusory sentence that "Plaintiffs performed their obligations under the contract," the SAC does not contain any well-pleaded facts to cure this pleading deficiency, which creates an additional basis for dismissal of Count VII. *See Blankenship v. Pushpin Holdings, LLC*, No. 14 C 6636, 2015 WL 5895416, at *12 (N.D. Ill. Oct. 6, 2015) (holding that substantial performance was not sufficiently pled where Plaintiff made no allegations demonstrating "actions taken in line with their obligations under the [contract], aside from the fact that [p]laintiffs [] made initial monthly payments to [d]efendants").

C. Plaintiffs' Breach of Contract Claim is Partially Time-Barred and Significantly Limited by the Applicable Statute of Limitations.

The statute of limitations for breach of contract claims is ten years, running from the date of breach. 735 ILCS 5/13-26; *ABF Capital Corp. v. McLauchlan*, 167 F. Supp. 2d 1011, 1014 (N.D. Ill. 2001).[10] Thus, any breaches that took place prior to June 8, 2010 for Plaintiffs that were parties to the original Complaint and prior to November 16, 2010 for Plaintiffs added in the Amended Complaint are time-barred. Plaintiffs Hall, Rasul, and Simmons admit that they were no longer franchisees and terminated their FAs in 2010. *See* Ex. 1. Therefore, as no breaches are alleged in the final months of 2010 for those three Plaintiffs, their breach of contract claims are fully time-barred. Along the same lines, Plaintiffs Anthony George, Jacqueline George, Dwayne

[10] Plaintiffs Simon, S. Miller, K. Harris, and J. Lewis allege that they entered the System after the start of the ten-year limitations period (AC ¶¶ 58, 67, 70, 74); thus, while their claims are not adequately pled, they are not challenged as time-barred.

Johnson, Mbanefo, Rogers, Karen Tancrede, Serge Tancrede, Gordon Thornton, Thybulle, and Wynn admit that they exited the McDonald's System less than two years after the start of the statute of limitations period, however, only Plaintiffs Mbanefo, Rogers, Thornton, and Wynn assert any allegations in that two year period. *See id.*; SAC ¶¶ 333–38, 441–66, 535–80, 677–709, 718–25, 763–79. Thus, Plaintiffs Anthony George, Jacqueline George, Dwayne Johnson, Karen Tancrede, Serge Tancrede, and Thybulle's breach of contract claims are fully time-barred and Plaintiffs Mbanefo, Rogers, Gordon Thornton, and Wynn's breach of contract claims are limited to the single, timely incident that they each allege. *See id.*

For the remaining thirty-five Plaintiffs who bring breach of contract claims, absent specific facts to establish that the breaches for which Plaintiffs seek to recover accrued after June 8, 2010, it is unreasonable to infer that these claims are timely, and Plaintiffs' use of deliberately vague pleading to obscure statute of limitations issues cannot prevent dismissal of their claims. *See Rivas*, 2015 WL 718271, at *4. At the very least, however, the Court should limit Plaintiffs' breach of contract claim to after June 8, 2010 for original Complaint Plaintiffs and after November 16, 2010 for Amended Complaint Plaintiffs, dismissing any alleged breaches before this period of time with prejudice.

III. PLAINTIFFS' NEWLY ALLEGED FRAUDULENT MISREPRESENTATION CLAIM FAILS AS A MATTER OF LAW AND SHOULD BE DISMISSED (COUNT VIII).

In their original Complaint, Plaintiffs asserted a claim for fraudulent misrepresentation, which Defendants moved to dismiss in its entirety. *See generally* Dkt. 25 at 25–34. Plaintiffs then dropped the misrepresentation claim and recast their fraud claim as solely one for fraudulent omission in the Amended Complaint. *See* Dkt. 30 ¶¶ 248–254. Now that the fraudulent omission claim was found legally insufficient by the Court on multiple fronts, MTD Order at 30:14–37:14, Plaintiffs have reverted back to a fraudulent misrepresentation claim. Not only does this repleading

exceed the leave to amend contemplated by the Court, which on its own should lead to dismissal of the new fraud claim, *see infra* Argument Section VI, but the eleventh-hour attempt still fails to state a viable fraud claim.

The Court previously dismissed Plaintiffs' fraud claim on two separate bases that also apply to fraudulent misrepresentation claims and yet neither of those fatal deficiencies was amended in the SAC. First, the SAC still only "offers generalized allegations" about the alleged misrepresentations and "lack[s] details about who said what to whom, when, and how" as is required by Rule 9(b). MTD Order at 36:14–23. Second, the terms of Plaintiffs' contracts with McDonald's expressly disclaim reliance on the alleged fraud and "you can't hang your hat on something that is disclaimed by the language of the contract itself." *Id.* at 33:14–16. Along with the deficiencies upon which the Court dismissed Plaintiffs' fraud claim previously—which have not been resolved in the SAC—the claim is barred by the applicable five-year statute of limitations. For all of these reasons, Count VIII should be dismissed with prejudice.

A. Plaintiffs Still Have Failed to Plead Any Fraud with Particularity.

Plaintiffs have once again failed to plead with particularity the elements of their fraud claim in the SAC: (1) a false statement of material fact; (2) knowledge or belief by McDonald's that the statement was false; (3) an intent by McDonald's to induce reliance upon the statement; (4) reasonable reliance by Plaintiffs; and (5) damages. *Bright Star Franchising, LLC v. Northern Nevada Care, Inc.*, No. 17 C 9213, 2020 WL 635903, at *6 (N.D. Ill. Feb 11, 2020); *Duffy v. Ticketreserve, Inc.*, 722 F. Supp. 2d 977, 991 (N.D. Ill. 2010).

As identified by the Court in its MTD Order, Plaintiffs are required to plead the "who, what, when, where, and how" regarding any alleged false statement, including "the identity of the person making the representation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated to the plaintiff." MTD Order at 35:24–

36:6 (quoting *Rocha*, 826 F.3d at 911). Indeed, despite claiming the existence of a multi-decade, pervasive scheme to defraud Black franchisees, the SAC contains ***only four*** factual allegations involving specific false statements. *See* SAC ¶¶ 237, 406, 424, 767. However, one of those alleged false statements was made to a non-Plaintiff, *id.* ¶ 424, and the other three supposed false statements were made before the three named Plaintiffs (Brown, Douglas Hollis, and Wynn) entered the McDonald's System and long before the start of the statute of limitations period for fraud claims. *See id.* at ¶¶ 237, 406, 767; *see also infra* Argument Section III.C. And none of the four allegations satisfies Rule 9(b), as they do not identify the McDonald's representative who provided the information, the exact dates of the statements, where the statements occurred, or how specifically the alleged misstatements were false. *See* SAC ¶¶ 237, 406, 424, 767.

