



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PHYLLIS GIANOTTI, Derivatively on Behalf
of the Nominal Defendant, MCDONALD'S
CORPORATION,

Plaintiff,

v.

LLOYD H. DEAN, ROBERT A. ECKERT,
MARGARET H. GEORGIADIS, ENRIQUE
HERNANDEZ, JR., JOHN J. MULLIGAN,
SHEILA PENROSE, JOHN W. ROGERS, JR.,
MILES D. WHITE, CATHERINE
ENGELBERT, STEPHEN JAMES
EASTERBROOK, CHRISTOPHER
KEMPCZINSKI, DAVID FAIRHURST,
CHARLES STRONG, and MORGAN LEWIS
& BOCKIUS LLP,

Defendants,

v.

MCDONALD'S CORPORATION,
Nominal Defendant.

C.A. No. 2021-0642-JTL

**PUBLIC VERSION
FILED 7/28/21**

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Phyllis Gianotti ("Plaintiff," "Gianotti," or "Stockholder"), by her attorneys, respectfully submits this Verified Stockholder Derivative Complaint for the benefit of Nominal Defendant McDonald's Corporation ("McDonald's" or the "Company") against certain members of its Board of Directors (the "Board") and officers (together, "Individual Defendants") to remedy Individual Defendants'

breaches of fiduciary duties (or the aiding and abetting of such breaches) concerning their oversight duties into enterprise risks concerning racial discrimination and sexual harassment and misconduct, as well as for committing corporate waste, and against Morgan Lewis & Bockius LLP (“Morgan Lewis”) for aiding and abetting such breaches of fiduciary duties. Plaintiff makes these allegations upon personal knowledge as to those allegations concerning Plaintiff and, as to all other matters, upon information and belief based on the investigation of undersigned counsel, which includes, without limitation: (a) review and analysis of public filings made by McDonald’s and other related parties and non-parties with the United States Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and other publications disseminated by McDonald’s, Defendants (defined herein), and other related non-parties; (c) review of news articles, stockholder communications, and postings on McDonald’s website concerning the Company’s public statements; and (d) inspection of corporate books and records produced pursuant to a demand under 8 *Del. C.* §220 (the “220 Documents”).

INTRODUCTION

1. Sexual misconduct and racial discrimination are problem areas McDonald’s has long recognized internally and externally.

2. In 2018, McDonald’s workers around the country held a strike to protest the widespread sexual harassment in McDonald’s restaurants, which made

this harassment a severe reputational issue for the Company's brand. These strikes demanded that McDonald's adopt and cause its franchisees to adopt more effective sexual harassment prevention policies, procedures, reporting, and training.

3. These strikes did not ultimately result in a successful outcome because a year later, McDonald's faced a series of high-profile lawsuits brought by the American Civil Liberties Union ("ACLU"), as well as Fight for \$15 and the Times Up Legal Fund. These lawsuits continued to allege widespread sexual harassment at McDonald's corporate-owned and franchised restaurants, as well as the lack of effective prevention, and the widespread retaliation against employees who complained of harassment. In addition, the ACLU helped workers across the country file scores of employment discrimination charges based on sexual harassment with the Equal Employment Opportunity Commission ("EEOC"). The pervasive sexual harassment and misconduct at McDonald's was even more troubling because many of the victims were teenagers.

4. These lawsuits reveal that McDonald's restaurants often lacked any systematic or safe reporting mechanisms for sexual harassment and misconduct complaints. Restaurants even lacked human resources ("HR") departments. Reporting options were often limited to store or regional managers, who would brush aside concerns. This blatant lack of concern would then encourage more employees

to engage in harassment because they knew there were few, if any, repercussions for doing so. By contrast, complainants would be targets for retaliation.

5. The fact that the corporation had widespread sexual harassment is not a surprise because the Company suffered from the wrong tone at the top. According to a *Wall Street Journal* report from January 2020, Easterbrook and Fairhurst, the heads of *all* human resources at McDonald's, would often socialize and flirt with employees at happy hours at headquarters. The flirtation was witnessed by other employees and made them uncomfortable. Their leadership likely led to the tolerance of the widespread violation of the Company's anti-dating policy, which prohibited employees from dating or otherwise having a sexual or romantic relationship with one another. Yet intra-office dating was so common that it resulted in marriages, or "McMarriages." Numerous employees did not know of the Company's anti-dating policy even though it was referenced in employee codes of conduct, which suggests the policy was widely ignored.

6. Furthermore, Fairhurst, the global head of all HR, himself repeatedly engaged in inappropriate behavior with female employees, for which he became the subject of multiple complaints, yet he was allowed to retain his position for years. Board minutes reveal that Fairhurst was the subject of at least three complaints within the span of less than two years, yet he was fired only after the last complaint.

7. Easterbrook, as the CEO of the Company, also engaged in inappropriate behavior by having numerous relationships with employees despite the fact that the Company barred these relationships. The Board discovered that Easterbrook had at least *three* sexual relationships with junior employees between 2018-2019. Nevertheless, although Easterbrook was fired owing to his violation of Company policy, he was given a lavish severance package, and only after facing stiff investor resistance to this award, the Board has now sought to revoke that severance based on purportedly new evidence, thus involving the Company in a protracted legal battle that it could have avoided from the outset had it conducted a minimally adequate investigation

8. More recently, the public has also shined a spotlight on widespread racial discrimination perpetrated at the highest levels in McDonald's.

9. First, in January 2020, two McDonald's executives filed a discrimination lawsuit where they alleged that Easterbrook and Kempczinski (in his former role as head of U.S. operations and in his current role as CEO) expressly deprioritized racial equity as a concern by focusing entirely on gender in company diversity pushes.

10. Easterbrook and Kempczinski, more than revealing their positions on racial equity through their messaging, were also alleged to have systematically

targeted Black franchisees and Black executives through initiatives that had a direct and disproportionate impact on them.

11. As a result, McDonald's went from having a black CEO between 2013 to 2015, Don Thompson, to having *no* Black executives in its C-suite. Moreover, Black executives at the level of vice president or above decreased from *42 to only 6, more than an 85% decline*. This included numerous demotions, such as the plaintiffs in the discrimination suit.

12. Moreover, the tone at the top set by Easterbrook and Kempczinski led to other executives engaging in open discriminatory conduct – including calling Black female colleagues “angry Black women” and even using racial slurs – without any repercussion. Indeed, Black employees who complained about discrimination or hostile conduct were systematically retaliated against. In June 2021, the Northern District of Illinois denied motions to dismiss numerous claims in the lawsuit filed against Easterbrook, Kempczinski, and the Company, lending further credence to these allegations, and making it even more troubling that, to date, the Board has refused to investigate these allegations.

13. These allegations are further bolstered by press reporting. For example, in September 2020, the *Wall Street Journal* reported that Easterbrook shrank diversity funding, thus making it more difficult to recruit and retain diverse employees, further exacerbating the lack of diversity at the top.

14. McDonald's problem with racial discrimination has only become a greater reputational concern over the last year. After the discrimination suit was filed, it was followed last fall by lawsuits by two groups of Black franchisees – one of former franchisees and one of current franchisees – alleging that McDonald's systematically discriminates against them by steering them toward lower-income and higher-crime neighborhoods, thus forcing them to incur higher operating costs while having less of an opportunity to earn a profit.

15. These lawsuits continue today. Herb Washington, a record-breaking track star and professional baseball player, who at one time was McDonald's largest Black franchisee, in February 2021 filed a lawsuit alleging that McDonald's systematically discriminated against him by steering him to operate in lower-margin neighborhoods (because of lower income and higher crime), and then forced him to sell his more successful franchises to White operators.

16. And in May 2021, Byron Allen sued McDonald's for discriminating against him and other Black media companies by refusing to buy advertisements on their networks. Allen alleged that out of McDonald's \$1.6 billion annual advertising budget, less than \$5 million – or less than one third of one percent – was spent on Black-owned media.

17. These harms were exacerbated by the Board's failure to exercise oversight in three ways:

- (a) **First**, the Board structured its enterprise risk management to filter all reporting through the CEO, thus becoming over-reliant on one officer to raise concerns. Moreover, Board committees improperly structured their authority to allow **all** oversight by management, which again opened the potential to remove the Board from oversight entirely;
- (b) **Second**, the Board, while understanding that the Company could exercise significant oversight of franchisees, for years, abdicated any oversight of franchisees for sexual harassment, despite numerous complaints, lawsuits, and activist pressure raising widespread sexual harassment as a problem at franchisees; and
- (c) **Third**, the Board inadequately disciplined Easterbrook and Fairhurst after initial reports of their misconduct, and then belatedly acted in a way that wastes corporate assets, as well as to date has failed to investigate charges of racial discrimination against Easterbrook, Kempczinski, and other officers despite the fact that several high-profile lawsuits have made detailed allegations of racial discrimination and retaliation against them.

18. For all of these harms to the stockholders and to the Company, caused by Defendants' misconduct, Plaintiff now brings this action to recover for Defendants' breaches of fiduciary duty.

JURISDICTION AND VENUE

19. This action arises under the laws of the State of Delaware because it pertains to breaches of fiduciary duties by directors and officers of a Delaware Court, and therefore, jurisdiction and venue lies in this Court under 10 *Del. C.* §3114.

20. Venue is also proper here because Defendants have consented to this venue. As a condition for the production of 220 Documents, the Company asked that any plenary action that relies on information in those documents be filed in this Court. Furthermore, the Company has a forum selection clause in its bylaws that call for all stockholder derivative suits to be filed in this Court.

THE PARTIES

I. PLAINTIFF

21. Plaintiff Phyllis Gianotti is a current stockholder of McDonald's, who has continuously held McDonald's stock for the relevant time period.

22. Gianotti, through her counsel, has conducted an investigation for over a year into issues concerning the Board's oversight over issues relating to racial and sexual harassment, discrimination, and retaliation. This action is the result of a

review of 389 220 Documents totaling 3,422 pages produced over an eight-month period (from September 2020 to May 2021), as well as numerous public filings.

II. NOMINAL DEFENDANT

23. Nominal Defendant McDonald's is a leading international quick-service restaurant business, with annual sales of \$20 billion and over 200,000 part- and full-time employees in over 39,000 restaurants. McDonald's is incorporated in Delaware, headquartered in Chicago, Illinois, and trades on the New York Stock Exchange ("NYSE") under the ticker symbol, MCD.

III. DEFENDANTS

24. Defendants Lloyd H. Dean ("Dean") has been a director of the Board since 2015.

25. Defendant Robert A. Eckert ("Eckert") has been a director of the Board since 2003. He has also chaired the Public Policy & Strategy Committee ("PPSC") since it was established in 2016.

26. Defendant Margaret H. Georgiadis ("Georgiadis") has been a director of the Board since 2015.

27. Defendant Enrique Hernandez, Jr. ("Hernandez") has been a director of the Board since 1996. Since 2016, he has also been the Chair of the Board.

28. Defendant John J. Mulligan (“Mulligan”) has been a director of the Board since 2015. He has been the Chair of the Audit and Finance Committee (“AFC”) since 2016.

29. Defendant Sheila Penrose (“Penrose”) has been a director of the Board since 2006. Since 2016, she has also been the chair of the Sustainability & Corporate Responsibility Committee (“SCRC”).

30. Defendant John W. Rogers, Jr. (“Rogers”) has been a director of the Board since 2003.

31. Defendant Miles D. White (“White”) has been a director of the Board since 2009. He has also been the chair of the Governance Committee since 2014.

32. Defendants Dean, Eckert, Georgiadis, Hernandez, Mulligan, Penrose, Rogers, and White are, at times, collectively referred to herein as the “Easterbrook Director Defendants.”

33. Defendant Catherine Engelbert (“Engelbert”) has been a director of the Board since December 2019.

34. The Easterbrook Director Defendants and Engelbert are, at times, collectively referred to herein as the “Director Defendants.”

35. Defendant Stephen James Easterbrook (“Steve Easterbrook” and “Easterbrook”) was the former CEO of McDonald’s from 2015-2019.

36. Defendant Christopher Kempczinski (“Kempczinski”) is the current CEO of McDonald’s and a member of the board since 2019.

37. Defendant David Fairhurst (“Fairhurst”) was the Chief People Officer (“CPO”) from 2015-2019.

38. Defendant Charles Strong (“Strong”) was the West Coast Zone President of McDonald’s US until 2018, when he was promoted to Chief Field Officer of the Company. He retired in February 2021.

39. Defendants Easterbrook, Kempczinski, Fairhurst, and Strong are, at times, collectively referred to herein as the “Officer Defendants.”

