EXHIBIT A

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' SUR-REPLY IN OPPOSITION TO PLAINTIFFS' REPLY IN SUPPORT OF CLASS CERTIFICATION

Plaintiffs accuse each and every one of the more than 2,000 McDonald's franchisees of joining a nationwide conspiracy to suppress wages—yet they took no depositions of any McDonald's franchise owner/operators or franchisee employees before filing their motion for class certification. They did not even bother to depose anyone who worked with either of the named Plaintiffs. And that is true notwithstanding the fact that Plaintiffs identified "current and former employees" of their McDonald's franchise restaurants as witnesses likely to have discoverable information in support of Plaintiffs' claims on their own Rule 26 disclosures, *see* Exs. 1, 2.*

Defendants, for their part, understood that the critical questions of agreement, injury, causation, and damages in this case depend on the circumstances of each restaurant and each employee, a fact that bears directly on the unsuitability of this case for class-based adjudication. Accordingly, Defendants submitted declarations from two franchisees and three franchisee employees in support of their opposition to Plaintiffs' motion. Only then did Plaintiffs finally seek franchisee discovery, and they deposed all five declarants. Higney Decl. ¶¶ 2-9. Plaintiffs' reply brief selectively cites portions of that testimony, taking excerpts out of context or misconstruing them to support their arguments. Dkt. 346 at 3, 8, 11. A more complete snapshot reveals the full picture: the deposition testimony confirms what the declarants attested to in their sworn declarations (*see* Higney Decl. Table 1) and demonstrates why this case cannot be litigated as a class action.

1. The declarants' testimony confirms that competition within local labor markets dictates employee pay and that there is no separate market for McDonald's-trained workers. All declarants, each of whom had responsibility for hiring or overseeing the hiring of employees at their respective franchised restaurant(s), testified that their restaurants competed with a broad range of other employers for employees within a local geographic area. *See*, *e.g.*, Ex. 3, Groen Dep. 96:10-97:12; Ex. 4, Lopez Dep. 146:23-147:13; Ex. 5, Vidler Dep. 221:15-222:10; Ex 6, Miller Dep. 155:23-156:21; Ex. 7, Watson Dep. 115: 4-23. Moreover, the witnesses unequivocally

* All "Ex." citations refer to exhibits attached to the Declaration of Caeli Higney filed in support of Defendants' motion for leave to file a sur-reply. Ms. Deslandes named Eric Vidler, Donna Miller, and Jason Watson in her Rule 26(a) disclosures. Ex. 1 at 2.

testified that they set their employees' wages based off what those local competitors were paying. *See*, *e.g.*, Ex. 3, 100:11-103:5; Ex. 4, 129:6-130:7, 148:25-149:18; Ex. 5, 127:25-128:17, 130:17-131:20; Ex. 6, 99:1-16; Ex. 7, 84:17-85:5. The makeup of those local competitors varied, leading to *different* wages in different local areas, which confirms that Plaintiffs' failure to analyze the impact of the alleged conspiracy in local labor markets is fatal to their class certification bid. *See* Ex. 3, 100:6-101:23; Ex. 4, 147:15-148:5, 149:3-18; Ex. 5, 135:24-138:11; *see also* Dkt. 299 at Section IV.A (explaining error of failing to define any labor market, or to acknowledge local variation).

Plaintiffs make much of the fact that some declarants acknowledged that their restaurants hired from the same general labor pool as other McDonald's restaurants, but in so arguing, they ignore testimony that other restaurants lacked *any* separately-owned McDonald's restaurants within a reasonable commuting distance. Ex. 5, 142:10-144:5. And Plaintiffs also ignore critical testimony explaining that even where McDonald's restaurants owned by different operators sat in the same local labor market, they made up only a tiny fraction of the pool of competing employers—and were not typically included in the restaurants' wage benchmarking exercises—meaning their influence over what a given McDonald's franchisee decided to pay its employees was (at most) minuscule. Ex. 3, 86:11-87:12; Ex. 4, 158:19-159:10; Ex. 5, 221:10-222:10.

