IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

Civil Case No. 17-cv-04857

Judge Jorge L. Alonso
Magistrate Judge M. David Weisman

PLAINTIFF'S MOTION TO REASSIGN AND CONSOLIDATE RELATED CASE AND MEMORANDUM IN SUPPORT THEREOF

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page**

Statutes

TABLE OF AUTHORITIES
(continued)

MOTION AND MEMORANDUM IN SUPPORT

Pursuant to Federal Rule of Civil Procedure 42 and Local Rule 40.4, Plaintiff Leinani Deslandes and Stephanie Turner jointly move to relate, reassign, and consolidate Ms. Turner's recently-filed case, *Turner v. McDonald's USA, LLC, et al.*, No. 19-cv-05524 (N.D. Ill.) ("*Turner*"), to the instant action, *Deslandes v. McDonald's USA, LLC, et al.*, No. 17-cv-4857 (N.D. Ill.) ("*Deslandes*"). The *Deslandes* and *Turner* cases meet every requirement for reassignment and consolidation. In particular, both cases involve the same factual and legal issues and the same proposed classes, so reassignment and consolidation will promote judicial economy and reduce the burden on the parties in both cases. Ms. Turner's claims and allegations against McDonald's are materially identical to Plaintiff Leinani Deslandes's. Like Ms. Deslandes, Ms. Turner seeks to represent a nationwide class of McDonald's restaurant employees. Similarly, Ms. Turner challenges an anticompetitive agreement between and among McDonald's and its franchisees not to solicit or hire one another's employees in violation of the Sherman Act, 15 U.S.C. § 1. Reassignment and consolidation will not prejudice McDonald's: Ms. Turner will stipulate to the discovery schedule and limitations already in place in *Deslandes*, and will focus on limited discovery necessary to establish her adequacy as a potential class representative. This modest amount of discovery will not require modifying the schedule in *Deslandes*.

I. FACTUAL BACKGROUND

A. Deslandes

Ms. Deslandes filed her complaint on June 28, 2017, Dkt. 1. She worked at a franchisee-owned McDonald's restaurant in Apopka, Florida for approximately 6 years. *Deslandes* Dkt. 32 ¶¶ 59-71 ("*Deslandes* Compl."). When Ms. Deslandes attempted to apply for a higher-paying position at a nearby McDonald's owned-and-operated restaurant ("McOpCo"), she was told that

McOpCo could not hire her without a "release" from her current franchisee employer, who refused to provide one. *Id.* ¶¶ 66-69. McDonald's adopted that policy pursuant to an agreement with and amongst its franchisees not to solicit, hire, or otherwise recruit one another's current or recent restaurant employees ("No-Poach Agreement"). *Id.* ¶¶ 84-96. This Court has already reviewed and denied McDonald's motion to dismiss Ms. Deslandes's Sherman Act claim. *Deslandes* Dkt. 53. Substantial class-wide discovery has since taken place and Magistrate Judge Weisman recently set a discovery cut-off date of March 2, 2020. *Deslandes* Dkt. 175.

B. Turner

Like Ms. Deslandes, Ms. Turner worked for McDonald's restaurants for several years. Ms. Turner began as an entry-level crew worker in a McOpCo in Latonia, Kentucky in 2000 or 2001, and earned a promotion to Swing Manager one year later. *Turner* Dkt. 1 ("*Turner* Compl.") ¶ 63. In 2005, Ms. Turner was passed over for a promotion to become an Assistant Manager, so she left the company. *Id.* ¶ 64. However, she was offered a job at a new McOpCo restaurant in Wilder, Kentucky after running into her former supervisor in or around November 2006. *Id.* ¶ 65.