40. Director Defendants and Officer Defendants, except for the Nominal Defendant, McDonald’s, are, at times, collectively referred to herein as the “Individual Defendants.”

41. Defendant Morgan Lewis & Bockius LLP (“Morgan Lewis”) is an international law firm that is often retained for its expertise in labor and employment matters.

SUBSTANTIVE ALLEGATIONS

I. THE BOARD RECOGNIZED THE IMPORTANCE OF HUMAN CAPITAL MANAGEMENT BUT IMPROPERLY MINIMIZED ITS DIRECT OVERSIGHT

A. The Board Recognized the Importance of Human Capital Management and Brand Reputation

42. In early 2015, the Board recognized the importance of increased risk oversight into human capital management (“HCM”). A January 23, 2015 memorandum to the Governance Committee from then CLO Gloria Santona (“Santona”) details: “there is no committee assigned to oversee risk in the area of human capital, such as workforce shortages, failure to attract talent and the like.” PG0002426.¹ These human capital risks include issues like “[d]iscrimination/harassment[,]” “lack of diversity[,]” and “pay equity[,]” which Santona notes are issues that are not assigned to any Board committee or the full Board. Furthermore, the Board has also not assigned oversight of “[r]eputational risk [that] results from failure to effectively manage any of the[se] risks[.]” *Id.* In addition, the Governance Committee knew that institutional investors were interested in HCM because management was “meeting with governance/proxy vote analysts from some of the Company’s large institutional investors[,]” which included “BNY Mellon, CalPERS, CalSTRS, Fidelity Investments, MFS

¹ Citations are to the beginning Bates number of the referenced 220 Document.

Investments, State Street Global Advisors, Vanguard and Wellington Management[,]" PG0002428. These investors and their advisors all expressed interest in the "[p]romotion of diversity and inclusion by fostering a work environment that values the unique contributions of all." *Id.*

43. At the January 27, 2015, Governance Committee meeting, Santana recommended "adding applicable risk oversight provisions to Committee charters, expanding the Board's annual enterprise risk review to include consideration of any emerging risks that would require assignment to a particular Committee, and to memorialize this practice in the Corporate Governance Principles." PG0002422. Santana "also discussed her benchmarking analysis as related to oversight of public policy issues." *Id.* White, the committee chair, thought "the current risk of oversight structure provides for an appropriate balance of responsibilities among the various Committees and that oversight of material public policy issues should remain in the Board's purview." *Id.* After further discussion, "the Committee agreed with Ms. Santana's recommendations and directed that she prepare proposed revisions to the Committee charters and Governance Principles for approval in March[.]" *Id.*

44. At the same time that the Board recognized that it needed more robust oversight in human capital matters, however, it also reduced its own oversight and filtered more information through the CEO.

45. In a January 2015 memorandum to the Audit Committee, the then head of compliance, Hayden Olinger, noted that while the Guidelines for addressing business integrity related calls “required that this Committee review the guidelines ‘no less frequently than annually,’ this has not been our practice. Therefore, we request that this section be revised to provide that this Committee will review and approve the guidelines ‘*at least once every three years or more frequently when a significant change occurs.*’” PG0001840 (emphasis in original). Moreover, “at [the Audit] Committee’s requests, we have revised the ‘Notification of Investigations’ and ‘Conduct of Investigations’ sections to require the General Counsel to consult with the CEO in the event of a claim involving an executive officer so long as doing so does not pose a conflict of interest for the CEO.” *Id.*

46. In March 2015, as a further reflection of the Board’s knowledge of the need to more robustly oversee HCM, the Governance Committee and SCRC sought to amend their charters to expressly state that they would “assist the Board of Directors in fulfilling its enterprise risk oversight responsibility by periodically assessing and responding as appropriate to risks relating to matters as outlined in this charter.” PG0002497 (Governance Committee charter amendment); PG0001947 (same for Sustainability and Corporate Responsibility Committee charter). In addition, the Board and Governance Committee considered amendments to the Corporate Governance Principles, including expressly stating that the Board

“[o]versees the Company’s enterprise-wide risk management framework[.]” PG0002501. Furthermore, “[e]ach of the Audit, Compensation, Finance, Governance, and Sustainability and Corporate Responsibility Committees shall be responsible for overseeing risks within its respective area of accountability and reporting to the full Board any risk that such Committee concludes is reasonably likely to be material to the Company. Each of the five Committees also shall regularly update the full Board on its particular risk oversight activities.” *Id.* Moreover, “[t]he Board as a whole shall, taking into account the work of the five standing Committees with respect to risk oversight, have ultimate responsibility for overseeing risk management related to the entire corporate enterprise. At least annually, the Board shall review the Company’s enterprise risk and management mitigation strategies. The Board shall also include consideration of any emerging risks that may require assignment to a particular Committee for continuing oversight.” *Id.* Furthermore, “Management shall provide regular updates to the Board regarding the Company’s risk exposures and mitigation efforts.”

47. McDonald’s, its Board, and its officers have also long recognized the value of its reputation for effective HCM to attracting and retaining customers, workers, and investors. For example, the 220 documents show that the Board reviewed disclosures regarding the importance of human capital concerns at least as

far back as 2015, when the Board would review risk factor disclosures in the Company's Q3 2015 10-Q stating:

Our success depends in part on our System's ability to recruit and retain qualified personnel to work in our restaurants. . . . [R]egulations are increasingly focused on employment issues including wage and hours, healthcare, immigration, retirement and other employee benefits and unlawful workplace discrimination. Our potential exposure to reputational and other harm regarding our workplace practices or conditions or those of our independent franchises or suppliers (or perceptions thereof) could have a negative impact on our business.

PG0001736.

48. In early 2016, the Board learned that investors were increasingly becoming focused on HCM. At its March 22, 2016 meeting, the SCRC found out from Fairhurst that the "investor community's focus on human capital management" has resulted in the "creation of the *Human Capital Management Coalition* ("HCM Coalition") – a group of investors from 24 funds (mostly union and public pension funds) who have been meeting monthly for the past two years." PG0002001 (emphasis in original). "The HCM Coalition has been reviewing research and speaking to retailers or QSR businesses with the intent of developing criteria that allow investors to compare different companies' labor practices, and the attendant financial, legal, and reputation risks." *Id.* The Company also worked with a leading human capital expert on assessing leadership in these factors, and Fairhurst observed that McDonald's was moving along that path, for example, through promoting

gender diversity: “By 2020, McDonald’s is committed to reaching its aim of having at least one third of the corporation’s Top-50 leaders be female.” *Id.*

49. Fairhurst made similar points at the March 23, 2016 full Board meeting. He “outlined his broad people strategy, noting the importance of maintaining the Company’s reputation and ongoing employee engagement and leadership development.” PG0001750. Robert Gibbs further “described plans to promote McDonald’s brand” and “research to assist with the formulation of compelling messaging to engage employees, stakeholders and the general public.” *Id.* The Board took strong interest in this topic: “Questions were asked and answered throughout the report and, at the end, there was an extensive discussion regarding opportunities to further enhance McDonald’s brand and promote its interests through appropriate outreach, community involvement and coalition-building.” *Id.*

50. Further reflecting on the importance of oversight into diversity and inclusion, and other human capital issues, in May 2016, McDonald’s formed a new standing committee, the Public Policy & Strategy Committee (“PPSC”) to more clearly provide oversight into these matters.

51. Furthermore, in July 2016, management proposed to the Governance Committee and the Board that it revise Corporate Governance Principles to clarify the point that the Board’s obligations are not only to stockholders but also to “the Company.” PG0002531.

52. The Governance Committee also received an update in July 2016 of a meeting with stockholders, where “about 100 comments relating to Board matters generally” were received by management, which included feedback that “[t]here needs to be more diversity (women and Hispanic representation most often mentioned)” on the Board. PG0002545.

53. At the first meeting of the new PPSC, the committee chair, Eckert, “indicated that management had benchmarked with other companies to help develop the proposed draft charter.” PG0002028. The proposed charter states that the PPSC would “assist the Board in fulfilling its oversight responsibilities relating to the long-term strategy of the Company and to identify, evaluate and monitor trends, issues, regulatory matters and other concerns that materially affect, or that could materially affect the Company’s business activities, performance and/or reputation. The Committee shall also assist the Board in reviewing other matters as outlined in this charter and shall assist the Board in fulfilling its enterprise risk oversight responsibility by periodically assessing and responding as appropriate to risks relating to matters within its purview.” PG0002033. The PPSC’s oversight areas would include: “Corporate Strategy[;] . . . Public Policy[;] . . . Government Relations[;] . . . Human Capital Management[;] . . . Compliance Programs[;] . . . Tax Strategy[;] . . . Cyber-Security[;] . . . Other Duties[;] . . . [and] Shareholder Proposals.” *Id.*

54. However, the PPSC undercut its own broad oversight from the outset by stating that it could delegate all of its responsibilities to management: “When appropriate . . . the Board or the Committee may delegate any of its responsibilities to a subcommittee comprised of two or more members of the Committee, the Board, or members of management.” *Id.*

55. Shortly afterwards, Eckert “reported on the first [PPSC] meeting” and sought and received approval of its charter at the July 28, 2016 Board meeting. PG0001703. The Governance Committee also sought and received approval for the Corporate Governance Principles revisions. The Board also reviewed risk disclosures it would make in SEC filings, which emphasized that McDonald’s “success depends in part on our System’s ability to identify, recruit, motivate and retain a qualified workforce to work in our restaurants in an intensely competitive environment.” PG0001805.

56. And in November 2016, the SCRC sought to amend its charter that “focuses on the core issue of brand trust and its relation to key sustainability components.” PG0002025.

57. The PPSC, at its next meeting on December 1, 2016, also had a “Labor Matters Discussion” that was redacted for privilege. PG0002042.

58. At the December 1, 2016 Board meeting, the Board was informed that the SCRC would “review brand trust measures at its next meeting.” PG0001812.

Moreover, White reported that directors had “expressed an interest in . . . receiving further information about external issues facing the Company.” PG0001812.

59. In early January 2017, the PPSC met to discuss how “human capital management” was “a growing item of interest in the investment community generally,” and that “Miles White, John Rogers, Mr. Fairhurst and Ms. Santana have met with investors, members of the Human Capital Management Coalition (HCMC) on this topic.” PG0001243. In addition, Fairhurst and Easterbrook led a discussion regarding “the initial top-line findings and assessments (strengths and weaknesses)” as a result of McDonald’s participation in a study by David Ulrich, a University of Michigan professor, and “discussed initiatives already in place to address the findings.” *Id.* As further detailed in a memo to the PPSC in January 2017: “The HCM Coalition has been reviewing research and speaking to retailers and QSR businesses with the intent of developing criteria that allow investors to compare different companies’ labor practices, and the attendant financial, legal, and reputational risk. Through 2016, representatives of the HCM Coalition met with McDonald’s on three separate occasions.” PG0001246. The Board also discussed human capital management at its January 26, 2017 meeting.

60. Meanwhile, in March 2017, the Governance Committee received a report on increasing investor outreach regarding HCM “with some of the Company’s largest institutional investors, as well as union and public pension fund holders.”

PG0002589. This included Miles, Rogers, and management “meeting with several pension funds and CtW representatives this past September.” *Id.* And the CLO’s team “also attend[ed] the Council of Institutional Investor conferences, and other conferences where investors and issues have an opportunity to engage with one another.” *Id.* Meanwhile, “[m]embers of the Human Capital Management Coalition (a group of union and pension funds), led by UAW Retiree Trust, continue their interest in learning more about the Company’s approach to, and Board oversight of, human capital management strategy and initiatives” that included two meetings with Fairhurst. *Id.*

61. In May 2017, the Governance Committee received stockholder correspondence from the Ontario Teacher’s Pension Plan, which “is the parent company of [proxy advisor] Glass Lewis.” PG0002592. Ontario highlighted its interest in “a few key corporate governance areas,” including “the processes in place that create a strong board culture and encourage diversity.” *Id.* Ontario also stressed the Board’s role in building on diversity: “Good governance is built on having an effective board. We believe that a board’s ability to be effective is contingent upon the strength of its culture and diversity.” *Id.*

62. Further in 2017, the Board again learned of important institutional investors’ interests in its ability to promote diversity and manage risks. At a September 21 2017 Board meeting, the full Board was informed of an August 31,

2017 letter from Vanguard, which was addressed to the Chair, Hernandez, highlighting Vanguard's holdings ("approximately \$10 billion of McDonald's stock") and highlighting the importance of "[g]ender diversity" on the Board, as well as "[t]horough disclosure of relevant and material risks" and "a growing role for independent directors in engagement both on issues over which they hold exclusive purview (such as CEO compensation and board composition/succession) and on deepening investors' understanding of the alignment between a company's strategy and governance practices." PG0001020.