As for the other Plaintiffs, the SAC is silent. To name just a handful of these shortcomings, Plaintiffs do not: identify a single McDonald's representative who provided a false statement; name a single Plaintiff that allegedly received misinformation other than Brown, Douglas Hollis, and Wynn; provide dates of the alleged misrepresentations; state whether those conversations were written or oral; describe the details of each conversation, including what exact material facts were falsely told to each Plaintiff; describe why Plaintiffs relied on the false statements; allege why McDonald's knew the alleged misrepresentations were false; or state what specifics actions were taken or damages incurred by which Plaintiffs in reliance on the statements. In contrast, the SAC "consists mostly of sweeping allegations" that "are not sufficiently particular to meet the heightened pleading requirements of Rule 9(b)," *Putzier v. Ace Hardware Corp.*, 50 F. Supp. 3d 964, 986–87 (N.D. Ill. 2014), such as McDonald's making false statements "regarding the availability of franchise locations," "future performance or profitability of franchise locations,"[11]

[11] To the extent that Plaintiffs' fraud claim is based on statements regarding "future performance or profitability," such statements are not material. Under Illinois law, only statements regarding past or present

"the physical condition of franchise locations," and "various services, facilities, rights, and privileges that were available to other franchisees." SAC ¶¶ 822–26. In short, "the complaint excludes most of these [required] details for all of the [48] fraud plaintiffs . . . . [i]t doesn't say much about what fraud each plaintiff experienced or to whom, how it happened. Nothing." MTD Order at 36:7–24.

Such vague allegations fall markedly below Rule 9(b) standards. *See Putzier*, 50 F. Supp. at 985–86 ("The complaint is vague about critical information such as which representations were written or spoken, whether they were advertised by the corporation or communicated by an individual, whether they were stated on a single instance or as part of ongoing communications with the Plaintiffs, or even whether the representations were made to each Plaintiff.").

B. Plaintiffs Still Cannot Avoid the Fact that the Franchise Documents Expressly Disclaimed Reliance on the Purported Misstatements.

Along with failing to plead their fraud claim with the particularity required by Rule 9(b), the Court also previously dismissed Plaintiffs' claim because "[a] claim of fraudulent inducement cannot be based on an alleged misrepresentation that is expressly disclaimed by the terms of the contract." MTD Order at 32:8–11 (quoting *Ocean Tomo v. PatentRatings, LLC*, 375 F. Supp. 3d 915, 930 (N.D. Ill. 2019)). This rationale continues to be fatal to Plaintiffs' new fraudulent misrepresentation claim. Although Plaintiffs have now reframed it as a fraudulent misrepresentation claim, the crux of their fraud claim continues to be that "McDonald's failed to tell them that [Black] franchisees would make less money than other franchisees in other locations." MTD Order at 32:4–6; SAC ¶ 826. But as the Court already identified, "[t]hat theory

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facts are actionable, and statements relating to projections of future events will not support a fraud-related claim. *Abazari v. Rosalind Franklin Univ. of Med. and Sci.*, 40 N.E. 3d 264, 274 (Ill. App. Ct. 2015); *Avon Hardware Co. v. Ace Hardware Corp.*, 998 N.E.2d 1281, 1288 (Ill. App. Ct. 2013); *Barille v. Sears Roebuck & Co.*, 682 N.E.2d 118, 123 (Ill. App. 1997) ("Statements regarding future events or circumstances are not a basis for fraud.").

runs into a basic problem" because "several provisions of the franchise agreement . . . make clear the limitation of the relationship, as well as the risks of running the business." *Id.* at 32:7–14. To plead a claim for fraudulent misrepresentation, Plaintiffs must plausibly allege ***both*** that McDonald's intended to induce each Plaintiff's reliance on the misrepresentation and that each Plaintiff, in turn, reasonably relied on it. *Cohen v. Am. Sec. Ins. Co*., 735 F.3d 601, 613 (7th Cir. 2013). But because both McDonald's and Plaintiffs agreed to certain disclosures and non-reliance provisions in the FA and FDD that explicitly undermine the alleged misrepresentations, Plaintiffs cannot establish either essential element.

With respect to the alleged false statements regarding future financial performance, the FA and FDD expressly provide that no assumptions should be made regarding the future profitability of a given franchise. The FA specifically states that "***[n]o representation has been made by McDonald's as to the future profitability***" of the franchise acquired, negating any possible allegation that McDonald's intended to induce Plaintiffs' false belief by providing false statements regarding financial performance. FA ¶ 28(c) (emphasis added); *see also* MTD Order at 32:15–21 ("Let me read that again. 'No representation has been made by McDonald's as to the future profitability of the restaurant.'"). Similarly, the FDD states that information regarding average franchise financial results should not "be construed as the financial results or 'profit' . . . which might be experienced by a franchisee with a similar sales volume or an indication that any particular sales volume will be obtained" because the results of franchisees "may differ." *See* FDD at Item 19. Plaintiffs' other fraud allegations regarding franchise availability, physical conditions of restaurants, and the availability of "various services, facilities, rights, and privileges," *see* SAC ¶ 823, are similarly foreclosed. The FDD and FA establish that Plaintiffs knew the following ***before*** they each voluntarily chose to enter into the franchise relationship:

- A franchisee is under no obligation to accept any franchise offered to it. Preliminary Agreement ¶ 13; MTD Order at 33:8–12 (emphasizing Preliminary Agreement ¶ 13 in showing the disclaimers undercutting Plaintiffs' fraud claim).

- Franchisees must operate in compliance with the entire McDonald's System, including through making renovations and remodeling. FDD at 23; FA ¶¶ 12(a), 12(d), 12(e).

- The grant of one franchise does not guarantee the award of additional franchises. FA ¶ 28(h); MTD Order at 33:3–7 (emphasizing FA 28(h) in showing the disclaimers undercutting Plaintiffs' fraud claim).

- The franchise term is limited, with "no right to renew or extend." FDD at 15, 23, 29, 34, Preliminary Agreement ¶¶ 2, 3, 6; Rewrite Policy at 1; FA ¶ 28(a).

- Transfers of franchises requires McDonald's approval, and it has a right of first refusal. FDD at 34–35; FA ¶ 15.

Neither required element of Plaintiffs' fraudulent misrepresentation claim—McDonald's intent to induce Plaintiffs' false reliance and Plaintiffs' reasonable reliance—can be maintained in the face of such explicit disclaimers in their contractual documents. *See Ace Hardware Corp. v. Landen Hardware, LLC*, 883 F. Supp. 2d 739, 751–52 (N.D. Ill. 2012) (finding no reasonable reliance as a matter of law where the franchise documents disclosed the risk of operating a franchise, including that franchisor made no representations about financial success); *see also Avon Hardware Co.*, 998 N.E.2d at 1289 (same). The Court previously dismissed Plaintiffs' fraudulent omission claim for this exact reason based on the same disclaimers in the contractual documents. MTD Order at 32:12–33:13. Plaintiffs could not "hang [their] hat on something that is expressly disclaimed by the language of the contract itself" then and the same result should be found now. *Id.* at 33:14–16.