In or around 2009 or 2010, Ms. Turner began to consider applying to a franchisee-owned McDonald's restaurant in Florence, Kentucky, approximately five miles closer to where she lived at the time. *Turner* Compl. ¶ 66. However, her supervisor at the McOpCo restaurant told her she could not be hired at a franchisee-owned McDonald's without a release unless she first stopped working at the McOpCo for six months. *Id.* The supervisor even told Ms. Turner the franchisee could not speak with her without a release from McOpCo. *Id.* Because she was led to believe McOpCo would not give her a release, Ms. Turner abandoned her plans and continued working for McOpCo. *Id.* This limitation on her mobility deprived her of job opportunities

closer to her home with cheaper transportation costs, and suppressed her wages by reducing competition. *Id.*

Ms. Turner eventually left McOpCo on March 3, 2012. *Turner* Compl. ¶ 67. She began working as a Swing Manager at a franchisee-owned McDonald's restaurant in Florence, Kentucky over six months later, on September 25, 2012. *Id.* In 2016, she was considering moving to Florida for personal reasons, but was told by her supervisor that she would need a release if she intended to work for another McDonald's restaurant in Florida. *Id.* ¶ 68. Similarly, in 2017, Ms. Turner considered moving to Louisiana, but was reminded by her supervisor she could not work for a McDonald's there without a release. *Id.* ¶ 69. Ms. Turner continued working for the franchise in Florence until September 2018, when she moved to Monroe, Ohio. *Id.* ¶ 70.

During her tenure with McDonald's, Ms. Turner proved herself to be a reliable employee with much value to offer the company. *Turner* Compl. ¶ 71. However, because of McDonald's unlawful no-poach agreement, her labor mobility was artificially limited, and she suffered suppressed wages and diminished employment opportunities. *Id.*

II. PROCEDURAL BACKGROUND

Ms. Deslandes moved for leave to file an amended complaint naming Ms. Turner as a second plaintiff and potential class representative on May 31, 2019. *Deslandes* Dkts. 146-148. On June 5, 2019, after a brief hearing at Ms. Deslandes's presentment of that motion, the Court denied Ms. Deslandes's request without prejudice. The Court reasoned that the parties were:

> well into a complicated discovery plan that the magistrate judge is overseeing, and there is no harm to Ms. Stephanie Turner. If the case is – and the claims are ultimately certified, she would likely be a member of the class. And as counsel's pointed out, *there's no reason why she couldn't file her own case*. So respectfully the motion's going to be denied.

June 5, 2019 Hearing Tr. 7:10-19 (emphasis added). The Court confirmed that the ruling was without prejudice to Ms. Turner later joining the case. *Id.* 7:22-8:1.

Shortly afterwards, on June 17, 2019, Ms. Deslandes's and Ms. Turner's counsel wrote to McDonald's stating that Ms. Deslandes intended to move for appointment of Ms. Turner as a second class representative, and that Ms. Deslandes and Ms. Turner "will not object to McDonald's taking reasonable discovery from Ms. Turner, notwithstanding her current status as an absent class member." Salahi Decl., Ex. B. The letter noted that "Ms. Turner reserves her right to file her own complaint, to seek that it be related to Ms. Deslandes' case, and to seek consolidation and coordination of discovery, scheduling, and other pre-trial and trial matters, to protect her ability to represent the class." *Id.* at 1, n.1. The following day, on June 18, Ms. Deslandes served Rule 26 supplemental disclosures identifying Ms. Turner as a witness, and stating that Ms. Turner "has discoverable information about the allegations set forth in the Amended Complaint and damages, and intends to serve as a class representative." Salahi Decl. ¶ 4. Also on June 18, Ms. Deslandes served requests for production of documents concerning Ms. Turner and her franchise employer. *Id.* ¶ 5.

On June 29, McDonald's sent a letter to Ms. Deslandes's counsel disagreeing that the Court's denial of her motion for leave to amend was without prejudice to later addition of Ms. Turner as a class representative. Salahi Decl., Ex. C. Ms. Deslandes's counsel wrote McDonald's on July 8 regarding Ms. Turner's participation in the *Deslandes* action, stating:

> The most practical and efficient course is to conduct discovery relevant to [Ms. Turner's] viability as a class representative in this case [*Deslandes*], so long as McDonald's will not oppose [Ms. Turner's] request for appointment as a class representative on the grounds that she was not a named plaintiff or on the basis of Judge Alonso's June 5 order. If McDonald's cannot so stipulate, please inform us immediately, so that we may file a separate complaint and seek consolidation as soon as possible to avoid unnecessary delay.