63. Gender equality, diversity, and other issues became an even more prominent issue that investors flagged for the Board in 2018. At a January 9, 2018 Governance Committee meeting, Krulewitch flagged a stockholder proposal that he recommended for the PPSC's review, which would "[r]equest that the Board prepare a report on the Company's policies and goals to identify and reduce inequities in compensation due to gender, race or ethnicity within its workforce, including franchised restaurants." PG0002611.

64. On November 29, 2018, the Compensation Committee met and discussed amending its charter "to include a reference to the Committee's oversight of diversity and pay equity." PG0002273. The charter also provided, however, that "[w]hen appropriate . . . the Committee may delegate any of its responsibilities to . . . one or more members of management[.]" PG0002311. The Compensation

Committee had this charter approved at the November 29, 2018 Board meeting, where it also received a report from the SCRC “that management had provided a gender balance strategy update with a goal of taking a global approach with baseline measures in place.” PG0001080.

65. In 2019, the Board continued to learn of investor interest in diversity, inclusion, and equity. In March 2019, the Governance Committee received a report on investor outreach, where it was told: “Investors continue to be interested in our human capital management philosophy and practices, including as they relate to employee engagement and diversity and inclusion.” PG0002667.

66. Furthermore, in March 2019, the PPSC was told about how McDonald’s centered its workplace initiatives around lobbying and publicity: “our Government Relations team had effective engagements in Washington in which they met with members of Congress to describe our Safe and Respectful workplace programs. . . . This past week the Company rolled out its gender diversity strategy in conjunction with International Women’s Day.” PG0000893.

67. At a January 23, 2020 PPSC meeting, Kempczinski admitted that with respect to employer reputation, “the Company sometimes appears to be reactive rather than proactive” and “that it was time for the Company to reevaluate its strategy and messaging and that he intended to revisit the Committee at its next meeting with a plan forward. A discussion followed regarding different assessments management

should undertake, including an evaluation of employment and political shifts in society, as well as benchmarking of peers that have gone through a similar transformation. The Committee expressed its support and looked forward to future discussion on the matter.” PG0001273. Tovar then discussed “whether, and to what extent, the Company can be more proactive in its efforts to share the desired belief that McDonald’s provides good jobs and cares about its employees” while “indicat[ing] that although there was negative media directed toward the Company over the last few months (*e.g.*, leadership change; presidential candidate narratives), there was no noticeable change in consumers’ or opinion elites’ view of how McDonald’s treats its employees.” *Id.* Tovar also noted that “awareness of negative news has limited impact on employer reputation, but awareness of positive news drives numbers significantly. Questions were asked and answered regarding the Company’s ability to invest proactively in areas that yield positive news and other earned media coverage.” *Id.* Furthermore, Krulewitch discussed a stockholder proposal that requested a Board-level “report regarding the Company’s actions on workplace safety, Board-level oversight of human capital management, and associated workforce metrics.” *Id.*

68. In an accompanying presentation from January 15, 2020, management stressed to the PPSC: “The Leadership transition and management of new C-suite and Board appointments create critical runway in managing a tone from the top

commitment to lead. It also carries with it heightened scrutiny on our actions – and disparity between the Corporation and restaurants.” PG0001278.

69. And in another accompanying presentation regarding the stockholder proposal, “Management also recommend[ed] that representatives of the Company offer a dialogue with the proponent to see if they may be amenable to withdrawing the proposal[.]” PG0001291.

70. At a January 22, 2020 SCRC meeting, DeBiase claims that McDonald’s goals with respect to “food, environment, and people” were “more comprehensive and global in scope than the competitors’ initiatives” but “identified gaps between the perception and reality of a brand’s sustainability or corporate responsibility efforts, noting that certain competitors are able to build trust in their brands with far fewer actions than what it might take the Company to achieve the same results.” PG0001294. In an accompanying presentation, management notes how some competing companies have formal goals for diversity and inclusion and gender balance while McDonald’s does not. PG0001299. Another accompanying presentation includes a copy of the franchise agreement, which specifies how franchisees must follow the “McDonald’s System” regarding restaurant operations. PG0001302.

71. A January 23, 2020 Board meeting discussed “2019 TIP plan outcomes[.]” which included Easterbrook’s award. PG0001147. It also included a

report from the PPSC where “Eckert noted that the Company had made strong progress in reputation over the last several years and that the consumer insights revealed a fairly low level of impact on employer reputation from recent events. He explained that overall low level awareness of the Company’s training and education programs provided a potential opportunity to further boost the Company’s reputation in this area. He explained that during the April PPSC meeting, management and the Committee intended to engage in a deeper discussion of the Company’s employer reputation strategy.” *Id.* Eckert also summarized the PPSC’s “evaluation of a shareholder proposal related to the Board’s oversight of human capital management. Mr. Ecker noted that management would file a no-action letter with the SEC and prepare a draft statement in Opposition for the Committee to review in the event the proposal is included in the Proxy Statement.” *Id.*

72. As a continued sign of stockholder interest in HCM, management recommended that the Board approve amending the PPSC charter in a March 2020 memorandum, to describe its HCM areas of oversight: “e.g., workplace health and safety; respectful workplace environments; and diversity and inclusion” and also amending the charter to clarify that oversight affects McDonald’s “brand” in addition to business operations. PG0001208.

73. Furthermore, a March 2020 Governance Committee memorandum providing a “Shareholder Engagement Report” states that “we engage with a global

and diverse group of shareholders, including actively managed funds, index funds, union and public pension funds, and socially responsible investment funds. The group represents nearly half of our outstanding shares.” PG0002690. This stockholder engagement includes how “[s]ome investors have made specific inquiries regarding the Board’s oversight of the transition, including the selection of Chris Kempczinski as the new President and Chief Executive Officer. A few investors have asked about the compensation associated with Steve Easterbrook’s departure.” *Id.* Furthermore, “[i]nvestors continue to be interested in our human capital management philosophy and practices, including as they relate to workplace health and safety; respectful workplace environments; and diversity and inclusion.” *Id.*

74. At the April 2, 2020 Board meeting, Krulewitch “described the series of Section 220 demands to inspect Company records made by shareholders under Delaware law.” PG0001181. Krulewitch also reported on the proposed PPSC charter amendment, which was made in exchange for a stockholder withdrawing a stockholder proposal, and he “made clear that the intent of the amendment was not to change any Committee’s responsibilities or agendas, but rather was a reflection of the status quo as requested by the shareholder.” *Id.* The charter amendments would “include references to the types of human capital management matters that the Committee oversees.” *Id.*

75. In a further reflection of the pressure the Company was getting regarding HCM, at a July 20, 2020 SCRC meeting, “Ms. Capozzi highlighted the values conversation that Mr. Kempczinski has led since becoming CEO[.]” PG0002810. She also “described a global, cross-functional D&I Advisory Group that was created to provide strategic direction, consultation and to champion the implementation of new solutions. She noted that this was not just about employees; rather, the group would focus on an integrated plan that would also have a positive impact on customers, franchisees, suppliers and the community.” *Id.* “Mr. Kempczinski noted that management was still listening to stakeholders and then moving to an assessment of what actions would be important for the Company to take.” *Id.*

76. In a further emphasis on HCM, at a July 20, 2020 Compensation Committee, Capozzi discussed how “the current business and social environment, along with new Company leadership, presented a unique opportunity for the Company to reset and renew its commitment to a set of core values.” PG0002347. A memorandum to the Compensation Committee states, “Emerging from a crisis with a new leader at the heal[m], creates a window of *opportunity to reset and renew our commitment* to a set of Core Values.” PG0002353 (emphasis in original).

77. A July 2020 SCRC presentation on diversity and inclusion also stated, “McDonald’s will use our *influence* and *scale* to *accelerate meaningful and*

overdue societal change for our employees, franchisees, suppliers, customers, and communities.” PG0001541. At the same time, however, McDonald’s was “de-prioritiz[ing] . . . [l]ower investment, human resources for 2021 – targeted stakeholder & ESG reporting only” and among the programs it would “de-fund” were “[s]ome initiatives relevant for local investments[.]” including “Women in Tech via Archways[.]” PG0001529.

78. On October 5, 2020, the Compensation Committee met to discuss management’s “proposal to introduce a Human Capital (‘HC’) category into TIP team factors for EVPs. Referring to the pre-read materials, [Capozzi] explained that the HC category would be weighted at 15% of the target award, with an initial focus on Leadership, Inclusion and Representation. She remarked that EVP TIP metrics under the current program focused on financial performance only and did not measure individual performance. She stated that introducing an HC category would reinforce the Company’s prioritization of values centered on diversity, equity and inclusion (‘DE&I’).” PG0002755. Kempczinski added “the importance of having leaders set the right tone throughout the organization.” *Id.* But the Compensation Committee “encouraged management to narrow the scope of its proposed HC metrics.” *Id.*

79. Moreover, as discussed below, the Board designed its oversight to willfully blind itself from important enterprise risk management, including in crucial

human capital and reputation issues, and signaled that it was willing to completely abdicate oversight in critical areas to management.

B. The Board Designed Its Oversight to Rely on Officers, Thus Blinding Itself to Problems Officers Chose to Not Raise

80. Even though, as outlined above, the Board had nominal oversight over HCM, it never gave itself direct oversight because the reporting structure filtered all complaints through officers first. The 220 Documents reveal that all reports to the Board were filtered through Board Committees, who in turn received their information from the CEO, who in turn received his reports from a management level Enterprise Risk Management (“ERM”) Committee. For example, a chart produced in connection with the September 2019 Board meeting illustrates this system (PG0001125):

81. Despite numerous lawsuits implicating CEO misconduct – including the lawsuit the Company filed against Easterbrook – the Board has kept in place this reporting structure. At an October 2020 meeting, almost a year after Easterbrook was terminated and after the Board commenced litigation against him for misleading them as to the extent of his misconduct, the Board was presented with the same risk management system as in 2019. By this time, the Board was also aware that there were allegations against the current CEO that he and Easterbrook had engaged in systematic racial discrimination. But again, the full Board relied on Board committees, and the Board committees in turn relied on information filtered through the CEO:

82. This over-reliance on the CEO is especially problematic at McDonald's given the various lawsuits' allegations against the two most recent CEOs: Easterbrook and Kempczinski. The Company is currently engaged in litigation against Easterbrook for lying to it about his misconduct. And while the Board adjudged that Easterbrook's subordinate, Kempczinski, was a sufficiently clean break from the past, as noted above, lawsuits filed in 2020 allege that Easterbrook and Kempczinski engaged in systematic racial discrimination. Specifically, the lawsuits allege that they systematically steered diversity efforts at the Company to focus on gender diversity, and while they did not achieve full parity in that area, they

used those diversity efforts as a cover for systematically undermining the hiring, retention, and promotion of Black executives and franchisees.

83. Moreover, to the extent that Board received reports from other officers, its oversight was still problematic because for most of the relevant period, the CPO was Fairhurst – a man who the Board knew to behave inappropriately in front of women. Fairhurst also had every reason to hide any misconduct from Easterbrook, and by extension, Kempczinski, as it related to racial discrimination, because Easterbrook had authority over him and brought him over and promoted him. Thus, the Board’s oversight structure was designed to keep itself uninformed of officer-level misconduct, as well as rely on a few key officers for all their information as to enterprise risks to the Company.

C. Several Board Committees Improperly Delegate All Their Authority to Officers, Further Robbing Itself of Oversight

84. Finally, as further evidence of the Board’s over-reliance on officer reporting channels, the Compensation Committee and Public Policy & Strategy Committee have charters where they allow for delegating *all* their responsibilities to officers. According to the publicly posted versions of their most recent Charters:

- (a) The Compensation Committee: “When appropriate as permitted under applicable law and listing standards, the Committee may delegate any of its responsibilities to (i) a subcommittee comprised of two or more members of the Committee or the Board of Directors

or (ii) one or more members of management, acting separately or together as a management committee.”

(b) The Public Policy & Strategy Committee: “When appropriate, as permitted under applicable law and the listing standards of the New York Stock Exchange, the Board or the Committee may delegate any of its responsibilities to a subcommittee comprised of two or members of the Committee, the Board, or members of management.”

85. At the same time, the Board receives training on their fiduciary duties, so they would have known that such a delegation is improper. The only reasonable explanation for the Board allowing this delegation to be written into committee charters is a willful blindness to potential lack of oversight.

