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

LEINANI DESLANDES, on behalf of herself and all others similarly situated, Plaintiff, v. McDONALD'S USA, LLC, a Delaware limited liability company, McDONALD'S CORPORATION, a Delaware corporation; and DOES 1 through 10, inclusive, Defendants.	)	Case No. 17-cv-04857 Judge Jorge L. Alonso Magistrate Judge M. David Weisman
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STEPHANIE TURNER, on behalf of herself and all others similarly situated, Plaintiff, v. McDONALD'S USA, LLC, a Delaware limited liability company, and McDONALD'S CORPORATION, a Delaware corporation, Defendants.	)	Case No. 19-cv-05524 Judge Jorge L. Alonso Magistrate Judge M. David Weisman

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Earlier this week, the Supreme Court issued a unanimous decision in *NCAA v. Alston*, No. 20–512 (Exhibit 1), in which student athletes challenged NCAA eligibility rules fixing their compensation and benefits. Op. 8. The Court clarified that courts must take "special care not to deploy" tools such as "quick-look" analysis given "the inherent limits on a court's ability to master an entire industry," particularly with respect to "complex business arrangements." *Id.* at 17-18. This means the Rule of Reason—including its "'fact-specific assessment of market power and structure'"—must be applied to analysis of "[m]ost restraints challenged under the Sherman Act";

abbreviated "quick-look" analysis is limited to extreme cases on "opposite ends of the competitive spectrum." *Id.* at 16. The Court then applied the Rule of Reason because disputes involving labor market restrictions with potential procompetitive benefits "present[] complex questions" for which the quick look framework is inappropriate. *Id.* at 19.

The Court's guidance prescribes the appropriate mode of analysis here. The NCAA had undisputed monopsony power in the relevant labor market, student-athletes had "nowhere else to sell their labor," and the NCAA's rules were "admitted horizontal price fixing" that "*in fact* decrease[d] [student-athletes'] compensation" and suppressed output. Op. 14, 18. Yet because courts have not amassed sufficient experience with the types of restraints challenged in *Alston* to bless or condemn them "after only a quick look," *id.* at 17, the Court found the quick look standard inapplicable. *Id.* at 17–19. Rather, the "complex questions" presented compelled "fuller review," including "whether and to what extent [the challenged] restrictions in the [a] labor market yield benefits in [a corresponding] consumer market." *Id.* at 18–19.

Plaintiffs here challenge former Paragraph 14 of McDonald's franchise agreement—an intrabrand labor-market restriction within a "complex business arrangement[]," Op. 17, that McDonald's contends generates procompetitive benefits. Dkt. 299 at 23; *see also* Dkt. 53 at 15 (discussing McDonald's argument in this case "that the no-hire restriction promotes" competition "for hamburgers"); Dkt. 302-1 Ex. 2 at 21–55 (expert analysis of procompetitive benefits). Plaintiffs argue the "full-blown rule of reason" will not apply because McDonald's franchisees are competitors who agreed to restrict employee mobility, Dkt. 344 at 2, and accordingly, declined to allege a Rule of Reason claim even when given the opportunity by this Court to do so. Dkt. 53 at 16. *Alston* assessed admitted horizontal wage-fixing by interbrand competitors with proven (not disputed) anticompetitive effects under the Rule of Reason. Under *Alston*, Plaintiffs' failure to allege a Rule of Reason claim, much less proffer classwide evidence that could satisfy their burden to prove a Rule of Reason claim (including the requisite proof of impact, market definition, and market power in properly defined markets), is fatal to their bid for class certification. Dkt. 299 at

13–21; *see also* Op. 21 (explaining that "a careful analysis of market realities" is imperative).*

Dated: June 23, 2021

Respectfully submitted,

McDONALD'S USA, LLC and McDONALD'S CORPORATION

By: */s/ Rachel S. Brass*
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* McDonald's maintains that Plaintiffs' failure to allege a Rule of Reason claim also compels judgment against them, and McDonald's reserves the right to move for such relief.

CERTIFICATE OF SERVICE

I, Rachel S. Brass, an attorney, hereby certify that the foregoing document was electronically filed on June 23, 2021 and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

/s/ Rachel S. Brass
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