Id., Ex. D at 8.

On July 17, McDonald's responded, stating that it would not stipulate, and arguing the Court had already "rejected Plaintiff's attempt to add Ms. Turner as a named plaintiff and class representative." Salahi Decl., Ex. E at 5. The next day, on July 18, McDonald's objected to Ms. Deslandes's discovery requests and refused to produce documents related to Ms. Turner's employment. Salahi Decl., Ex. F.

On August 15, 2019, Ms. Turner filed her complaint, which was thereafter randomly assigned to the calendar of the Hon. Charles P. Kocoras. *See Turner* Dkt. 1; *see also* Aug. 16, 2019 (undocketed) Case Assignment.

III. LEGAL STANDARD

Local Rule 40.4 provides that "[t]wo or more civil cases may be related if . . . the cases involve some of the same issues of fact or law [or] in class action suits, one or more of the classes involved in the cases is or are the same." LR 40.4(a). A case may be reassigned to another judge if it is related to an earlier-numbered case and each of the following criteria is met:

> (1) both cases are pending in this Court;
> (2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort;
> (3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and
> (4) the cases are susceptible of disposition in a single proceeding.

LR 40.4(b). The motion to relate must be filed in the lower-numbered case. LR 40.4(c). The Court must then decide whether or not the cases are related and, if they are, whether the higher-numbered case should be reassigned. LR 40.4(d).

These rules concerning related cases and reassignment of cases within the Northern District of Illinois are consistent with relevant guidance on consolidation of cases. Federal Rule of Civil Procedure 42(a) provides:

> If actions before the court involve a common question of law or fact, the court may (1) join for hearing or trial any or all matters at issue in the action; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.

Fed. R. Civ. P. 42(a); *see Star Ins. Co. v. Risk Mktg. Grp., Inc.*, 561 F.3d 656, 660 (7th Cir. 2009). Whether to consolidate related cases is within the Court's discretion. *Unified Messaging Sols., LLC v. United Online, Inc.*, No. 13-cv-00343, 2013 WL 1874211, at *4 (N.D. Ill. May 3, 2013). In exercising its discretion, the court "should consider whether the proposed consolidation would promote convenience and judicial economy." *Sylverne v. Data Search N.Y., Inc.*, No. 08-cv-0031, 2008 WL 4686163, at *1 (N.D. Ill. May 28, 2008). "By far the best means of avoiding wasteful overlap when related suits are pending in the same court is to consolidate all before a single judge." *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 839 (7th Cir. 1999).

IV. ARGUMENT

Ms. Deslandes's and Ms. Turner's motion to reassign and consolidate the *Turner* case with the *Deslandes* case should be granted because the two cases meet the standards of both Local Rule 40.4 and Federal Rule of Civil Procedure 42(a). Reassignment and consolidation would be more efficient, would save the Court's resources, and would not prejudice any party.

A. The Cases Are Related Because They Involve the Same Factual and Legal Issues and Overlapping Classes (Rule 42(a) and Local Rule 40.4(a))

In evaluating whether two actions are related, both the federal and local rules examine whether the actions "involve a common question of law or fact." Fed. R. Civ. P. 42(a). "Local Rule 40.4(a) requires only that the potentially related cases share *some* of the same issues of fact or law, not that the key issue is the same in both cases." *Urban 8 Fox Lake Corp. v. Nationwide Affordable Housing Fund 4, LLC, et al.*, No. 18-cv-6109, 2019 WL 2515984, at *3 (N.D. Ill. June 18, 2019) (emphasis in original). Here, essentially *all* factual and legal issues overlap between the cases. In particular, the key question in both cases is whether McDonald's no-poach

agreement—as evidenced by paragraph 14 of its standard franchise agreement—violates the Sherman Act, 15 U.S.C. § 1, as an unreasonable restraint of competition, and has harmed a nationwide class of McDonald's restaurant employees by, among other things, suppressing their wages.