86. Furthermore, the Board understands that this delegation is unusual because the other four standing committees do not allow for delegating their responsibilities to management.

87. The delegation by the Compensation and Public Policy & Strategy Committees is most troubling because of the key roles they would otherwise play in overseeing the Company’s officers.

88. The Public Policy & Strategy Committee conducts oversight into various business areas, including, expressly, compliance with laws and regulations

(other than accounting and finance-related matters that are the purview of the Audit & Finance Committee) and human capital management. In other words, the Public Policy & Strategy Committee is the one with the most direct oversight into ensuring the Company's officers comply with anti-discrimination, harassment, and retaliation laws and policies. But by allowing for all of its authority to officers, it is effectively signaling that it is willing to abdicate that oversight completely.

89. The 220 documents show that this delegation by the Public Policy & Strategy Committee was built into its founding charter, so the Committee has always signaled that it may abdicate its oversight completely. PG0002033 (July 19, 2016 memo attaching founding charter).

90. The Compensation Committee determines the CEO's compensation, as well as works with the CEO to determine the compensation for all other executives. By allowing for all its responsibilities to be delegated to management, the Compensation Committee is effectively ceding Board oversight over officer-level compensation, thus removing an important source of oversight into officer conduct.

91. The 220 documents also demonstrate that the Compensation Committee has also for long signaled that it could abdicate its oversight of officer compensation. In a November 2018 memorandum to the Compensation Committee that attached a copy of the charter, and also for the Compensation Committee to oversee "diversity and pay equity" as factors in compensation, the unamended

Delegation clause (which indicates that this was a long-standing practice) reads exactly the same as the current version. PG002311.

92. Furthermore, the Board routinely abdicated its oversight in responding to shareholder proposals – especially those relating to HCM – by giving the Company’s general counsel carte blanche to respond, as further discussed below.

II. THE BOARD KNEW OF WIDESPREAD SEXUAL HARASSMENT BUT IMPROPERLY ABDICATED ITS OVERSIGHT OF FRANCHISES

A. The Board Was Informed of Investor Concerns, Regulatory Actions, and Litigation Concerning Widespread Sexual Harassment

93. On November 30, 2017, at a full meeting, the Board heard from Easterbrook about “the recent increase of sexual harassment issues in the media and in the business community.” PG0001025. Easterbrook noted that Krulewitch had provided training to senior leadership and “enhanced training to the entire organization was in the process of being implemented.” *Id.* He also “stressed the importance of the subject matter to him personally and his commitment to lead the organization on this important topic.” *Id.*

94. On January 24, 2019, the PPSC met to discuss several workplace-related stockholder proposals. Eckert (the PPSC chair) asked Robert Gibbs, McDonald’s Global Chief Communications Officer, to “comment on the efforts the Company and the Corporate Relations team is making in connection with . . . the

Company's sexual harassment program." PG0000398. "Mr. Gibbs discussed the strengthening of the Company's sexual harassment and workplace safety program and the political environment around these issues on federal and state levels." *Id.*

95. But in contrast to the tone in the minutes, in a January 2019 memorandum accompanying the PPSC meeting, management took a more adversarial tone against the stockholders, which indicated that management merely wanted to shut them down and reassure the Board that everything was fine, despite the fact that the Board had been presented with information in earlier meetings that things were not fine: that McDonald's needed to improve diversity to improve business, and that McDonald's received serious complaints about sexual harassment. Now management had to report about regulatory actions being taken against the Company's franchisees, [REDACTED]

[REDACTED]

96. At the same time, McDonald's appeared to acknowledge that it did need to improve, because in the same January 2019 memorandum, management informed the PPSC that "McDonald's teams have been proactively working to improve policies and programs related to these issues. Specifically, the Company has modified and improved its policies on human rights and sexual harassment." *Id.* The Company has also been working on implementing "new training programs aimed at safe and respectful workplaces" and has "created financial incentives for the franchisees to take the training[.]" *Id.*

97. In January 2019, the Governance Committee was told of an SEIU proposal that was withdrawn, which would have called for "the Board to strengthen McDonald's prevention of workplace sexual harassment by formalizing the Board's oversight responsibility, aligning senior executive compensation incentives, reviewing (and if necessary overseeing revision of) Company policies, and reporting to shareholders by December 31, 2019 on actions taken." PG0002652. It also discussed two other stockholder proposals: "CtW Investment Group requests that the Board adopt a policy precluding the use of mandatory arbitration of employment related claims; non-compete agreements with employees; and non-disclosure agreements related to employees engaged in discrimination or harassment issues." PG0002648. Another stockholder, "Clean Yield Asset Management, requests the Company to issue a report on the potential impact of state and federal legislation

prohibiting the use of non-disclosure agreements and compulsory arbitration agreements.” *Id.* The proposals were then flagged for the PPSC.

98. In a March 2019 memorandum, the PPSC was told that [REDACTED]

[REDACTED] PG0000893.

99. And in another March 2019 memorandum to the PPSC, Krulewitch noted that in response to the stockholder proposals that centered on the Company’s use of arbitration clauses or non-disclosure agreements, he emphasized the Company’s limited uses of either, but admitted that they were used in connection with severance and with settlements.

100. With respect to arbitration, McDonald’s “does not use arbitration covenants as a condition of employment at any level. At termination, we do not include arbitration covenants in any settlements.” PG00006335. But the Company does “include an arbitration covenant in every severance and retirement agreement provided to any restaurant or staff employee.” *Id.*

101. With respect to non-disclosure agreements, McDonald’s use was broader. Although McDonald’s “generally does not require employees to sign non-disclosure agreements during employment” and has “not asked any employee to sign a non-disclosure agreement as part of any HR, Compliance, or Legal

investigation[,]” but the Company has “included a non-disclosure covenant as a part of settlement agreement[s] with both current and former employees.” *Id.*

102. Management implicitly acknowledged the merit of CtW and Clean Yield’s proposals when, as a condition for their withdrawing their stockholder proposals, it agreed to additional public reporting of the Company’s practices, and to “notify our Board in any case in which we would seek to use a non-disclosure agreement with an officer in a case involving harassment and discrimination[,]” and allow CtW to meet with a Board director. *Id.*

103. The subjects of the memoranda were discussed at a March 21, 2019 PPSC meeting. In addition, “Gibbs provided the Committee with an update on sexual harassment legislation that has been passed or is anticipated to be enacted within the various states.” PG0000420.

104. By May 2019, the Board had to pay more attention to workplace issues because lawsuits began to be filed. At the May 23, 2019 Board meeting, Hernandez asked for “an update on the recent activity involving allegations of sexual harassment in restaurants.” PG0000423. Krulewitch discussed recent EEOC charges that had been filed, making note of the previous EEOC charges regarding similar topics that had been filed in 2018. *Id.*

105. Krulewitch also “explained that since the charges in 2018, the Company had been working diligently to enhance its programs and policies with regard to

sexual harassment with a deliberate focus on the restaurants.” *Id.* The Company “had engaged expert third parties to assist in the revision of its policies and training for its company-owned restaurants as well as to the tools it offered to its franchises.” *Id.* Krulewitch also “noted the Company had engaged with RAINN, a not-for-profit in the area of women’s violence, to receive feedback on its program. He noted that the Company had subsequently enhanced its training programs in its company-owned restaurants” and “had developed training tools to offer its franchises, and that 90% of the franchisees had voluntarily implemented the training.” *Id.*

106. However, the 220 documents do not show that the Board or its committees have reviewed any of these “enhanced” policies since 2018, nor even that the Board was informed of the 2018 EEOC charges contemporaneously. Rather, the Board “encouraged management to report back to the Board with further enhancements to the program and its strategy.” *Id.*

107. On June 27, 2019, the PPSC held a special meeting, whereby Easterbrook addressed the committee “by reiterating the seriousness with which the Company addresses the topic of sexual harassment in the workplace.” PG0000417. Easterbrook “outlined some of the reactions he has received regarding the Company’s efforts to ensure McDonald’s is a safe and respectful workplace” and “discussed some of the programs that the Company has enhanced in this area, along

with efforts to further strategize around and communicate the Company's initiatives to a variety of stakeholders." *Id.*

108. Furthermore, Krulewitch gave "a litigation and regulatory update related to sexual harassment at McDonald's" and referred to presentation materials "regarding the progress the Company has made in its efforts to promote a safe and respectful workplace." *Id.* Krulewitch and Gibbs also "provide[d] an update on a recent meeting with Time's Up" on June 11, 2019. Krulewitch noted that "Time's Up acknowledged the significant steps the Company has taken to address the underlying issues" but "feels McDonald's can do even more to take a leadership role against workplace sexual harassment given its size and scale." *Id.* Gibbs "further indicated that he felt the meeting was a positive step in the right direction and feels that Time's Up may be in a position to validate publicly many of McDonald's efforts to help ensure a safe and respectful environment for its workers." *Id.*

109. Furthermore, Fairhurst presented on McDonald's "people and gender strategy" and "described the efforts around gender pay equity in line with increased expectations of society at large, and of the Company's shareholders in particular." *Id.* Eckert then asked Gibbs to "present the Company's communication strategy." *Id.* Gibbs proposed that "the Company must continue to enhance accountability" through "a proposed Safe& Respectful Workplace Governance Board, which would include representatives from both owner/operators and the Company" as well as

“training that will continue to be developed[.]” *Id.* Furthermore, Gibbs “expressed his view of [the] unique narrative that McDonald’s has on these topics and the plan to have all Directors be advocates for the Company’s actions.” *Id.* The Committee then discussed “the Company’s proposed communication strategy” and “includ[ed] comments shared by [Board chair] Enrique Hernandez Jr., who was unable to attend the meeting but provided his perspective to Mr. Eckert prior to the meeting.” *Id.* The PPSC focused on “the scope and extent of any publicity; potential intended and unintended consequences of such communications; the size and scale of the Company; and its ability to manage expectations and provide leadership.” *Id.* Eckert closed the discussion “by confirming that the Company: (i) has developed a comprehensive plan around the issues of sexual harassment and safe and respectful workplace environments; (ii) will continue to be proactive; and (iii) will further evaluate how best to execute its strategy and be a leader on the issues.” *Id.*

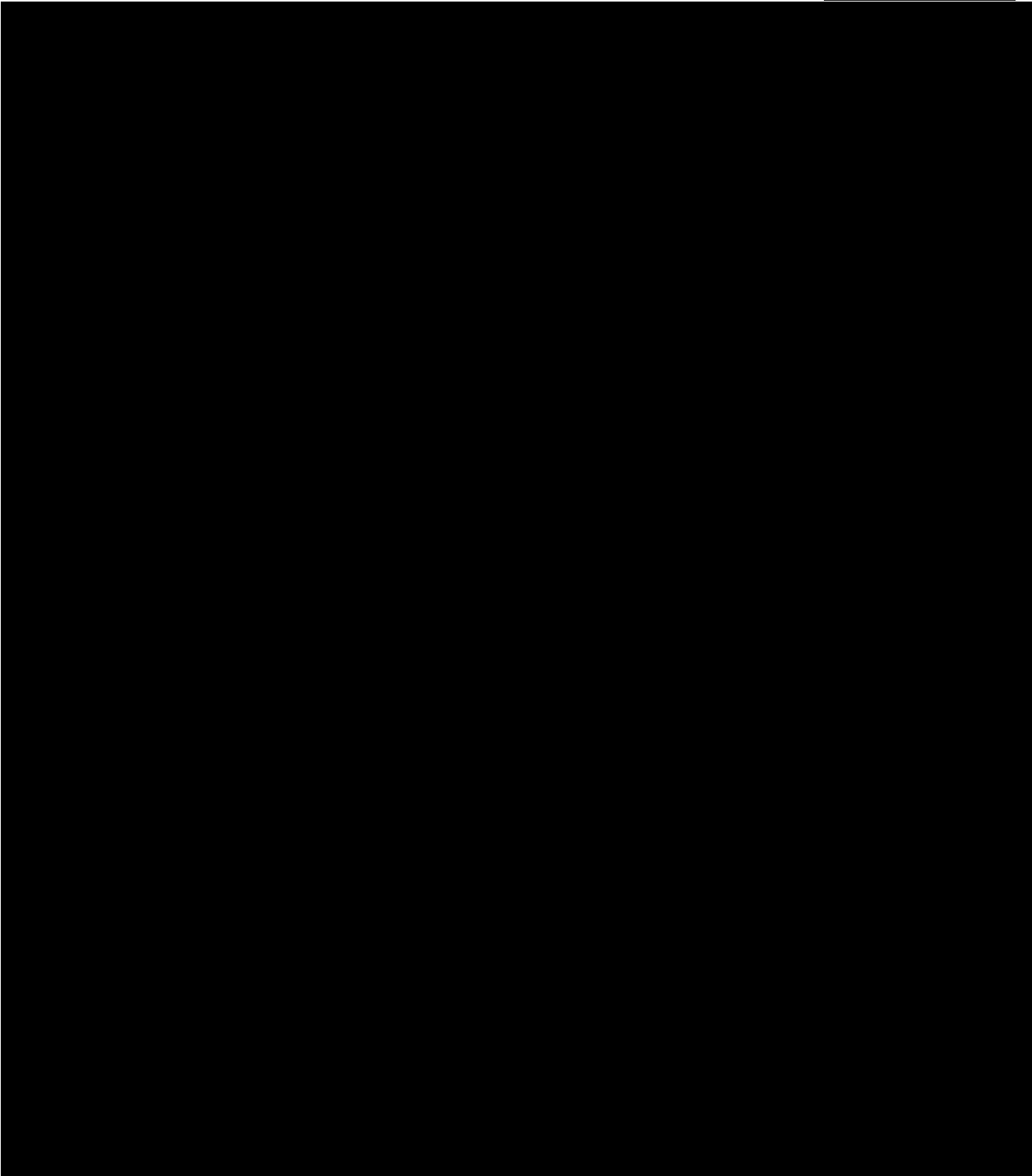
110. A June 2019 memorandum to accompany the PPSC meeting gave an overview of previous discussions regarding “the issue of sexual harassment, as well as the proactive work we are doing to create a safe and respectful workplace for our employees and support the efforts of our independent owner/operators to do the same.” PG0000682. The memorandum recounted how in January 2019, the PPSC heard the Company give an overview of “the scope of its programs to enhance a safe and respectful workplace for Company and owner/operator employees” and in May