C. The Fraudulent Misrepresentation Claim is Barred by the Five-Year Statute of Limitations.

Illinois applies a five-year limitations period to claims of fraud. 735 ILCS 5/13-205; MTD Order at 30:22–24. Because Plaintiffs allege misrepresentations in the context of their contractual relationships with McDonald's, the claim is "extracontractual" and accrues at "the date of the

breach of the duty or the contract, not the date of the damages." *American Fam. Mut. Ins. Co. v. Krop*, 120 N.E.3d 982, 987 (Ill. 2018); *see also In re marchFIRST Inc.*, 589 F.3d 901, 903 (7th Cir. 2009). Thus, the statute of limitations period for the fraudulent misrepresentation claim began on June 8, 2015 for the Plaintiffs who were parties to the original Complaint, and on November 16, 2015 for the Plaintiffs added for the first time in the Amended Complaint.

As the Court acknowledged, a motion to dismiss based on statute of limitations grounds may be granted "where the allegations of the complaint itself set forth everything necessary to satisfy the affirmative defense." MTD Order at 31:8–13 (quoting *Chicago Building Design v. Mongolian House*, 770 F. 3d 610, 613–14 (7th Cir. 2014)). That is exactly the case here. First, to the extent the fraudulent misrepresentation claim is based on misrepresentations upon which Plaintiffs supposedly relied when they entered the McDonald's System, *see* SAC ¶ 823, ***all 48*** Plaintiffs admit that they joined the McDonald's System before the start of the five-year limitations period in 2015, *see* SAC ¶¶ 165–779, making those fraud allegations time-barred. Second, Plaintiffs do not dispute that ***21 of the 48*** Plaintiffs asserting fraud claims exited the McDonald's System prior to the start of the limitations period, barring their fraud claims entirely. *See* Ex. 1. Finally, as mentioned previously, the SAC only identifies 3 specific false statements that were directed to Plaintiffs and ***all of those statements are outside the statute of limitations period*** and, therefore, are time-barred. *See* SAC ¶¶ 237, 406, 424, 767. Thus, as there are no false statements alleged within the statute of limitations period involving any of the Plaintiffs, the entire fraudulent misrepresentation claim should be dismissed as untimely.

IV. PLAINTIFFS' TORTIOUS INTERFERENCE CLAIM MUST BE DISMISSED (COUNT IX).

A. Plaintiffs Fail to Plead Essential Elements of their Tortious Interference Claim.

To establish a tortious interference claim under Illinois law, Plaintiffs must plead: "(1) a valid contract, (2) defendant's knowledge of the contract, (3) defendant's intentional and unjustified inducement of a breach of contract, (4) a subsequent breach of contract caused by defendant's wrongful conduct, and (5) damages." *Westrock Company & Victory Packaging, LP* v. *Dillon*, No. 21-CV-05388, 2021 WL 6064038, at *19 (N.D. Ill. Dec. 22, 2021) (citation omitted). Plaintiffs fail to plead facts in support of two of these elements: that McDonald's interfered with any contract, or that in doing so McDonald's acted "unjustifiably."

First, Plaintiffs do not allege that any third party breached a contract with Plaintiffs, let alone that a third party did so as a result of McDonald's inducement. At most, Plaintiffs allege generally that "Plaintiffs had valid business relationship with one or more individuals or entities, including but not limited to business loans or financing provided by financial institutions or investors." SAC ¶ 828. This is insufficient. Illinois Courts require that a plaintiff allege a contractual breach. *McCoy v. Iberdrola Renewables, Inc.*, 760 F.3d 674, 685 (7th Cir. 2014) (finding proposed amendment to tortious interference claim futile where plaintiff had failed to allege any actual contractual breach—allegations that interference lowered value of agreement that was still being negotiated could not support tortious interference claim). Not one of the *Manning* Plaintiffs has identified any contractual agreement with a third party that was breached; therefore, they have not stated a claim.

Plaintiffs also do not allege any facts showing that McDonald's acted "unjustifiably." Courts recognize a privilege in intentional interference cases where a defendant acts to protect an interest which the law deems to be of equal or greater value than the plaintiff's rights. *See HPI*

Health Care Services, Inc. v. Mt. Vernon Hosp., Inc., 131 Ill. 2d 145, 157 (1989). The privilege extends to protect a business that acts to protect its own financial interest. *See Dawson v. Gen. Motors Corp.*, 977 F.2d 369, 375 (7th Cir. 1992) (observing that "[i]nterference designed to protect one's financial interest is generally privileged"). "If the defendant's interference is privileged, the plaintiff bears the burden of proving that the defendant's conduct was malicious." *Delloma v. Consol. Coal Co.*, 996 F.2d 168, 171 (7th Cir. 1993).

The most that Plaintiffs allege is that McDonald's "intentionally interfered with these business relationships, including but not limited to through their racially discriminatory conduct and breach of contract alleged in the Counts above." SAC ¶ 830. But as already discussed, all of the conduct that Plaintiffs complain of was authorized by the terms of the FA. *See supra* Sections III.A, III.B. McDonald's exercise of its rights under the FA, many of which are designed to regulate the use of and protect McDonald's brand, certainly qualifies as acting with justification to protect McDonald's business interests. *Dawson*, 977 F.2d at 375; *Delloma*, 996 F.2d at 171. As a matter of law, that conduct cannot be "unjustified" to support a tortious interference claim.

Because Plaintiffs have failed to plead facts in support of two essential elements of their tortious interference claim, Count IX should be dismissed with prejudice.

B. Many of Plaintiffs' Tortious Interference Claims are Time-Barred.

Under Illinois law, a claim for tortious interference with a business relationship is five years. *Poulos v. Lutheran Social Servs. of Illinois, Inc.*, 312 Ill.App.3d 731, 745 (Ill. App. Ct. 2000). Because the tortious interference count was not raised until the filing of the *Manning* Plaintiffs' SAC, the statute of limitations period began on December 16, 2017. It is undisputed that 35 out of the 48 Plaintiffs[12] exited the McDonald's system prior to December 16, 2017, and

[12] Those 35 Plaintiffs are Robert Bonner, Larry Brown, Glenda Claypool, Yves Dominique, Wise Finley, Anthony George, Jacqueline George, Wesley Hall, Lawrence Holland, Douglas Hollis, Glenna Hollis, Van

therefore, the claims of those Plaintiffs are completely time barred. *See* Ex. 1. The 13 other Plaintiffs[13] left the McDonald's System within two years of the expiration of the statute of limitations, limiting their claims to McDonald's alleged conduct that occurred during the limitations period.