Plaintiffs' attempt to twist the franchisee deposition testimony to support their theory regarding the specificity of McDonald's training, Dkt. 347 Table 1, similarly misses the mark. None of the declarants testified that McDonald's training provided "primarily" McDonald's-specific skills or unique value, as Plaintiffs' expert Prof. Cappelli opined. Ex. 4, 90:20-91:16, 93:22-98:12 (an employee with previous McDonald's experience is not necessarily more valuable than one without such experience); Ex. 5, 98:1-24 (training provides skill sets that are applicable to other businesses; "people are always grabbing McDonald's managers and trying to put them in their business."). Quite to the contrary, the declarants uniformly testified that McDonald's training is applicable and valuable to a wide range of employers, undercutting Plaintiffs' theory of common harm. *See*, *e.g.*, Ex. 3, 116:21-117:17; Ex. 4, 151:7-152:6; Ex. 5, 101:1-102:14; Ex. 6, 56:2-58:6,

77:1-5, 159:14-160:14; Ex. 7, 123:11-124:22. Similarly, declarants testified that the McDonald's training that they personally received imparted skills transferrable to other employers. Ex. 5, 97:9-24, 99:14-100:7; Ex. 7, 75:1-76:17, 79:8-80:4. Though some agreed that it would be easier to train an employee who had previously received McDonald's training, Ex. 3, 76:15-77:3, none testified that ease of training implicated the pay decisions in their restaurants.

Far from supporting Plaintiffs' claim of a market limited to employees with McDonald's-specific skills, the declarants' testimony demonstrates the opposite—that McDonald's restaurants compete for employees with a broad swath of local employers, regardless of whether those employees have McDonald's experience or not, and that McDonald's restaurant employees learn skills that they leverage across a variety of other jobs and employers—undercutting Plaintiffs' hypothetical market definition and theory of harm.

2. The declarants' testimony confirms there is no common wage structure shared by all McDonald's restaurants. The franchisee deponents also confirmed what their declarations and the documentary evidence demonstrated—there is no common wage structure connecting all 14,000 McDonald's franchise and McOpCo restaurants. Declarants who were involved in wage-setting uniformly testified that they did not base employee wages off what McOpCos—or any other McDonald's restaurants—were paying. Ex. 3, 69:24-71:14, 100:3-5, 105:12-106:5, 108:17-109:10, 130:5-7; Ex. 4, 121:2-122:1, 129:6-130:7, 133:1-16, 149:19-150:16. Rather, as discussed above, franchise restaurants set wages independently based off local competitive conditions, and adjusted their wages to account for those conditions, as well as individualized factors, such as employee performance and availability. Ex. 3, 67:12-68:15, 101:24-103:5, 104:1-105:11, 106:6-108:16; Ex. 4, 117:9-118:22, 148:6-23; Ex. 6, 100:10-102:6. Such testimony contradicts Plaintiffs' theory that any wage suppression would have spread throughout the entire McDonald's system as a result of a shared, common wage structure.

3. The declarants' testimony confirms that employees were allowed to move freely between separately-owned McDonald's restaurants. The declarants' testimony also undermines Plaintiffs' theory that the alleged conspiracy suppressed putative class member wages by

preventing them from moving between independently-owned McDonald's restaurants, thus depriving them of the ability to leverage their McDonald's-specific skills for higher pay. In fact, all witnesses testified that they were aware of McDonald's employees who moved freely between separately-owned restaurants—either with or without releases. Ex. 3, 90:12-91:6; Ex. 4, 98:14-99:23, 109:2-111:15, 113:7-24, 156:1-157:6, 159:16-160:17; Ex. 5, 147:14-148:24, 151:1-153:21; Ex. 6, 109:4-15, 111:2-14, 157:2-159:9; Ex. 7, 92:5-94:2. In some cases, declarants testified about employees who worked at multiple separately-owned McDonald's restaurants simultaneously without issue. Ex. 4, 86:12-90:13; Ex. 5, 59:17-62:16. In other cases, they testified about affirmatively *facilitating* employee movement, for example by putting an employee in contact with another franchisee organization, Ex. 3, 72:10-73:12; Ex. 5, 141:1-142:5, or by providing release letters when requested, Ex. 3, 91:7-18; Ex. 4, 114:2-23; Ex. 5, 222:12-223:7.