2019 “we had a similar discussion followed by a request from the [PPSC] to hold a separate meeting to discuss these issues in more detail.” *Id.* The memorandum reports that McDonald’s received 20 EEOC charges in May 2018 and in May and June 2019, while it expects to receive 9 more. Of those charges, the vast majority occurred in franchised stores, with around 2 charges against company-owned stores. The charges “involve restaurant-level conduct” but “also allege systemic harassment[.]” *Id.* Despite the numerous charges against franchised restaurants, McDonald’s will only implement mandatory training in company-owned restaurants. Franchisees would instead be “strongly encouraged to offer these trainings in their organizations.” *Id.*

111. In July 2019, the PPSC received another update discussing how, “In late May, McDonald’s Corp. was accused in 25 lawsuits and regulatory charges of condoning sexual harassment in the workplace and retaliating against employees who speak up” while “as noted in the June [PPSC] meeting, the Company continues to make progress on enhancing its safe and respectful workplace programs. Corporate Affairs, Human Resources and Legal have continued to partner to engage with prominent stakeholders and to more effectively communicate our programs to interested third parties. PG0000639.

112. At the July 18, 2019 PPSC meeting, Krulewitch updated the committee on an “ongoing dialogue between the Company and the [HCMC], which has led to

a better understanding of the needs and interests of a variety of stakeholders regarding underlying human capital management.” PG0001268. [REDACTED]





114. On September 19, 2019, Easterbrook presented at a PPSC meeting whose sole agenda item was, “Driving our reputation as an Employer.” PG0000789. Easterbrook claimed “that there is significant attention dedicated to these issues by senior management; however, there is an opportunity for the Company to visibly lead on a more proactive basis.” *Id.* Fairhurst then “identified the stakeholder groups that the Company hoped to influence in order to drive McDonald’s reputation: consumers, NGOs, elected officials, employees, and franchisees.” *Id.* Furthermore, the PPSC specifically asked about “the Company’s engagement with particular external parties, such as TIME’S UP Now, and a discussion followed regarding the Company’s efforts to go beyond sexual harassment training such as reducing unconscious bias . . . as well as highlighting the emphasis the Company places on diversity and entrepreneurship.” *Id.*

115. A November 26, 2019 report to the PPSC noted that engagement with CtW, the NYC Comptroller, CalPERS, and other HCMC members had to be postponed because of Fairhurst’s departure. PG0000811. The investors also enclosed a follow-up letter that stressed “what takes place at franchised restaurants will inevitably affect the reputation of the McDonald’s Corporation, and therefore ensuring that effective controls are in place to prevent, detect, and address sexual

harassment at franchised restaurants should be a corporate imperative. Board oversight of the implementation of the new measures is important.” *Id.* But the investors also urged the Board “to ensure Board oversight[,] including the McDonald’s system and not only the Corporation.” *Id.* They also asked for a follow-up meeting since “much of McDonald’s planned response to reports of sexual harassment is in the implementation stage[.]”

116. In a November 22, 2019 Litigation Update, management highlighted to the Audit & Finance Committee the ACLU *Ries* sexual harassment case. PG0000790. And another November 26, 2019 memorandum to the PPSC, regarding “Driving our Reputation as an Employer[,]” also included a privileged discussion of the *Ries* sexual harassment lawsuit brought by the ACLU. PG0000814. Furthermore, the memo informed the PPSC that the Fight for \$15 has continued to press McDonald’s “as cooks, cashiers press new CEO to address widespread sexual harassment, raise pay, [and] respect union rights.” *Id.* The PPSC was also informed that regarding “sexual harassment, we continue to work with U.S. franchisees to rollout training associated with those topics and broadly supported by franchisee leadership. Our proactive work in that regard will continue to be important as we engage with the media and various NGOs on the subject.” *Id.* But notably, the PPSC was not told that training would be mandatory, despite the mounting litigation and publicity problems that the PPSC and the Board were being made aware of.

117. The accompanying presentation also emphasized that “McDonald’s faces constant pressure from unions, campaign groups, media, and politicians on the issues of wage[s and] sexual harassment[.]” *Id.*

118. In another presentation to the PPSC, “Driving Our Reputation as an Employer 2020 Look ahead[,]” management continued to blame external factors and deflect from actually examining the Company’s own culture and practices. Management emphasized that the “Situation Analysis 2020 is a year with several unique circumstances” – including how “Democratic Presidential Candidates will be pushing on wage and labor issues, as well as gender equality and diversity and inclusion. Name brands like McDonald’s will be targeted as examples of change that candidates say is needed.” PG0000849. Furthermore, “[t]his effort – inclusive of MeToo – can significantly undermine and drown out the broader narrative for McDonald’s around education, career advancement and growth. If the brand cannot provide safe, inclusive and respectful workplaces, inherently this can to [sic] recruitment issues and legislative action.” *Id.*

119. Current management also attempted to blame scrutiny of McDonald’s on Easterbrook and Fairhurst, without examining the broader Company culture that allowed them to engage in misconduct for years. Management stated that “[t]he leadership transition is both an opportunity to lead and a threat based on a renewed interest in driving the anti-McDonald’s corporate campaign and challenging the safe

and respectful workplace efforts.” *Id.* And again, “[t]he leadership transition and management of new C-suite and Board appointments create critical runway in managing a tone from the top commitment to lead. It also carries with it heightened scrutiny on our actions – and disparity between the Corporation and restaurants.” *Id.* Thus, the Company needs to engage in an “[o]ngoing defense of employer brand through proactive media and stakeholder engagement.” *Id.* Again, the PPSC appeared to have merely accepted management’s characterizations rather than push to investigate and remediate internal culture or practices.

120. Despite management’s positive spin, the Board knew that the Company faced increasing reputational problems due to widespread sexual harassment. At a December 6, 2019 Board meeting, the Board continued to learn of litigation being filed against the Company for sexual harassment, including “a class action that had been filed in Michigan alleging sexual harassment on behalf of a class of female employees at a single restaurant.” PG0000546.

121. Furthermore, at a May 20, 2020 PPSC meeting, “Kempczinski identified three key areas for which he and management were hopeful to gain input and feedback from the Committee: Corporation Reputation; U.S. Employer Reputation; and Franchisee Relations.” PG0001548. Capozzi discussed “U.S. employer reputation. Ms. Capozzi began by highlighting that the Company had done a great job protecting the brand but acknowledging that it would become more

difficult as outside interests continued to rally against the Company with . . . welfare concerns.” *Id.* Capozzi also stressed, as one important point, “how to be most thoughtful about the communications strategy.” *Id.* Krulewitch added that there was a “correlation between a company’s focus on employees’ safety and well-being and its reputation.” *Id.* Meanwhile, management also “present[ed on] the U.S. franchisee relations[.]”

122. In an accompanying presentation regarding “U.S. Employer Reputation and Strategy Update,” Capozzi and Krulewitch noted that one lesson learned from benchmarking with other companies is to “[p]rotect joint-employer status while considering non-employee actions you can take” – meaning that “[c]ompanies are willing to require some employment compliance practices of franchised localities (e.g. sexual harassment and human trafficking training) without dictating wages and benefit terms. Case studies show that some companies are considering new requirements within the franchisee model construct in light of societal shifts.” PG0001553.

123. Furthermore, “McDonald’s employer reputation challenges have grown” since the COVID-19 pandemic. *Id.* Whereas before the pandemic, the “[e]mphasis [was] on workers not being treated fairly (sexual harassment . . .)” and “SEIU, CTW, [and] #MeToo running active campaigns” now after the pandemic the “[e]mphasis [was] on workers and customers not being protected by businesses

staying open” as well as “SEIU & CTW campaigns continue with the addition of ACLU support as the group has rejoined the effort[.]” *Id.* Moreover, “[w]hat has largely stayed the same” – “Pressure from labor strikes, class action lawsuits, government officials, and Board tactics.” *Id.*

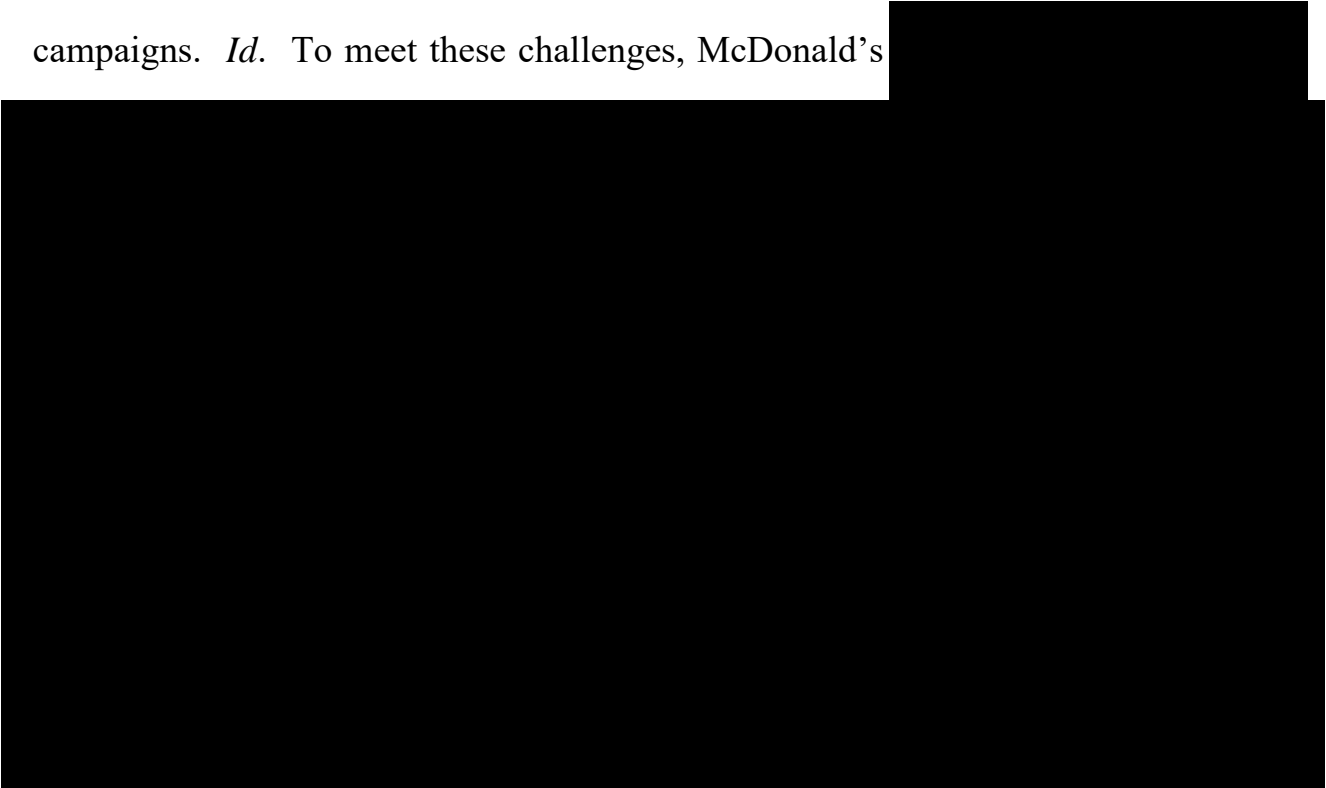
124. At the May 21, 2020 Board meeting, in addition to extensive discussions regarding stockholder reactions to Easterbrook’s severance package, the Board discussed “the Company’s corporate reputation” and “the work being done on corporate reputation as well as employer reputation.” PG0001317. Furthermore, the Board discussed “franchisees’ ownership structure and equity as well as the Company’s engagement strategy.” *Id.*

125. At a July 20, 2020 PPSC meeting, management “provided an update on additional work done around corporate reputation[.]” including “research that identified particular initiatives or actions on a sliding scale of increased customer visits and a sense of pride among customers.” PG0001595. Management also provided an “update on the Company’s U.S. employer reputation” and “how the U.S. labor relations and employer reputation strategies had undergone a robust evaluation and highlighted potential approaches from the Company’s employer reputation.” *Id.* One of the successful measures was “a reduction in protest activity[.]” *Id.*

126. In addition, “management was working with franchisees on many of these initiatives . . . however, there were some areas of disagreement. Messrs.