V. PLAINTIFFS' NEWLY ALLEGED UNJUST ENRICHMENT CLAIM FAILS AS A MATTER OF LAW (COUNT X).

A. An Unjust Enrichment Claim Cannot Lie Where an Express Contract Exists.

Plaintiffs' new unjust enrichment claim is not viable under Illinois law. The Seventh Circuit and Northern District of Illinois have long held that "recovery for unjust enrichment is unavailable where the conduct at issue is the subject of an express contract between the plaintiff and defendant." *Cohen v. Am. Sec. Ins. Co*., 735 F.3d 601, 615 (7th Cir. 2013); *see also Pittsfield Dev., LLC v. Travelers Indem. Co.*, 542 F. Supp. 3d 791, 803–05 (N.D. Ill. 2021) (Seeger, J.) (same); *Guinn v. Hoskins Chevrolet*, 836 N.E.2d 681, 704–05 (Ill. App. Ct. 2005) (same).

Based on the face of Plaintiffs' own pleadings, there is no question that "Plaintiffs have pleaded a valid and enforceable contract," which, therefore, "is fatal to a claim for unjust enrichment." *People ex rel. Dowling v. AAMBG Reinsurance, Inc.*, 260 F. Supp. 3d 972, 979 (N.D. Ill. 2017). Indeed, four out of the ten claims alleged by Plaintiffs are ***dependent*** upon the existence of such a contractual relationship: race discrimination in contracting (Count I); race discrimination in contracting, pattern or practice (Count II); race discrimination in contracting, retaliation (Count III); and breach of contract (Count VII). *See Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476

Jakes, Dwayne Richard Johnson, Harold Lewis, Jeremy Lewis, Keith Manning, Ken Manning, Joseph Mbanefo, Lois McGuire, Mitchell McGuire, Dawn Mussenden, William Rasul, Jeffrey Rogers, Carrie Salone, Jeremiah Simmons, Annis Staley, Harry Staley, Karen Tancrede, Serge Tancrede, Gordon Thornton, Ronnie Thornton, Errol Thybulle, William Washington, Lance Williams, and Jacqueline Wynn.

[13] The 13 Plaintiffs are Benny Clark, Eleanor Clark, Christine Crawford, Delores Crawford, Juneth Daniel, Al Harris, Kristen Harris, Laetitia Johnson, Dwight Miller, Scott Miller, Floyd Sims, Allen Stafford, and Norman Williams.

(2006). And Plaintiffs admit to the existence of an express contractual relationship, as shown by the references to Plaintiffs' "franchisor/franchisee contractual relationship" and their "franchise agreements" throughout the SAC. *See* SAC, ¶¶ 5–6, 18, 73–77, 305, 343, 368, 464, 472, 477, 479, 558, 620, 673, 708, 715, 774, 782–84, 793, 814 ("Each of the Plaintiffs had a valid and enforceable written contract with Defendants."), 815–21, 825.

Finally, Plaintiffs' unjust enrichment claim is based on "McDonald's induc[ing] Plaintiffs to make substantial repairs, renovations, and other improvements to their restaurants." *Id.* at ¶ 833. Plaintiffs, however, admit that repair, renovation, and improvement of their restaurants were governed by the terms of their FAs. *See id.* at ¶ 77 (citing FA ¶ 12 and admitting that "Franchisees may be required to renovate their stores in compliance with McDonald's standard building plans, including when those plans are '*reasonably* changed from time to time by McDonald's'"); ¶ 86 ("McDonald's maintains an internal set of national standards setting out the required equipment, layout, and physical condition that each of its restaurants must maintain, called the National Restaurants Building and Equipment Standards."); ¶ 784 ("[T]argeting Plaintiffs for unfair and unreasonable enforcement of their franchisor/franchisee contracts, including . . . improvements or renovations."); ¶ 819 (alleging that McDonald's breached the FA "by forcing Plaintiffs to renovate their stores when Defendants' plans and standards had not change [sic]"); *see also* FA ¶ 12 (franchisees must operate in compliance with the entire McDonald's System, including through making renovations and remodeling); FDD at 23 (same).

As Plaintiffs' unjust enrichment allegations arise directly out of the parties' express contractual relationship, the claim is not viable under Illinois law. *See, e.g.*, *Guinn*, 836 N.E.2d at 704 (dismissing unjust enrichment claim where "throughout her complaint, [plaintiff] refers to the [] contract and her allegations of defendants' violations are based on information and obligations

expressed within that contract" and "[a]lthough the contract is not specifically referenced in [plaintiff's] unjust enrichment count, she incorporates the allegations of each other count into the unjust enrichment count"). Plaintiffs are not permitted to "shift the risk[s] that they knowingly assumed" by pursuing an equitable remedy for a claim that is governed by an existing, legal contract. *Cromeens, Holloman, Silbert, Inc. v. AB Volvo*, 349 F.3d 376, 397 (7th Cir. 2003); *see also Pittsfield Dev.*, 542 F. Supp. 3d at 803 (Seeger, J.) ("Unjust enrichment is an equitable remedy and requires a showing that there is no adequate remedy at law . . . . [b]ut if an express contract exists to govern the parties' conduct, then there is no room for an implied contract.") (internal quotations omitted). Accordingly, Count X should be dismissed.

B. The New Unjust Enrichment Claim is Time-Barred.

Under Illinois law, the statute of limitations for unjust enrichment claims is five years. *Frederickson v. Blumenthal*, 271 Ill. App. 3d 738, 742 (Ill. App. Ct. 1995). Thus, as Plaintiffs did not allege unjust enrichment in any of their pleadings before the SAC, the statute of limitations period for their unjust enrichment claim began on December 16, 2017, five years before the filing of the SAC.

This timing is fatal for ***35 out of the 48 Plaintiffs***.[14] Plaintiffs admit that 35 Plaintiffs exited the McDonald's System prior to December 16, 2017, the start of the statutes of limitations period for their unjust enrichment claims, meaning that their claims are entirely time-barred. *See*

[14] Those 35 Plaintiffs are Robert Bonner, Larry Brown, Glenda Claypool, Yves Dominique, Wise Finley, Anthony George, Jacqueline George, Wesley Hall, Lawrence Holland, Douglas Hollis, Glenna Hollis, Van Jakes, Dwayne Richard Johnson, Harold Lewis, Jeremy Lewis, Keith Manning, Ken Manning, Joseph Mbanefo, Lois McGuire, Mitchell McGuire, Dawn Mussenden, William Rasul, Jeffrey Rogers, Carrie Salone, Jeremiah Simmons, Annis Staley, Harry Staley, Karen Tancrede, Serge Tancrede, Gordon Thornton, Ronnie Thornton, Errol Thybulle, William Washington, Lance Williams, and Jacqueline Wynn.

Ex. 1. The other 13 Plaintiffs[15] exited the McDonald's System 2 years or less after December 16, 2017, meaning that their unjust enrichment claims would be limited to that short time period. *See id.* Significantly, however, the unjust enrichment claim is based on Plaintiffs' repairs, renovations, and improvements allegedly unjustly benefitting McDonald's and yet there are ***no*** repairs, renovations, or improvements alleged in the entire SAC by any of the Plaintiffs that occurred during the statute of limitations period. *See* SAC ¶¶ 129–779. As none of the unjust enrichment allegations are timely, as Plaintiffs themselves set forth on the face of the SAC, all of the unjust enrichment claims are time-barred and should be dismissed.