In short, consistent with their declarations, the franchisee witnesses testified that they did not use or view former Paragraph 14 as a means to either limit employee movement between independently-operated McDonald's restaurants or to suppress employee wages. Ex. 3, 124:5-125:9 (did not know about Paragraph 14); Ex. 4, 103:8-104:21 (Paragraph 14 not relevant to hiring practices because "people should work where they want to work"); *id.* 106:2-109:1 (never had any interaction with McDonald's about Paragraph 14, not aware of complaints about it); *id.* 155:15-25 (Paragraph 14 "not something that was ever discussed [] in our company" or "used in any way"); *id.* 157:7-159:10 ("there's nothing stopping anyone from going to work anywhere" and Paragraph 14 had no impact on wages). This testimony undermines any finding of common impact (since, under Plaintiffs' theory, impact stems from impeded movement), or any suggestion agreement can be proved with common evidence. Rather, individualized inquiries are needed to determine whether a given franchisee joined the alleged conspiracy at all.

4. Nothing in the declarants' testimony impeaches the reliability of their declarations. Plaintiffs suggest that the declarations are somehow unreliable because some witnesses allegedly did not understand the purpose for which their declarations would be used. Dkt. 347, Table 3. But this ignores that the witnesses were instructed not to disclose the substance of communications

with counsel, to preserve the attorney-client privilege. *See*, *e.g.*, Ex. 3, 33:23-34:9; Ex. 4, 68:24-70:15; Ex. 5, 39:6-41:17; Ex. 6, 27:14-29:3; Ex. 7, 26:18-27:11. And it ignores that each declarant provided accurate facts under penalty of perjury about their experiences with recruiting, hiring, and training employees, and the degree to which they were aware of or followed Paragraph 14 (among other matters). *See*, *e.g.*, Ex. 3, 36:9-39:12; Ex. 4, 66:2-82:7; Ex. 5, 41:6-52:9; Ex. 6, 30:22-47:4; Ex. 7, 33:25-45:9 (describing drafting process). That the witnesses did so without knowing whether or how the testimony might be used removes "self-interest" from the calculus of their credibility—making them more reliable, not less. *Compare Brenda L. v. Saul*, 392 F. Supp. 3d 858, 867 (N.D. Ill. 2019) (social security claimant's "self-interested" testimony discredited in light of contradictory evidence); *Schultz v. Am. Airlines, Inc.*, 901 F.2d 621, 623 (7th Cir. 1990) (testimony of "vitally interested" personal injury plaintiff by itself was insufficient to state a claim) *with* Ex. 4, 51:9-23, 71:11-21 (had an "arm's length perspective on [this lawsuit] since it didn't involve me personally"); Ex. 5, 38:19-22 (doesn't know whether the Allegroe organization could be held responsible for any wrongdoing).

The testimony similarly shows that those witnesses who worked with Ms. Deslandes had no axe to grind with her—instead, they tried to help her with very difficult personal circumstances, *see* Ex. 6, 167:5-170:13; Ex. 5, 192:14-193:6; 203:10-204:6, but wanted to set the record straight with respect to false accusations made about the Allegroe franchise organization—such as the fact that she never asked for, nor was denied, a "release" to move to another McDonald's restaurant and was never selected to attend Hamburger University, *see* Ex. 5, 44:16-45:7, 208:3-209:1, 216:13-217:2, 225:17-226:6; Ex. 6, 162:5-25, 170:10-22; Ex. 7, 131:19-132:1.

Finally, Plaintiffs' claim that the witnesses' deposition testimony contradicted their declarations is based on a misleading and incomplete picture of that testimony. When viewed in its proper context—rather than as cherry-picked soundbites—the testimony illustrates the veracity of the declarations. Higney Decl. Table 1 (compiling testimony omitted in Dkt. 347 Table 2).

Dated: June 4, 2021

Respectfully submitted,

McDONALD'S USA, LLC and McDONALD'S CORPORATION

By: */s/ Rachel S. Brass*
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CERTIFICATE OF SERVICE

I, Rachel S. Brass, an attorney, hereby certify that the foregoing document was electronically filed on June 4, 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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