Kempczinski and [Joe] Erlinger [President – McDonald’s USA] emphasized the importance of socializing these issues with franchisees as well as potential risks and consequences if owner/operators did not agree with the Company’s decisions. Questions were asked and answered regarding the evolving relationship between the Company and its franchisees, and a discussion then followed regarding the Company’s efforts.” *Id.*

127. Furthermore, in an accompanying July 21, 2020 presentation to the PPSC regarding “US Labor Relations and Employer Reputation Strategy[,]” management stated, “Our approach yielded important results but changing landscape requires us to evolve.” PG0001610. Furthermore, “McDonald’s labor relations challenges have grown[,]” noting that the ACLU has joined existing SEIU and CtW campaigns. *Id.* To meet these challenges, McDonald’s



[REDACTED]

128. During the October 6-7, 2020 Board meeting, Erlinger updated the Board's [REDACTED]

[REDACTED]

B. Despite Recognizing the Importance of Brand Reputation and the Widespread Claims of Sexual Harassment and Misconduct, the Board Willfully Refused to Exercise Oversight Over Franchises for Years

129. McDonald's exercises a great deal of control over its franchises. For example, a copy of McDonald's franchise agreement was attached for review by the Sustainability & Corporate Responsibility Committee of the Board, in January 2020 (PG0001302). It specified that "McDonald's operates a restaurant system" that it calls the "McDonald's System[, which] is a comprehensive system for the ongoing development, operation, and maintenance of McDonald's restaurant locations" and "is operated and advertised widely within the United States of America and in certain foreign countries." *Id.* The franchise agreement emphasizes:

The foundation of the McDonald's System and the essence of this Franchise is the adhere by Franchisee to standards and policies of McDonald's providing for the uniform operation of all McDonald's restaurants within the McDonald's System including, but not limited to, serving only designated food and beverage products; the use of only

prescribed equipment and building layout and designs; strict adherence to designated food and beverage specifications and to McDonald's prescribed standards of Quality, Service and Cleanliness in the Restaurant operation. Compliance by Franchisee with the foregoing standards and policies in conjunction with the McDonald's trademarks and service marks provides the basis for the valuable goodwill and wide family acceptance of the McDonald's System. Moreover, the establishment and maintenance of a close personal working relationship with McDonald's in the conduct of Franchisee's McDonald's restaurant business, Franchisee's accountability for performance of the obligations contained in this Franchise, and Franchisee's adherence to the tenets of the McDonald's System constitute the essence of this Franchise.

130. This franchise agreement goes further and specifies *mandatory* requirements the franchisee must follow, including:

- (a) Requiring the franchisee to “live in the locality of their McDonald's restaurant, actually own the entire equity interest in the business of the Restaurant and . . . work full time at their McDonald's restaurant business.”
- (b) Providing franchisees with “business manuals [that] contain detailed information including: (a) required operations procedures; (b) methods of inventory control; (c) bookkeeping and accounting procedures; (d) business practices and policies; and (e) other management and advertising policies. Franchisee agrees to promptly adopt and use exclusively the formulas, methods, and policies contained in the business manuals[.]”

- (c) Allowing franchisees to “use only advertising and promotional materials and programs provided by McDonald’s or approved in advance, in writing, by McDonald’s.” Moreover, the “[f]ranchisee shall expend during each calendar year for advertising and promotion of the Restaurant to the general public an amount which is not less than four percent (4%) of Gross Sales[.]”
- (d) Requiring franchisee “to enroll Franchisee and Franchisee’s managers, present and future, at Hamburger University or such other training center as may be designated by McDonald’s from time to time.” Moreover, “Franchisee shall pay all traveling, living, compensation, or other expenses incurred by Franchisee and Franchisee’s employees in connection with attendance at Hamburger University or such other training centers.”
- (e) And prohibiting franchisee from purchasing or otherwise financially benefiting from other similar restaurant businesses.

131. The franchise requirement further emphasizes, “Franchisee acknowledges that every component of the McDonald’s System is important to McDonald’s and to the operation of the Restaurant as a McDonald’s restaurant, including a designated menu of food and beverage products; uniformity of food specifications, preparation methods, quality, and appearance; and uniformity of

facilities and service.” Furthermore, “McDonald’s shall have the right to inspect the Restaurant at all reasonable times to ensure that Franchisee’s operations thereof is in compliance with the standards and policies of the McDonald’s System.”

132. McDonald’s franchisee agreement includes specific operational requirements that the Franchisee must comply with, including:

(a) Operate the Restaurant in a clean, wholesome manner in compliance with prescribed standards of Quality, Service, and Cleanliness; comply with all business policies, practices, and procedures imposed by McDonald’s; serve at the Restaurant only those food and beverage products now or hereafter designated by McDonald’s; and maintain the building, fixtures, equipment, signage, seating and decor, and parking area in a good, clean, wholesome condition and repair, and well lighted and in compliance with designated standards as may be prescribed from time to time by McDonald’s;

(b) Purchase kitchen fixtures, lighting, seating, signs, and other equipment in accordance with the equipment specifications and layout initially designated by McDonald’s and, promptly after notice from McDonald’s that the Restaurant premises are ready for occupancy, cause the installation thereof;

(c) Keep the Restaurant constructed and equipped in accordance with the building blueprints and equipment layout plans that are standard in the McDonald’s System or as such blueprints and plans may be reasonably changed from time to time by McDonald’s;

(d) Franchisee shall not, without the prior written consent of McDonald’s: (i) make any building design conversion or (ii) make any alterations, conversions, or additions to the building, equipment, or parking area;

(e) Make repairs or replacements required: (i) because of damage or wear and tear or (ii) in order to maintain the Restaurant building and parking area in good condition and in conformity to blueprints and plans;

(f) Where parking is provided, maintain the parking area for the exclusive use of Restaurant customers;

(g) Operate the Restaurant seven (7) days per week throughout the year and at least during the hours from 7:00 a.m. to 11:00 p.m., or such other hours as may from time to time be prescribed by McDonald's (except when the Restaurant is untenable as a result of fire or other casualty), maintain sufficient supplies of food and paper products, and employ adequate personnel so as to operate the Restaurant at its maximum capacity and efficiency;

(h) Cause all employees of Franchisee, while working in the Restaurant, to: (i) wear uniforms of such color, design, and other specifications as McDonald's may designate from time to time; (ii) present a neat and clean appearance; and (iii) render competent and courteous service to Restaurant customers;

(i) In the dispensing and sale of food products: (i) use only containers, cartons, bags, napkins, other paper goods, and packaging bearing the approved trademarks and which meet the McDonald's System specifications and quality standards which McDonald's may designate from time to time; (ii) use only those flavorings, garnishments, and food and beverage ingredients which meet the McDonald's System specifications and quality standards which McDonald's may designate from time to time; and (iii) employ only those methods of food handling and preparation which McDonald's may designate from time to time;

(j) To make prompt payment in accordance with the terms of invoices rendered to Franchisee on Franchisee's purchase of fixtures, signs, equipment, and food and paper supplies; and

(k) At Franchisee's own expense, comply with all federal, state, and local laws, ordinances, and regulations affecting the operation of the Restaurant.

133. Moreover, the franchise agreement requires the franchisee to carry specific amounts and types of insurance, including workers' compensation

insurance, commercial general liability insurance, and “[a]ll such insurance as may be required under the Lease” and the “insurance policies required to be carried hereunder shall name McDonald’s and any party designated by McDonald’s as additional insureds, as their interests may appear in the Franchise.”

134. Despite the detailed requirements contained in the franchise agreement, it does *not* mandate a prohibition of (and enforcement of such prohibition) sexual or racial harassment, discrimination, and other misconduct, despite the importance of preventing such conduct to the reputation of the Company.

135. But the policies that the Board designed purposefully merely *suggest* that the franchisees adopt workplace policies similar to the Company’s. Indeed, the Standards of Business Conduct (“SBC”) at the Company states that they “do not apply to McDonald’s owners/operators or their employees, who are independent business men and women.” Rather, McDonald’s merely “expect[s] [its] owner/operators to maintain high standards of integrity and abide by all applicable laws and regulat[ions]” and “encourage[s] them to adopt standards for their business which are similar to [McDonald’s SBC].”

136. Although McDonald’s had a manual for owner operators that replicated its own employee handbook, there is no indicator that this manual was mandatory for adoption by franchisees. Furthermore, the 220 documents indicate that McDonald’s sought *voluntary* changes from franchisees, even though McDonald’s

was not hesitant about imposing expensive operational requirements on franchisees in other contexts.

137. In 2019, as lawsuits and EEOC charges mounted, so that sexual harassment became an even hotter button issue, the Board received a report in May 2019, where the Company's then- chief legal officer ("CLO") Jerry Krulewitch "noted that the Company had subsequently enhanced its training programs in its company-owned restaurants" but merely "worked to adopt a shared values statement with its U.S. franchises." McDonald's "had developed training tools to offer its franchisees and that 90% of the franchisees had voluntarily implemented the training. In addition, the Company had sponsored a third party hotline that franchisees could adopt to allow franchisee employees an opportunity to explore issues of alleged sexual harassment." Thus, the corporate emphasis in 2019 remained "voluntary" compliance by franchisees, despite the fact that widespread sexual harassment in franchises, resulting in high-profile lawsuits, already showed the deficiencies of a "voluntary" program.

138. By 2020, the Board, either as a fully body or through its standing bodies, had received numerous reports of shareholder campaigns, employee demonstrations, high-profile lawsuits, regulatory actions, and engagements with non-profits on the widespread sexual harassment in McDonald's restaurants, the vast majority of which would have been McDonald's franchises. Furthermore, the Board

faced stiff investor resistance to its approval of compensation for Easterbrook, including “vote no” campaigns from CtW and opposition from Glass Lewis.

139. After all of this external pressure, the Board finally began to discuss *required* standards for franchisees in 2020. In July 2020, the PPSC discussed how “[s]trong US brand standards [are] required to ensure crew and customer safety is addressed consistently[,]” including proposed franchisee standards to “[i]mplement anti-harassment and anti-discrimination policies and trainings, workplace violence prevention training, reporting and investigation protocols for alleged violations.” PG0001610.

140. [REDACTED]

[REDACTED]

C. The Board Has Also Merely Listened to Management Spin Instead of Take Proactive Steps to Correct Years-Long Gender Diversity Gaps

141. At the May 8, 2015 Sustainability and Corporation Responsibility Committee (“SCRC”) meeting, in a presentation, the SCRC learned that only “27% of positions at vice president and above at McDonald’s Corporation are held by women.” PG0001951. Yet this did not appear to be a matter of comment at the meeting.

142. At the July 15, 2015 meeting, the SCRC discussed the “professional services diversity spend[.]” PG0001930. [REDACTED]

[REDACTED] Moreover, in discussing workforce concerns, the SCRC was told, “By delivering a positive narrative about McDonald’s employment practices to key target audiences, we aim to counter ongoing labor pressures in our U.S. market.” PG0001942. Thus, the SCRC was admitting that its spending was aimed at bolstering the Company’s public image, to counter “labor pressures,” rather than geared to actually improving diversity and inclusion.