VI. THE COURT SHOULD DISMISS PLAINTIFFS' NEWLY ASSERTED CLAIMS FOR FAILURE TO SEEK LEAVE OF COURT.

Years after this litigation began and three pleadings later, Plaintiffs have attempted to inject three new claims into this case. Plaintiffs' Section 1982 and tortious interference claims were both asserted for the first time in the SAC, and the fraudulent misrepresentation claim was not alleged in the Amended Complaint, the subject of the Court's MTD Order. In adding these claims, Plaintiffs have exceeded the scope of leave granted by the Court, which contemplated and provided leave for Plaintiffs to re-plead the claims included in the Amended Complaint and addressed in the MTD Order. *See* MTD Order at 5:6–8 ("I'm going to be granting McDonald's motion to dismiss the amended complaint, and I'm going to give plaintiffs leave to amend."); *see also id.* at 20:11–15 ("Those claims [1981 claims] are therefore dismissed without prejudice with leave to amend."). After the initial pleading stage, a party may amend its pleading "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Because the SAC exceeds that leave, the Court should exercise its discretion and dismiss these newly asserted claims. *See,*

[15] The 13 Plaintiffs are Benny Clark, Eleanor Clark, Christine Crawford, Delores Crawford, Juneth Daniel, Al Harris, Kristen Harris, Laetitia Johnson, Dwight Miller, Scott Miller, Floyd Sims, Allen Stafford, and Norman Williams.

e.g., *Barnes v. Sea Hawai'i Rafting, LLC*, 493 F. Supp. 3d 972, 978–79 (D. Haw. 2020), *aff'd sub nom. Barnes v. Kris Henry, Inc.*, No. 20-17141, 2022 WL 501582 (9th Cir. Feb. 18, 2022) ("When leave is granted to amend certain claims against specific parties, the Court may dismiss and strike any portions of the amended pleading not expressly permitted."); *see also Raiser v. City of Los Angeles*, No. CV 13-2925 RGK RZ, 2014 WL 794786, at *4 (C.D. Cal. Feb. 26, 2014) ("The rule applies even if the court did not expressly bar amendments other than the one(s) it did allow."); *Hukic v. Aurora Loan Servs.*, 588 F.3d 420, 432 (7th Cir. 2009) (district courts have "broad discretion" to deny leave to amend); *FDIC v. Kooyomjian,* 220 F.3d 10, 15 (1st Cir. 2000) (holding that district court did not abuse its discretion in striking two new claims in amended pleading, where court had granted leave to amend previously-pleaded claims).

CONCLUSION

For the foregoing reasons, McDonald's requests that the Court dismiss Plaintiff's Second Amended Complaint in its entirety, with prejudice.

Dated: March 31, 2023

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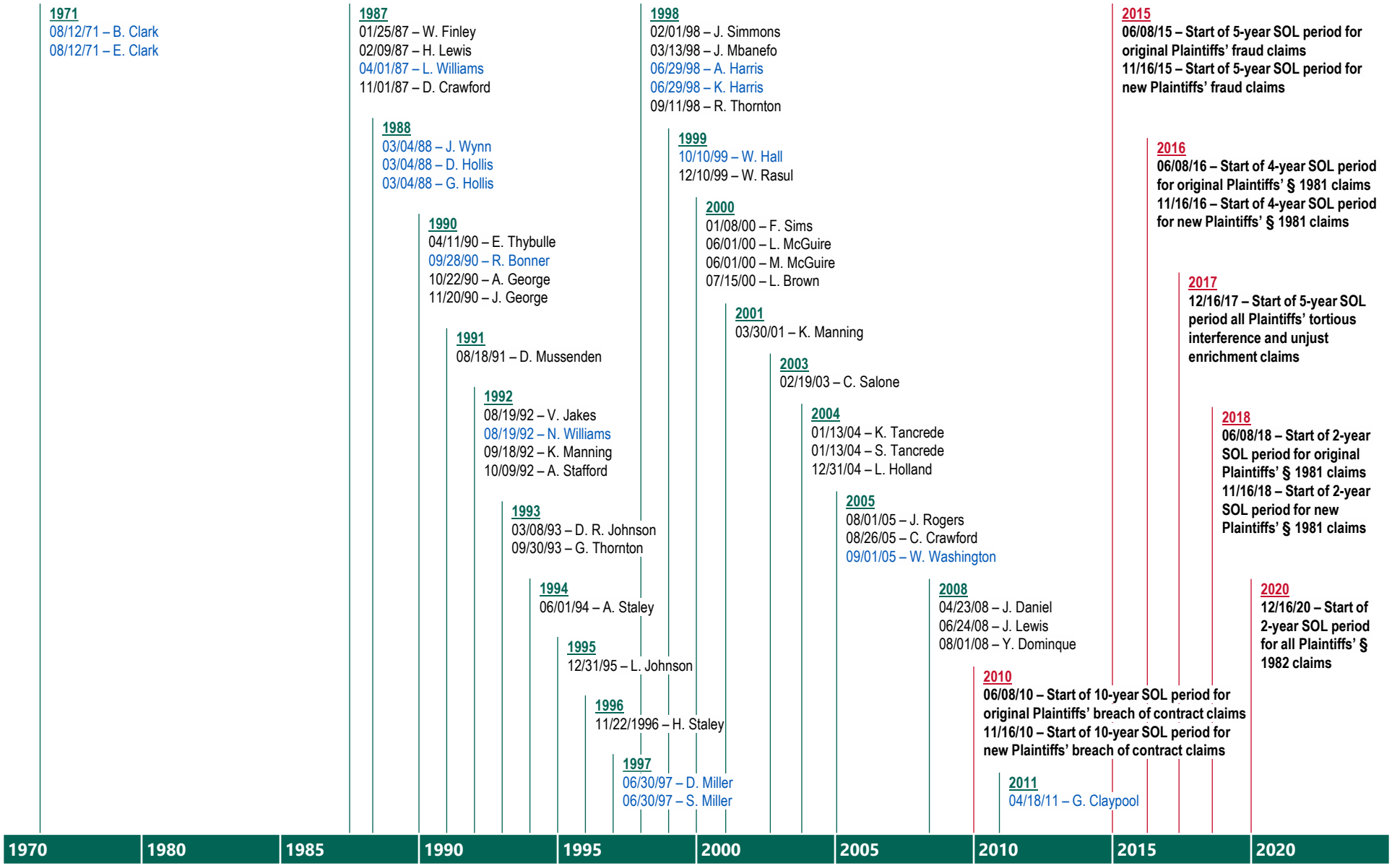
EXHIBIT 1