Ms. Turner and Ms. Deslandes both allege an identical claim under the Sherman Act, 15 U.S.C. § 1. *See Deslandes* Compl. ¶¶ 126-137, *Turner* Compl. ¶¶ 124-135. And they both seek to represent the same nationwide class of McDonald's restaurant employees. *See Deslandes* Compl. ¶ 117, *Turner* Compl. ¶ 116. The cases are related and should be reassigned and consolidated. *See, e.g., Brunner v. Jimmy John's LLC*, No. 14-c-550915, 2016 WL 7232560, at *2 (N.D. Ill. Jan. 14, 2016) (granting motion to consolidate and reassign two cases with overlapping FLSA claims and collectives).

B. *Turner* Should Be Reassigned and the Cases Should Be Consolidated.

1. Both Cases Are Pending in this Court (Local Rule 40.4(b)(1))

The first factor for reassignment of related cases under Local Rule 40.4—whether both cases are pending in this Court—is met. Both cases were filed and are pending in the Northern District of Illinois.

2. Reassigning *Turner* and Consolidating the Cases Will Save Substantial Judicial Time and Effort (Local Rule 40.4(b)(2))

The second factor for reassignment—judicial efficiency—favors reassignment and consolidation. Local Rule 40.4(b)(2) states that a related case may be reassigned where "the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort." Assignment of *Turner* to the same judge presiding over *Deslandes* "would save significant judicial resources and ensure consistent rulings on common questions," *Urban 8*, 2019 WL 2515984, at *3. Indeed, this Court has already "invested significant time to understand

the complex" issues in this case, *id.*, having adjudicated McDonald's motion to dismiss. *Deslandes* Dkt. 53. It would be more efficient and a better use of judicial resources (and the parties' resources) to have the same judge preside over both matters. *See Smith v. Check-N-Go of Ill., Inc.*, 200 F.3d 511, 513 n.1 (7th Cir. 1999) (criticizing district court for failing to consolidate group of cases that "were filed by a single law firm, on behalf of a stable of clients" "even though the issues and parties have substantial overlap").

By contrast, if the *Turner* case is not reassigned or the cases are not consolidated, Ms. Turner will be forced to duplicate the significant classwide discovery that has already taken place in *Deslandes*, an exercise that serves no purpose and benefits neither the parties nor the Court. Unnecessary inefficiencies would include: (1) asserting the same claims, defenses, and arguments in multiple pleadings; (2) conducting discovery in more than one case even though discovery in the two cases will overlap almost entirely and thus should be coordinated; (3) requiring counsel for all parties to appear and incur travel and labor expenses associated with hearings in both matters as well as duplicative depositions in both matters; and (5) wasting the Court's resources by requiring more than one judge to preside over essentially identical litigation matters. Further, absent reassignment and consolidation, there is a chance that different district court or magistrate judges will reach different conclusions on merits, procedural, or discovery issues, exposing the parties and the same proposed class to conflicting rulings in the two cases. *See, e.g., Ames v. Rock Island Boat Club*, No. 07-cv-4608, 2010 WL 11561138, at *2 (C.D. Ill. Apr. 12, 2010) (if related cases are not consolidated, "there would exist the possibility of inconsistent verdicts . . . which should be avoided where possible.").

3. No Delay Or Prejudice Will Result (Local Rule 40.4(b)(3))

The third factor for reassignment—the likelihood of delay in the earlier case—again favors reassignment and consolidation here for there will be no delay. Local Rule 40.4(b)(3)

suggests reassignment where "the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially."

Reassignment and consolidation will not delay the *Deslandes* action or prejudice McDonald's. The only additional discovery required—the deposition of Ms. Turner and discovery concerning her employment—would be narrow. This is discovery that McDonald's would need to undertake in the *Turner* case anyway. In all other respects, the *Deslandes* case will remain on the same schedule and involve the same discovery. Ms. Turner is represented by the same counsel as Ms. Deslandes, so coordination will be simple and convenient for all parties. Because Ms. Turner will comply with all discovery rulings, schedules, and limitations already in place in *Deslandes*, no modifications to the case schedule or the scope of discovery will be necessary.