143. A memorandum produced in advance of the July 16, 2017 SCRC meeting further highlighted: “The positive impact of such diversity on business performance is well documented. However, in recent years, a growing body of research evidence is showing that diversity alone is not enough.” PG0000888. The memorandum shows that [REDACTED]

[REDACTED] *Id.*

144. A memorandum prepared for the January 25, 2018 PPSC meeting emphasized the Company’s need to improve senior executive representation of women: “The representation of women is at parity with men up to Manager level. At more senior levels, however, the proportion of women decreases. We also see leadership gaps for women in some of our functions (e.g., Operation and IT).” PG0000735. However, McDonald’s appeared to be more concerned with branding issues than equal opportunity based on its own workforce, because the memorandum goes on to state that for its “Representation” goal, it wanted to “[e]nsur[e] the representation of women at every grade is equal to, or better than, the percentage of women across the external workforce (Market- and Function-specific) through ongoing review and enhancement of recruitment and talent management processes.” *Id.*

145. And in another memorandum from January 25, 2018 to the PPSC, management asserted that for “*Diversity* – we are supporting the business in broadening the pool of talent targeted for recruitment.” PG0001258 (emphasis in original). Moreover, McDonald’s has “established a set of metrics that connection to our Global Brand Campaigns . . . focused on tracking our Employer Brand Image, Crew Engagement, and Application to Hire ratio. These are core measurements that help us determine the progress we are making in terms of our reputation campaign and crew management programs.” *Id.* Furthermore, management highlighted “Investor Interest in HCM[,]” including meetings with the HCM Coalition “on several occasions over the past three years, and it is clear that they are evolving their position on the public reporting of Human Capital metrics We also committed to them that we would track the diversity of shortlist candidates for senior executive search assignments.” *Id.* At the same time, management appeared to be telling the Board that no further improvement is needed in officer recruitment for women, because it [REDACTED]

[REDACTED]

146. At a January 25, 2018 PPSC meeting, Krulewitch discussed “the proposal that requests the Board to prepare a pay equity report, stating that the

Company had filed a no-action request with the SEC based on a technical violation by the proponent.” PG0000686. Relatedly, Fairhurst “described several of the Company’s initiatives to address the labor challenges, including employer branding, diversity in broadening the pool of talent targeted for recruitment, adding recruitment capability on the U.S. and global People teams, and introducing technologies to engage with potential employees.” *Id.* He also “reported on leadership development for female talent, especially in light of the Company’s reorganization He also noted his commitment to track diversity of the final candidates for senior executive search assignments.” *Id.*

147. Furthermore, in a January 17, 2018 memorandum to the PPSC regarding shareholder proposals, including the one that was flagged to the Governance Committee about pay equity reporting, management asked for “agree[ment]” on actions to take against these problems and to allow management to “draft the Board’s statements in opposition to the proposals needed[.]” PG0001254.

148. At the January 25, 2018 Board meeting, Eckert provided a report for the PPSC and “noted that the Company had done a great job of enhancing the number of female officers in the Company.” PG0000656. Moreover, in discussing how to respond to shareholder proposals, including the pay equity report referenced above, the Board resolved “[t]hat if one or more of the Proposals are not withdrawn or

excluded from the Proxy Statement, the Corporate Executive Vice President, General Counsel, and Secretary is hereby authorized to prepare on behalf of the Board of Directors a statement regarding each Proposal to be included in the Proxy Statement.” *Id.*

149. At a February 19, 2018 Compensation Committee, Fairhurst presented on “human capital initiatives currently underway at McDonald’s” and “concluded his remarks by commenting on the increasing investor interest in disclosure of various human capital metrics.” PG0002095. An accompanying memorandum again noted,

PG0002262.

150. Furthermore, on July 18, 2018, the SCRC held a meeting to discuss the Company’s Global Gender Equality and Diversity Strategy, which Fairhurst reports “is in the preliminary stages of development[.]” PSC0000623. Wendy Lewis, the Global CDO, “described the current landscape for women at McDonald’s, which description included statistics on the representation of women at McDonald’s” and “proposed metrics to support and evaluate the progress of the strategy.” *Id.* In an accompanying memorandum, the SCRC learned that “[t]he majority of McDonald’s and its franchisees’ employees are women (55%). In addition, women account for 54% of our corporate staff and 27% of our Officers.” PG0000223. Thus, while the

SCRC learned that

The Company acknowledged that “[t]his is a

representation gap that we are determined to close at McDonald’s through our Global Gender Equality and Diversity Strategy.” *Id.* Management noted: “This will be the first time that McDonald’s has had a global Diversity strategy, and we believe that with the progress we have made to date the implementation of this strategy should be a landmark moment for the business.” *Id.* Management also emphasized how “enhancing gender diversity across our business has the potential to increase our proportion of visits initiated by female customers by helping us become more relevant to females Enhancing relevance in this way is at the heart of our Customer Obsessed culture.” *Id.* Thus, the Board was well aware of the importance to McDonald’s of improving gender diversity to both the Company’s brand and bottom line.

151. Fairhurst further emphasized, in a November 2018 presentation to the SCRC, how “[o]rganizations worldwide are increasingly making Gender Balance & Diversity a key priority as studies show that a gender diverse workforce drives better business performance through deeper customer understanding and different thinking styles which drive faster problem-solving and decision-making.” PG0000228.

Moreover, “McKinsey has recently reported that the top quartile for gender diversity can realize 21% higher returns.” *Id.* Fairhurst again informs the SCRC: “Across McOpCo and franchised restaurant estates, our System employs ~1.9-million people, the majority of whom are women (~55%). Women also account for 54% of our Corporate staff.” *Id.* “The representation of women is at parity with men up to Manager level. At more senior levels, however, the proportion of women decreases sharply (*e.g.*: 27% of Officers globally are women). We also see leadership gaps for women in some of our largest functions (*e.g.*: Operations and IT).” *Id.* And these gaps “mirror the gender representation gaps found across the workforce as a whole.” *Id.* Furthermore, the Company will “[r]evew and ensure alignment of zero-tolerance policies towards all forms of verbal and/or physical abuse and sexual harassment for Corporate, Segment, and IOM Market employees and the employees of company-owned restaurants in U.S. and IOM Markets.” *Id.*

152. At the July 18, 2019 Board talent meeting, management acknowledged that it continued to have a representation gap in gender diversity. The Company’s “percentage of female officers globally has stabilized at 26% following a drop [in] 2017-18 Our medium-term commitment remains, to achieve a target of women constituting one-third of our Officers.” PG0000742. [REDACTED]

[REDACTED] Yet ethnic diversity was not discussed in depth at the meeting.

153. Bizarrely, in a November 2019 presentation to the PPSC, where management discussed McDonald's "[o]ngoing defense of employer brand through proactive media and stakeholder engagement[,] it provided as "positive employer proof points" that "over 50% of our U.S. office-based staff are women" and [REDACTED] PG0000814. (internal capitalization omitted).

[REDACTED] Yet the PPSC appeared to have accepted this management sales pitch without question.

154. At the same time, when the PPSC was listening to management's spin on improving diversity, the PPSC learned in an accompanying presentation in July 2020 that among the things the Company was doing was defunding initiatives like "Women in Tech via Archways." PG0001600.

155. At the July 21, 2020 Board meeting, the Board also received a presentation stating that diversity and inclusion were "Most Impactful on Brand" but at the same time it was told the Company would "SLOW – De-prioritize" – "Lower investment, human resources for 2021 + Targeted stakeholder & ESG reporting

only” and “NO – De-fund” initiatives such as “Women in Tech via Archways.”

PG0001478.

III. DESPITE EVIDENCE OF SYSTEMATIC RACIAL DISCRIMINATION, THE BOARD HAS NEVER INVESTIGATED RACIAL DISCRIMINATION ALLEGATIONS AGAINST TOP OFFICERS

156. In January 2020, two Black executives filed a lawsuit alleging that Easterbrook, and Kempczinski systematically discriminated against Black employees, executives, and franchisees. This lawsuit recently survived a motion to dismiss in a decision on June 25, 2021, in the Northern District of Illinois. It alleges specific actions and statements by Easterbrook and Kempczinski that undermined Black employees at the Company, including:

- (a) Easterbrook told NBMOA members that “diversity” at McDonald’s meant “women” but omitted any mention of Blacks, therefore implying that McDonald’s was not going to emphasize racial diversity;
- (b) In April 2019, Kempczinski told a meeting of Black executives that “numbers don’t matter” in terms of Black representation in McDonald’s;
- (c) Easterbrook and Kempczinski specifically omitted any mention of race in the Company’s public diversity commitment page, which under their tenure, referenced only gender balance or diversity;

- (d) Easterbrook and Kempczinski starved the McDonald's African American Council of funding, whereas previously it had a budget that allowed it to help develop Black executive talent and a franchisee pipeline;
- (e) Easterbrook and Kempczinski excluded Black executives from their inner circle;
- (f) Easterbrook and Kempczinski, through a restructuring program, led a "purge" of Black executive ranks that reduced, between 2014 to 2019, from a high of 42 Black executives at the Vice President level or above, to only six Black executives at the Vice president level or above: 30 Black executives were terminated and 6 were demoted to the Director level or below. White executives, on the other hand, did not suffer from the same rates of attrition or demotions and in some instances were promoted despite poor performance scores;
- (g) At the same time, under a restructuring program, Easterbrook and Kempczinski drove a loss of 1/3 of Black franchises at McDonald's;
- (h) At the same time, Easterbrook and Kempczinski accelerated the shift of restaurant ownership to franchisees, away from the Company, to provide an excuse for the Company having less accountability for diversity efforts;

- (i) Easterbrook and Kempczinski led murkier data collection practices, for example, by grouping racial minorities into “people of color” without separating out Blacks, which masked the decline of Black representation among McDonald’s executives and franchisees. Kempczinski specifically prohibited separating out the data on Black female employees, for the purpose of being able to tout McDonald’s general gender diversity efforts, when the murkier practice was complained about to him;
- (j) Easterbrook and Kempczinski took the above actions even though they knew about complaints from the NBMOA that the above actions had a discriminatory impact. The claims that Easterbrook and Kempczinski used the restructuring to intentionally discriminate against Black executives and franchisees were among the ones that survived a motion to dismiss;
- (k) Kempczinski also met with one of the lawsuit plaintiffs when she alleged retaliation but took no actions in response.

157. The racial discrimination lawsuit also alleges a pervasive pattern of racial discrimination by a senior executive at McDonald’s, Charles Strong, who was the West Zone President and then the Chief Field Officer of the Company, before he

retired in [2020]. The allegations against Strong are especially disturbing, and include:

- (a) In 2016, when a Black executive told her supervisors that she was threatened by a White franchisee, Strong dismissed her concerns by calling her “irrational and incompetent” and threatening that he had “stuff on you You will need God when I am done with you.”
- (b) In 2017, Strong told a Black executive to ignore the instructions of other Black female executives because of their “Black woman attitude” that was “too angry and aggressive.”
- (c) In 2018, Strong again told a Black executive that other Black female executives were “angry Black women” and asked her to explain the source of their anger. The “angry Black women” Strong disparaged constituted 40% of all of McDonald’s Black female vice presidents.
- (d) Strong continued to call Black female executives “angry” and to coach them to be “softer” afterwards.

158. The allegations in the lawsuit are bolstered by the 220 Production. The 220 Documents show a heavy emphasis on gender diversity and a light emphasis on racial diversity, lending credence to the lawsuit’s claims that the Company ostensibly focused on gender diversity efforts as a cynical ploy to take attention from undermining efforts to hire, retain, and promote Black employees, as well as mask

the increasing open discrimination against Black employees, especially Black executives, at McDonald's. Further, the 220 Documents show that on several occasions, the Board found out about such concerns, and yet the Board took no direct steps to address these concerns.

159. And despite the detailed and credible (as shown by the survival of a motion to dismiss) allegations in the lawsuit, the 220 Documents never at any point show that the Board engaged with the substantive allegations against Easterbrook and Kempczinski or so much as conducted even a cursory investigation in these allegations. The Board also took no actions with respect to the allegations against Strong. This is in spite of the fact that the Board was especially attuned to the C-suite transition at his time because of the negative attention by investors to the Board's – at the time – generous severance package to Easterbrook despite his violation of Company policy.

160. Moreover, in the year before the lawsuit, the Board would have known that the lawsuit allegations were credible because it discussed similar concerns from franchisees in 2019.