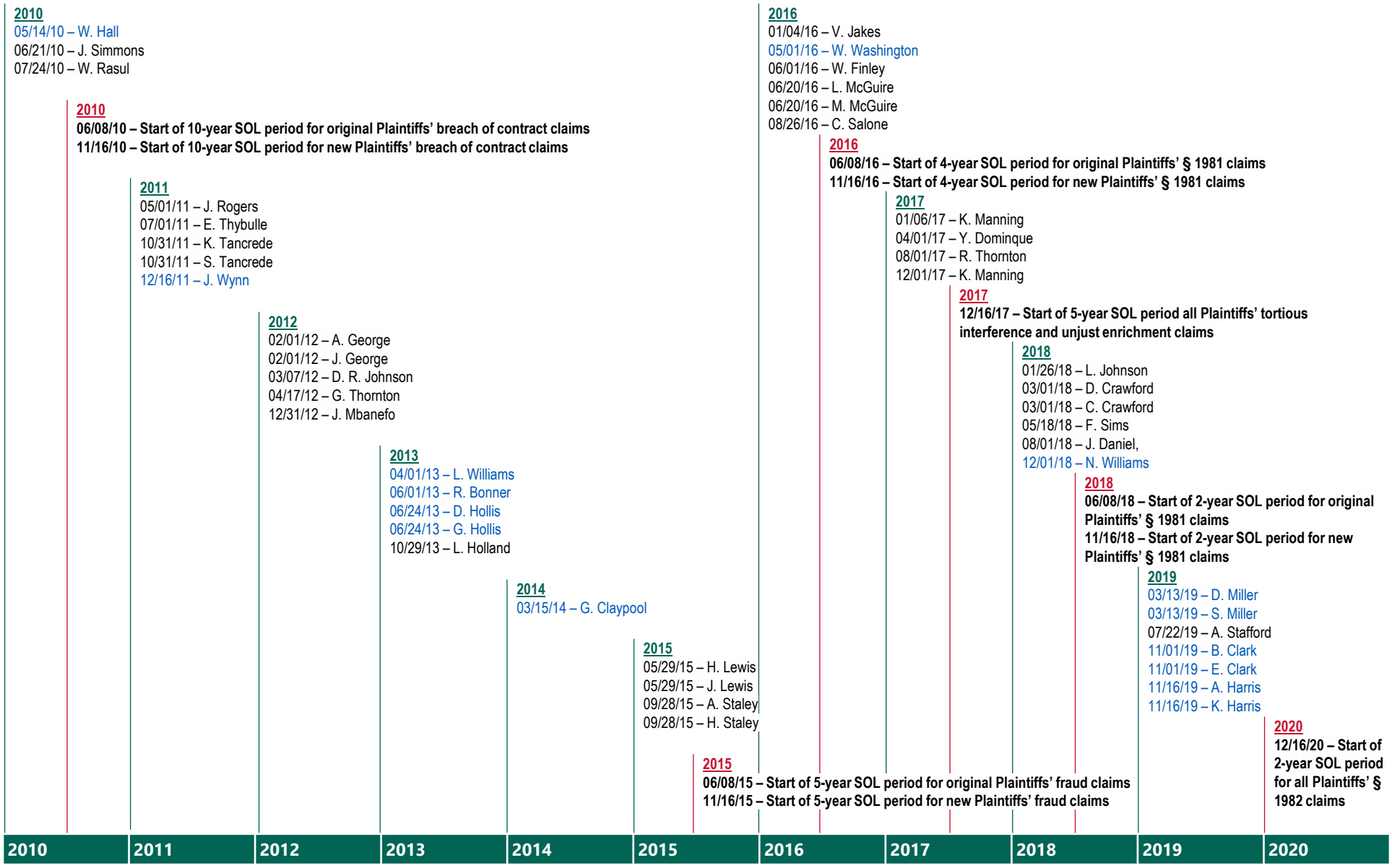
Timeline of *Manning* Plaintiffs' Entrance Into McDonald's Franchise System



* Names in blue reflect "new" Plaintiffs who were added in the Amended Complaint.

** Dates are taken from Defendants' spreadsheet submitted as part of the Court-ordered statute of limitations project. Plaintiffs and Defendants have confirmed and agreed upon the exit dates for all of the Plaintiffs.

Timeline of *Manning* Plaintiffs' Exit From McDonald's Franchise System



* Names in blue reflect "new" Plaintiffs who were added in the Amended Complaint.

** Dates are taken from Defendants' spreadsheet submitted as part of the Court-ordered statute of limitations project. Plaintiffs and Defendants have confirmed and agreed upon the exit dates for all of the Plaintiffs.

EXHIBIT 2

SUMMARY OF FACTUAL ALLEGATIONS IN SECOND AMENDED COMPLAINT SUBMITTED IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Manning, et al. v. McDonald's Corp., et al.

	Plaintiffs Alleging Claims Under Sections 1981 and 1982	Factual Allegations of Alleged Discriminatory Conduct[1]
1	Kenneth Manning (SAC ¶¶ 129-64)	**Before 6/8/16:** Paragraphs 133-158 **After 6/8/16:** Paragraphs 159-164 allege that Manning wanted to sell his stores to a particular buyer, Ed Gerena, but that McDonald's refused to approve this sale or the refinancing of his "heavy debt load" (¶ 162), thereby forcing him to accept lower offers from white owner/operators (¶¶ 162-163). Manning does not explain how he concluded that these actions were discriminatory. Paragraph 164 asserts that "but for Manning's race," he would have been treated differently (¶ 164), but also alleges that his organization was "successful" and "one of the largest owner/operators in the Eastern Division." *Id.*
2	Keith Manning (SAC ¶¶ 165-78)	**Before 6/8/16:** Paragraphs 166-174 **After 6/8/16:** Paragraphs 175-178 allege McDonald's enforced its renovation standards upon Manning more stringently than it did his unnamed white counterparts (*id.*). Specifically, he claims he was required to renovate one year earlier than was initially expressed to him (¶ 175). Manning does not explain how he concluded that these actions were discriminatory.
3	Delores and Christine Crawford (SAC ¶¶ 179-200)	**Before 6/8/16:** Paragraphs 180-195 **After 6/8/16:** Paragraphs 196-200 allege that McDonald's interfered with the Crawfords' efforts to sell their restaurants which resulted in them selling the stores in 2018 for a lower price to a white owner/operator (¶ 200). While the Crawfords allege that they would have been able to sell their stores for more if McDonald's

[1] For ease, the dates in this chart reference the earliest statute of limitations for Plaintiffs' discrimination claims: the four-year statute of limitations for post-contractual Section 1981 claims, which began on June 8, 2016 for Plaintiffs added in the original Complaint and November 16, 2016 for Plaintiffs added in the Amended Complaint. To the extent, however, that Plaintiffs allege pre-contractual discriminatory conduct under Section 1981 or Section 1982, those claims are further limited by the applicable two-year statute of limitations. Specifically, the pre-contractual Section 1981 statute of limitations began on June 8, 2018 for Plaintiffs added in the Amended Complaint and November 16, 2018 for Plaintiffs added in the Amended Complaint. For Section 1982, the statute of limitations began on December 16, 2020 for all Plaintiffs as those claims were alleged for the very first time in the SAC.