Courts regularly permit additional class representatives to be added to a case precisely because the scope of individual discovery is narrow, not burdensome, and in and of itself insufficient to be a form of undue prejudice or delay. *See, e.g.*, *Jalili v. Am. Family Mutual Ins. Co.*, No. 15-cv-4200-NKL, 2016 WL 3566252, at *3 (W.D. Mo. June 27, 2016) ("By allowing the addition of new named plaintiffs at this stage, the Court minimizes the possibility that later intervention will be necessary and corresponding delays incurred. Any prejudice to [Defendant] as a result of this amendment is minimal."); *Gilliam v. Addicts Rehabilitation Center Fund*, No. 3452-RJHRLE, 2006 WL 1049352, at *2 (S.D.N.Y. Apr. 19, 2006) ("In class actions, plaintiffs may add or modify class representatives during pre-certification discovery."); *Amparan v. Plaza Home Mortg., Inc.*, No. C-07-4498, 2009 WL 2776486, at *2 (N.D. Cal. Aug. 28, 2009) (same). This is particularly true here, where, as proposed class actions, essentially all discovery in both

Deslandes and *Turner* is class-related rather than focused on the individual named plaintiffs. For example, McDonald's produced only a few dozen documents regarding Ms. Deslandes. But its class-wide production thus far totals approximately 54,000 documents, and will expand when additional custodial documents are produced. Salahi Decl. ¶ 11. It would be far more efficient for Ms. Turner to rely on the class-wide discovery already completed and still underway in *Deslandes* rather than attempt to duplicate it. *See Peery v. Chicago Housing Auth.*, No. 13-cv-5819, 2013 WL 5408860, at *2 (N.D. Ill. Sep. 26, 2013) ("This Court believes that the undoubted overlap in discovery issues between the two cases will result in substantial savings in both the Court's time and effort and the parties' time and effort.").

Further, although discovery in *Deslandes* has been underway for nearly a year, there are still at least six months left in the discovery schedule. A significant amount of discovery remains to be taken in *Deslandes*. In the coming weeks and months, McDonald's will be producing a sample of nationwide payroll compensation data, Dkt. 174, and documents from twenty-one additional custodians. Dkt. 177. The collection of data from third-parties is still in very early stages because Ms. Deslandes was forced to litigate McDonald's attempt to block subpoenas she served on certain payroll providers. Dkts. 108, 137, 172. That process is now proceeding, but adjudication was delayed for several months during the recusal of four magistrate judges. Dkts. 113, 122, 132, 144. In any event, the parties are not "at or near completion of discovery," *H.O.P.E., Inc. v. Eden Mgmt. LLC*, No. 13-cv-7391, 2016 WL 4011225, at *6 (N.D. Ill. Jul. 27, 2016) (granting motion for reassignment), and there is nothing about the current discovery posture that would weigh against reassignment or consolidation. There is no reason why responses to the modest number of Requests for Production specifically focused on Ms. Turner or a deposition of Ms. Turner cannot be completed within the existing *Deslandes* discovery

schedule. Indeed, Ms. Turner has made herself available for discovery to Defendants since June 17, 2019. Salahi Decl., Ex. B.

Reassigning Ms. Turner's case is not likely to cause any substantial delay to *Deslandes* or prejudice to McDonald's. The contrary is true: McDonald's would have to expend additional time, effort, and expense if the cases are not consolidated or heard by the same judge.