	Plaintiffs Alleging Claims Under Sections 1981 and 1982	Factual Allegations of Alleged Discriminatory Conduct[1]
		had not interfered, they do not explain how they concluded that these actions were discriminatory.
4	Van Jakes (SAC ¶¶ 201-213)	**Before 6/8/16:** Paragraphs 204-213 Van Jakes alleges he was forced out of the system and lost five stores in 2016 due to his race (¶ 213). He does not allege when specifically in 2016 he claims to have been forced out of the System or how he concluded that McDonald's actions were discriminatory.
5	Annis Alston-Staley and Harry Staley (SAC ¶¶ 214-224)	**Before 6/8/16:** The Staleys fail to allege any conduct that took place after 6/8/2016. Rather, they allege that they purchased stores in 1995 without explaining when any of the remaining conduct took place (¶ 213).
6	Robert Bonner (SAC ¶¶ 225-233)	**Before 11/16/16:** Bonner fails to allege any conduct that took place after 11/16/2016. Rather, he alleges conduct that took place between 1990 when he entered the System and 2013 when he exited the System (¶¶ 227-232).
7	Larry Brown (SAC ¶¶ 234-246)	**Before 6/8/16:** Paragraphs 237-244 **After 6/8/16:** Paragraphs 245-246 allege McDonald's placed Brown in an unfavorable economic position such that he had no choice but to exit the System. (¶ 245). Without identifying who, Brown alleges McDonald's instructed a white owner/operator to offer him less than his stores were worth (*id.*).
8	Benny and Eleanor Clark (SAC ¶¶ 247-252)	The Clarks allege McDonald's discriminated against them "between 1999 and 2019." (¶ 249). Without detailing when or by whom, they claim they were subjected to increased inspections to generate bad business reviews. (¶ 250). The Clarks further claim that around 2019 McDonald's informed them that it would no longer support small operators with only a few restaurants and, therefore, the Clarks had no choice but to leave the System (¶¶ 251-252). The Clarks do not explain how they concluded these actions were discriminatory.
9	Glenda Claypool (SAC ¶¶ 253-261)	**Before 6/8/16:** Claypool fails to allege any conduct that took place after 6/8/2016. Rather, she alleges conduct that took place between 1971 when her late husband entered the System and 2014 (¶¶ 254-261).
10	Juneth Daniel (SAC ¶¶ 262-296)	**Before 6/8/16:** Paragraphs 264-277 **After 6/8/16:** Paragraph 278 complains of harassment Daniel experienced at the hands of local residents, which she does not

	Plaintiffs Alleging Claims Under Sections 1981 and 1982	Factual Allegations of Alleged Discriminatory Conduct[1]
		allege was caused by McDonald's (¶ 278). Paragraph 279 alleges Daniel was not permitted to bid for a new location though she does not allege she attempted to bid or inquired about purchasing the location (¶ 279). Paragraphs 280-282 allege Daniel was not permitted to change regions (¶ 281). Daniel alleges QSCVP Valerie Williams "stepped in and interfered" with her requests to change regions thereby ensuring she would not be able to succeed as a franchisee (¶ 281), but she does not explain how she concluded this was motivated by race. Paragraph 283 alleges Daniel was graded more harshly than her white counterparts without explaining when she was graded, who graded her, or what formed the basis of their critiques (¶ 283). Paragraphs 285-296 allege McDonald's would not allow Daniel to grow outside of her region, and forced her to complete renovations to her existing stores, but fail to explain how she concluded these actions were motivated by race.
11	Yves Dominique (SAC ¶¶ 297-306)	**Before 6/8/16:** Paragraphs 300-304 **After 6/8/16:** Paragraph 306 alleges Dominique was forced to sell his store in 2017. He claims McDonald's allowed white owner/operators to own only one store, but that he could not because of his race (¶ 306). Without more, he alleges that McDonald's "wanted to force [him] out of the system solely because of his race."
12	Wise Finley (SAC ¶¶ 307-332)	Paragraph 332 alleges McDonald's compelled Finley to sell his stores due to a loss of sales in 2016. It is unclear whether he sold the stores before 6/8/2016.
13	Jacqueline and Anthony George (SAC ¶¶ 333-338)	**Before 6/8/16:** The Georges fail to set forth allegations that took place after 6/8/2016.
14	Wesley Hall (SAC ¶¶ 339-355)	**Before 6/8/2016:** Hall fails to set forth allegations that took place after 6/8/2016.
15	Al and Kristen Harris (SAC ¶¶ 356-383)	**Before 11/16/16:** Paragraphs 360-376 **After 11/16/16:** Paragraphs 377-379 allege a business consultant inadvertently texted the Harrises making critical comments about their business—none of which related to their race nor did they claim such comments led to disparate treatment based on their race.

	Plaintiffs Alleging Claims Under Sections 1981 and 1982	Factual Allegations of Alleged Discriminatory Conduct[1]
		Paragraphs 381-383 allege the Harrises were forced out of the System after they: (1) failed a company graded visit; and (2) could not find an operator interested in purchasing only two of their stores as opposed to all four, but the Harrises fail to allege that either related to their race (¶¶ 381-383). The Harrises do not explain how they concluded these actions were discriminatory.
16	Lawrence Holland (SAC ¶¶ 384-399)	Holland fails to allege when any of his allegations took place. With the exception of alleging that in 2003 he purchased a store in Jackson, Georgia, and in 2005 he purchased a truck stop location, it is unclear when any of the conduct alleged took place (¶¶ 385-386).
17	Glenna and Douglas Hollis (SAC ¶¶ 400-412)	**Before 11/16/16:** The Hollises fail to allege conduct that took place after 11/16/2016.
18	Laetitia Johnson (SAC ¶¶ 413-426)	Johnson fails to state when any of the discriminatory conduct she alleges took place. With the exception of alleging she entered the System in or around 1995 (¶ 414), acquired more locations between 2003-2006 and in 2015 (¶ 417), and exited the System in 2018 (¶ 426), she fails to allege when any discriminatory conduct took place. Rather, she alleges conduct that it took place at "a co-op meeting," and "when Johnson wanted to retire," without more (¶¶ 421-425).
19	Harold and Jeremy Lewis (SAC ¶¶ 427-440)	**Before 6/8/16:** The Johnsons fail to allege conduct that took place after 6/8/2016.
20	Joseph Mbanefo (SAC ¶¶ 441-466)	**Before 6/8/16:** Mbanefo fails to allege conduct that took place after 6/8/2016.
21	Lois and Mitchell McGuire (SAC ¶¶ 467-484)	**Before 6/8/16:** Paragraphs 468-481 Paragraphs 482-483 allege the McGuires were "forced" to take out a home loan and ultimately sell the location to cover their losses. They do not allege when they took out such a loan, how they were forced, who forced them, when they sold the store, or how either related to their race.
22	Scott and Dwight Miller (SAC ¶¶ 485-504)	**After 11/16/16:** Paragraphs 491-494 allege McDonald's refused to rewrite the Millers' five stores at the end of their leases due to lower than average television market sales. The Millers claim that they had never heard of television market sales as a metric and, in a conclusory manner, allege that but for their race their request would not have been denied (¶ 492, 503).