4. The Cases Can Be Adjudicated Together (Local Rule 40.4(b)(4))

The final factor under Local Rule 40.4(b)—whether the cases are subject to a single disposition—is also met. Given the legal and factual overlap and the identical class allegations of the two cases, Ms. Turner's and Ms. Deslandes's cases naturally lend themselves to being adjudicated together and on the same record. *See Urban 8*, 2019 WL 2515984, at *4 (cases are susceptible of joint adjudication when "the witnesses, counsel, and many of the facts are the same or substantially similar"); *Global Patent Holdings, LLC v. Green Bay Packers, Inc.*, No. 00-c-4623, 2008 WL 1848142, at *4 (N.D. Ill. Apr. 23, 2008) (reassignment justified where "both actions involve *prima facie* fundamentally similar claims and defenses that will likely be amenable to dispositive treatment in unified proceedings"). Either class certification is appropriate in both, or it is appropriate for neither. Either the No-Poach Agreement was unlawful in both, or it is unlawful in neither. These issues should be determined in both cases at the same time and by the same judge.

5. Reassignment and Consolidation May Be Decided Before An Answer Is Filed in *Turner*

On August 16, 2019, Ms. Deslandes and Ms. Turner asked Defendants to stipulate to re-assignment and consolidation. Salahi Decl. ¶ 10. On August 28, 2019, Defendants declined to stipulate on the basis that reassignment and consolidation were "premature" under Local Rule 40.4(c) until McDonald's decided whether to answer or file a Rule 12 motion in response to the

Turner complaint. *Id.* In fact, "Rule 40.4(c) does not require that [defendants] answer or otherwise plead first." *Urban 8*, 2019 WL 2515984, at *4. That "general" requirement does not apply when "all parties have responded to the reassignment motion and the issues it raises," and "the parties are well-informed on the ins and outs of the [actions]." *Id.* That is the case here. The parties are represented by the same counsel in both cases; McDonald's has been aware of Ms. Turner's claim since at least May 31, 2019, *Deslandes* Dkt. 147; McDonald's has waived service in *Turner*, *Turner* Dkt. 4; and its attorneys have made appearances or sought leave to appear, Dkts. 6-11. Furthermore, if McDonald's decides to file a Rule 12 motion, this Court should decide it in order to maximize judicial efficiency because it has already "invested significant time to understand the complex" issues raised in both cases. *Urban 8*, 2019 WL 2515984, at *3.

V. CONCLUSION

For the above reasons, the Court should grant Ms. Deslandes's and Ms. Turner's motion to reassign *Turner* to Judge Alonso's calendar and to consolidate the two cases.

Dated: August 30, 2019

Respectfully submitted,

/s/ Dean M. Harvey

Dean Harvey ARDC# 250298
Anne B. Shaver ARDC# 255928
Lin Y. Chan ARDC# 255027
Yaman Salahi ARDC# 288752
Jeremy J. Pilaar (*pro hac vice* forthcoming)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
415.956.1000

Derek Y. Brandt
Leigh M. Perica
MCCUNE WRIGHT AREVALO, LLP
101 West Vandalia Street, Suite 200
Edwardsville, IL 62025
Telephone: 618-307-6116
dyb@mccunewright.com
lmp@mccunewright.com

Richard D. McCune
Michele M. Vercoski
MCCUNE WRIGHT AREVALO, LLP
3281 East Guasti Road, Suite 100
Ontario, CA 91761
Telephone: 909-557-1250
rdm@mccunewright.com
mmv@mccunewright.com

Walter W. Noss
Stephanie A. Hackett
Sean C. Russell
SCOTT+SCOTT ATTORNEYS AT LAW LLP
600 West Broadway, Suite 3300
San Diego, CA 92101
Telephone: 619-233-4565
wnoss@scott-scott.com
shackett@scott-scott.com
sean.russell@scott-scott.com

Michelle E. Conston
SCOTT+SCOTT ATTORNEYS AT LAW LLP
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: 212-223-6444
mconston@scott-scott.com

CERTIFICATE OF SERVICE

I, Dean M. Harvey, an attorney, hereby certify that **Plaintiff's Motion to Reassign and Consolidate Related Case and Memorandum in Support Thereof** was electronically filed on August 30, 2019 and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

/s/ Dean M. Harvey
Dean M. Harvey