	Plaintiffs Alleging Claims Under Sections 1981 and 1982	Factual Allegations of Alleged Discriminatory Conduct[1]
		Paragraphs 495-502 allege the Millers failed a review, were denied a rewrite appeal, decided to sell their restaurants, and were compelled to sell to McDonald's suggested buyer, who was white; instead of the buyer they selected, who was also white. (¶ 502). None of the Millers' allegations suggest McDonald's treated them differently because of their race. Paragraphs 502 and 504 allege McDonald's allowed a white owner/operator to sell the Millers' old stores for twice their purchase price nearly three years later but do not explain how this is evidence of discrimination.
23	Dawn Mussenden (SAC ¶¶ 505-527)	Mussenden fails to state with specificity when any of the discriminatory conduct she alleges took place. In fact, her claims are completely devoid of dates and years. Vague temporal phrases such as "eventually" (¶ 508), "when she attended a meeting" (¶ 509), "McDonald's later offered…" (¶ 512), "a few years later" (¶ 515), and "when Dawn and her husband got divorced" (¶ 517) are not sufficient.
24	William Rasul (SAC ¶¶ 528-534)	**Before 6/8/16:** Rasul fails to allege discriminatory conduct that took place after 6/8/2016.
25	Dwayne Richard Johnson (SAC ¶¶ 535-548)	**Before 6/8/16:** Paragraph 544 alleges McDonald's deployed its tactic of forcing Black operators out of the System "around 2005." Johnson fails to detail when any additional conduct took place thereafter (¶¶ 545-548). He, therefore, fails to allege conduct that took place after 6/8/2016.
26	Jeffery Rogers (SAC ¶¶ 549-580)	**Before 6/8/16:** Rogers fails to allege conduct that took place after 6/8/2016.
27	Carrie Salone (SAC ¶¶ 581-604)	**Before 6/8/16:** Paragraphs 584-600. Salone alleges she was forced to sell her restaurant at a loss in 2016 (¶ 603) following a meeting that took place in March 2016 (¶ 600). She fails to allege any discriminatory conduct took place after 6/8/2016. To the contrary, she alleges McDonald's urged a white owner/operator to buy her store (¶ 602) without stating when.
28	Jeremiah Simmons (SAC ¶¶ 605-616)	**Before 6/8/16:** Simmons fails to allege conduct that took place after 6/8/2016.
29	Floyd Sims (SAC ¶¶ 617-656)	**Before 6/8/16:** Paragraphs 618-629; 635-639 Without detailing specific dates, Paragraphs 640-642 allege that at some time in 2016 McDonald's told Sims he needed to sell his

	Plaintiffs Alleging Claims Under Sections 1981 and 1982	Factual Allegations of Alleged Discriminatory Conduct[1]
		stores, did not inform him of city road construction plans, and refused to renew his lease. **After 6/8/16:** Paragraphs 651-654 allege Sims was pushed out of the System by increased inspections in or around 2017 and ultimately exited in 2018 after McDonald's raised his rent and denied him rent relief. He does not allege when the inspections took place, who conducted them, how such inspections related to his race, that his rent was increased for a discriminatory purpose, or that he was wrongfully denied rent relief.
30	Allen Stafford (SAC ¶¶ 657-676)	**Before 6/8/16:** Paragraphs 663; 667-671 **After 6/8/16:** Paragraphs 664-665, 672-674 allege that McDonald's denied Stafford rent relief in 2016 (¶ 664), frequently inspected his stores in 2017 and 2018 (¶ 665), enforced its renovation standards more stringently in 2018 (¶ 673), and put one of his locations on an Improvement Process for Underperforming Restaurants in 2019 (¶ 674). Stafford does not explain how he concluded these actions were discriminatory.
31	Serge and Karen Tancrede (SAC ¶¶ 677-703)	**Before 6/8/16:** The Tancredes fail to allege any conduct that took place after 6/8/16. With the exception of alleging that they entered the System in or around 2004 (¶ 681) and sold a store in 2009 or 2010 (¶ 690), the Tancredes fail to make clear when any of the conduct alleged took place.
32	Gordon Thornton (SAC ¶¶ 704-709)	**Before 6/8/16:** Thornton fails to allege conduct that took place after 6/8/2016.
33	Ronnie Thornton (SAC ¶¶ 710-717)	**Before 6/8/16:** Paragraphs 710-716 **After 6/8/16:** Paragraph 717 alleges Thornton left the System because he could not afford to invest in Bigger Bolder Vision. He alleges he was "forced" to sell his stores, without more.
34	Errol Thybulle (SAC ¶¶ 718-725)	Thybulle fails to allege any conduct that took place after 6/8/2016. With the exception of alleging that he entered the System in or around April 1990 (¶ 719), Thybulle fails to make clear when any of the conduct alleged took place. In addition to excluding when the alleged rent relief denials and increased inspection practices took place, he also failed to explain who engaged in the conduct and how it was connected to his race.
35	William (Pete) Washington (SAC ¶¶ 726-733)	**Before 11/16/16:** Paragraphs 730-731

	Plaintiffs Alleging Claims Under Sections 1981 and 1982	Factual Allegations of Alleged Discriminatory Conduct[1]
		Paragraph 732 alleges McDonald's required Washington to relocate and denied him financial relief "solely because he was Black." He explains neither who engaged in the conduct, specifically when (other than sometime in 2016), how they did so, or in what way the conduct related to his race.
36	Lance Williams (SAC ¶¶ 734-742)	**Before 11/16/16:** Williams fails to allege conduct that took place after 11/16/2016.
37	Norman Williams (SAC ¶¶ 743-762)	**Before 11/16/16:** Paragraphs 745, 759 **After 11/16/16:** With the exception of stating that he entered the System in 1994 (¶ 745), sought rental assistance around 2013 (¶ 759), and received offers to buy his store around 2018 (¶ 761), Williams fails to make clear when any of the conduct he alleges took place. Rather, he relies on vague temporal terms like "ultimately" (¶ 753) and "eventually" (¶ 758). Williams, further, fails to allege a connection between any of the conduct alleged and his race with any detail. For instance, Williams he was denied rent relief unlike his white counterpart who was granted "meaningful financial assistance in similar circumstances" (¶ 754).
38	Jacqueline Wynn (SAC ¶¶ 763-779)	**Before 11/16/16:** Wynn fails to allege conduct that took place after 11/16/2016. Paragraphs 775-779 allege McDonald's instructed Wynn not to renew her lease on the store because it would not turn a profit until 2014 and refused her requests to negotiate. The allegations do not detail when such conversations took place, with whom, the content of the conversations, or how Wynn connected them to her race. Similarly, Wynn alleges McDonald's hand-selected a purchaser for her store and she did not receive market value—again without stating who, when, or why she concluded her race contributed (¶ 779).