161. At the January 24, 2019 Board meeting, the Board learned from Kempczinski “that franchisees were having to work harder to make less. He also addressed the sentiment of various minority operator associations. He concluded by noting that the business was focused on vastly improving the bottom US co-op

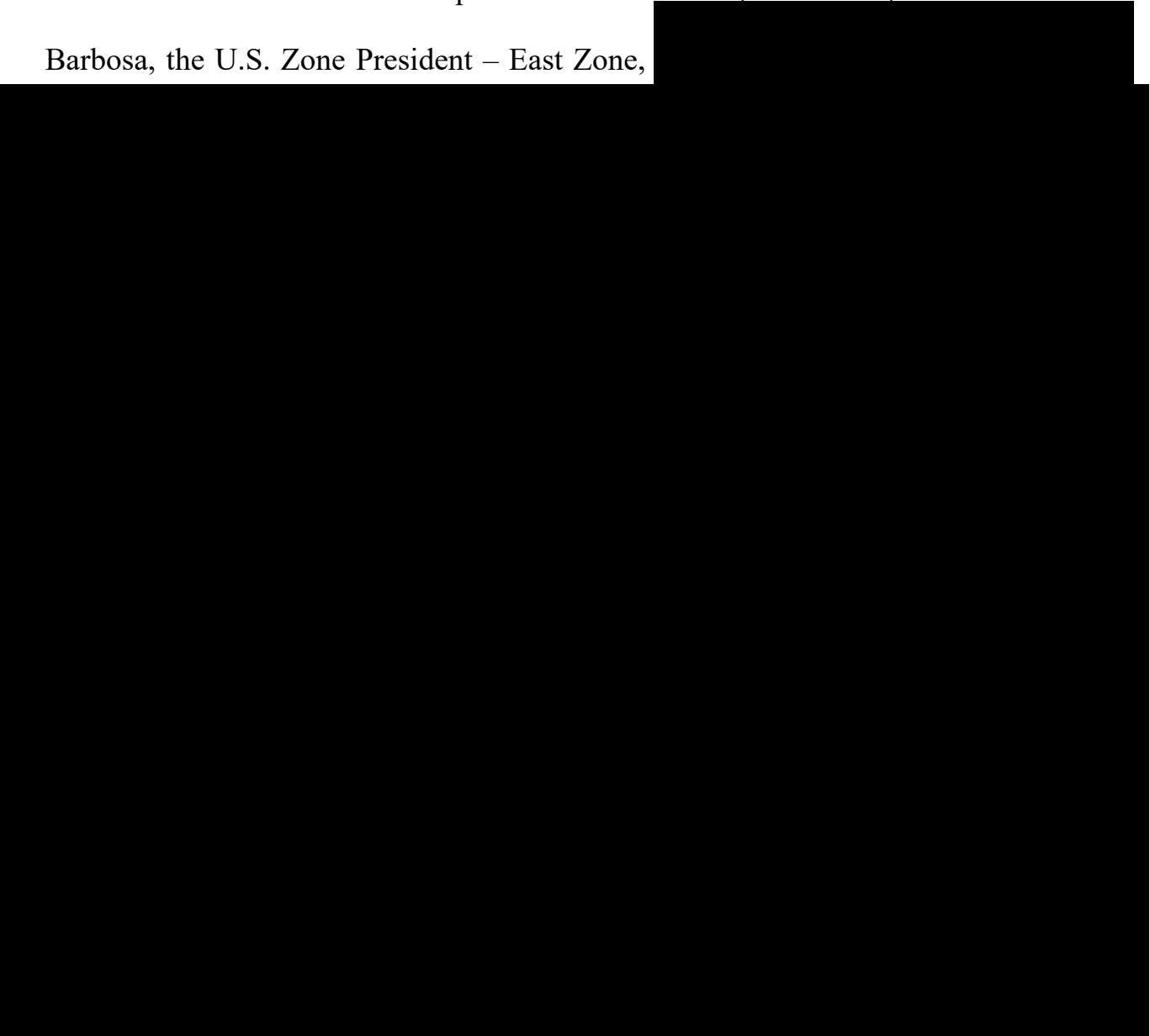
markets as those locations were primarily responsible for the bulk of the guest count losses in the prior year.” PG0000664. The Board also resolved that regarding the CtW and Clean Yield proposals, the General Counsel “is hereby authorized to prepare on behalf of the Board of Directors a statement regarding each Proposal to be included in the Proxy Statement, if necessary.” *Id.* Eckert then provided an update from the PPSC where he “discussed Professor Ulrich’s leadership assessment and the various components of the Company’s gender strategy.” *Id.*

162. A December 6, 2019 PPSC meeting flags several concerns from stockholders concerning the Easterbrook severance, as well as other human capital issues, such as racial discrimination against Black franchisees. During the meeting, the PPSC learned that it would have to reevaluate who engages with institutional investors “in light of David Fairhurst’s, the Company’s former Chief People Officer, departure from the Company.” PG0000883. Krulewitch noted that some of these institutional investors “had sent a letter to Mr. Hernandez to express their reaction to the facts and circumstances, as well as the severance agreement, associated with Steve Easterbrook’s, the Company’s former Chief Executive Officer, departure from the Company.” *Id.* Krulewitch also introduced a vice president, David Tovar, who “described the need to counter negative messaging against the Company and its jobs by destigmatizing and promoting working at McDonald’s, as well as demonstrating

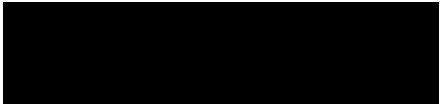
with clear actions the Company’s commitment to safe and respectful workplaces.”


Id.

163. Eckert and Kempczinski then discussed “diversity and inclusion within the McDonald’s system” and Kempczinski “referred to the Company’s interactions with the system’s African-American community, including its franchisees and the National Black McDonald’s Operators Association (‘NBMOA’).” *Id.* Mario Barbosa, the U.S. Zone President – East Zone,

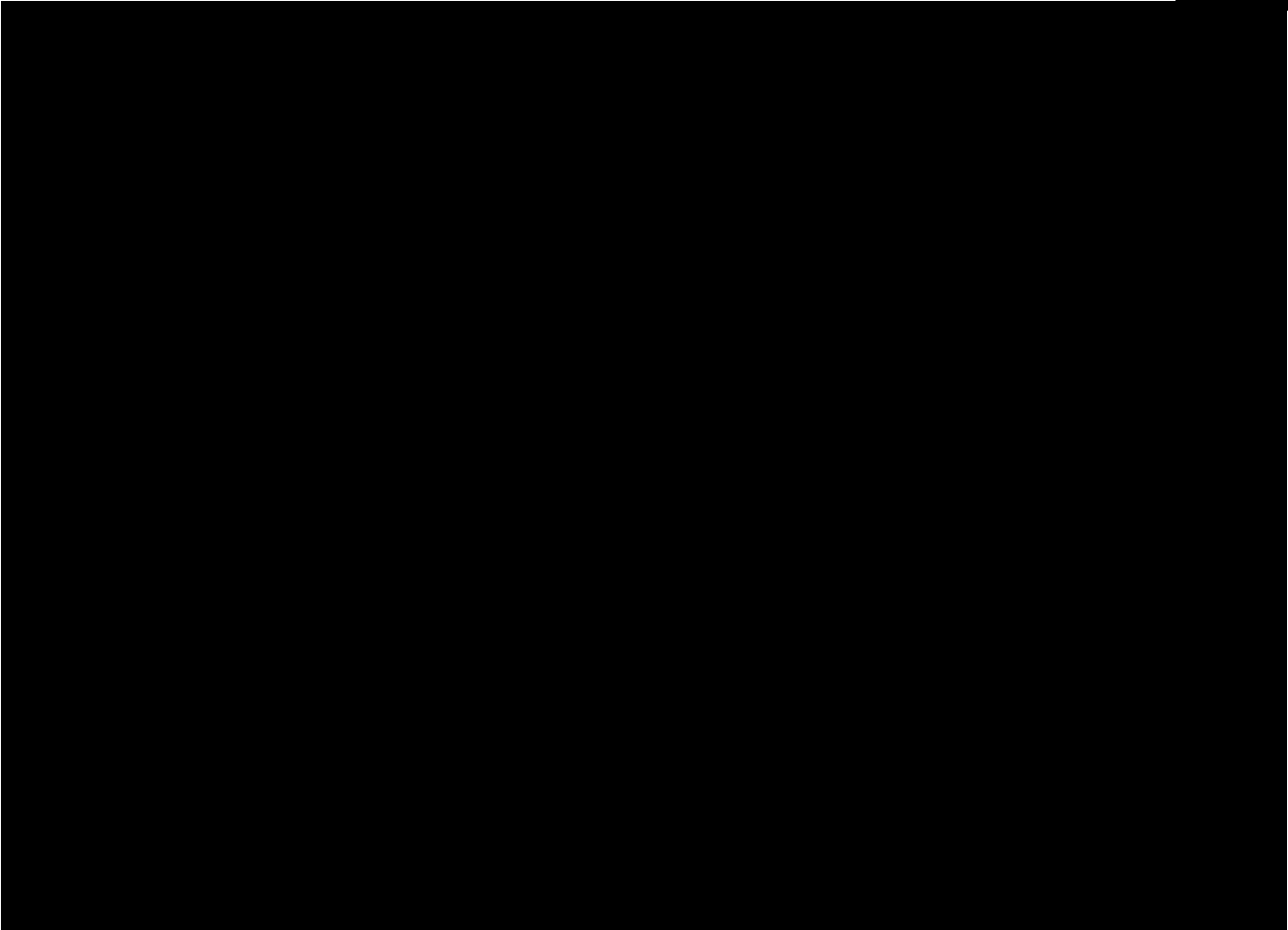



164. Kempczinski “stressed that management has been and will continue to evaluate and identify any root causes for the disparities, but emphasized that although the Company may be able to help resolve some issues, there may be other causes under the franchisees’ control. Questions were asked and answered regarding the gaps associated with NBMOA operators, and a discussion followed regarding the underlying variables and the Company’s strategy to address these concerns. . . . Questions were asked and answered regarding the distribution of diversity within the United States, and a discussion ensued.” *Id.*

165. The Company then appeared to try to excuse gaps in representation among Black employees and franchisees, by presenting on “indicators that support the fact that the reduction in African-American employees and people of color have been largely proportionate to the reduction in total U.S. employees. Mr. Kempczinski highlighted relatively strong employee survey results from African-American employees, and Ms. Kersey showed how the talent pipeline for African-American employees is very healthy. Mr., Kempczinski and Ms. Kersey indicated that external commentary to the contrary nevertheless remains an issue the Company needs to address. Finally, Ms. Kersey highlighted some recent key African-American employee appointments and shared how the diversity strategy is built within the same rubric as the Company’s U.S. gender strategy, which uses the pillars: Representation, Rising, Recognition and Reach.” *Id.* 



166. A presentation accompanying the above meeting, “Diversity and Inclusion in the McDonald’s System,” focused on the NBMOA’s “concerns regarding representation of African American [f]ranchisees and [c]orporate [e]mployees.” PG0000510. The presentation states that “Diversity and inclusion are core values at McDonald’s.” *Id.* It also stressed that “Diversity and inclusion are not a destination – they are continual areas of focus for the company.” *Id.*

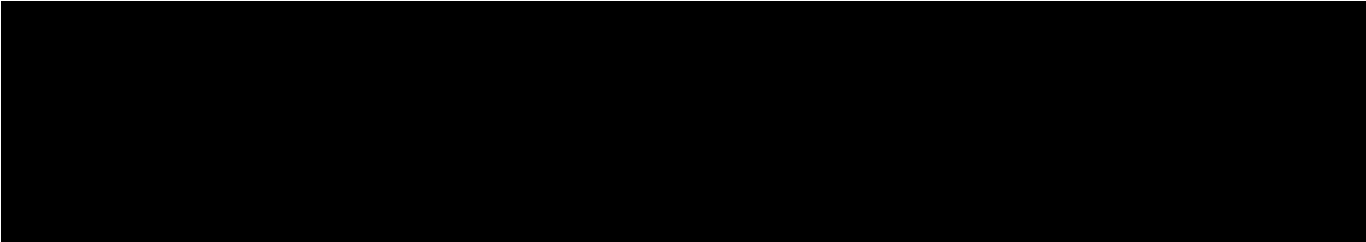
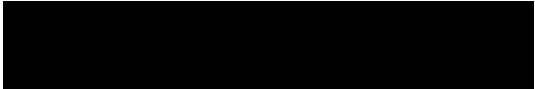


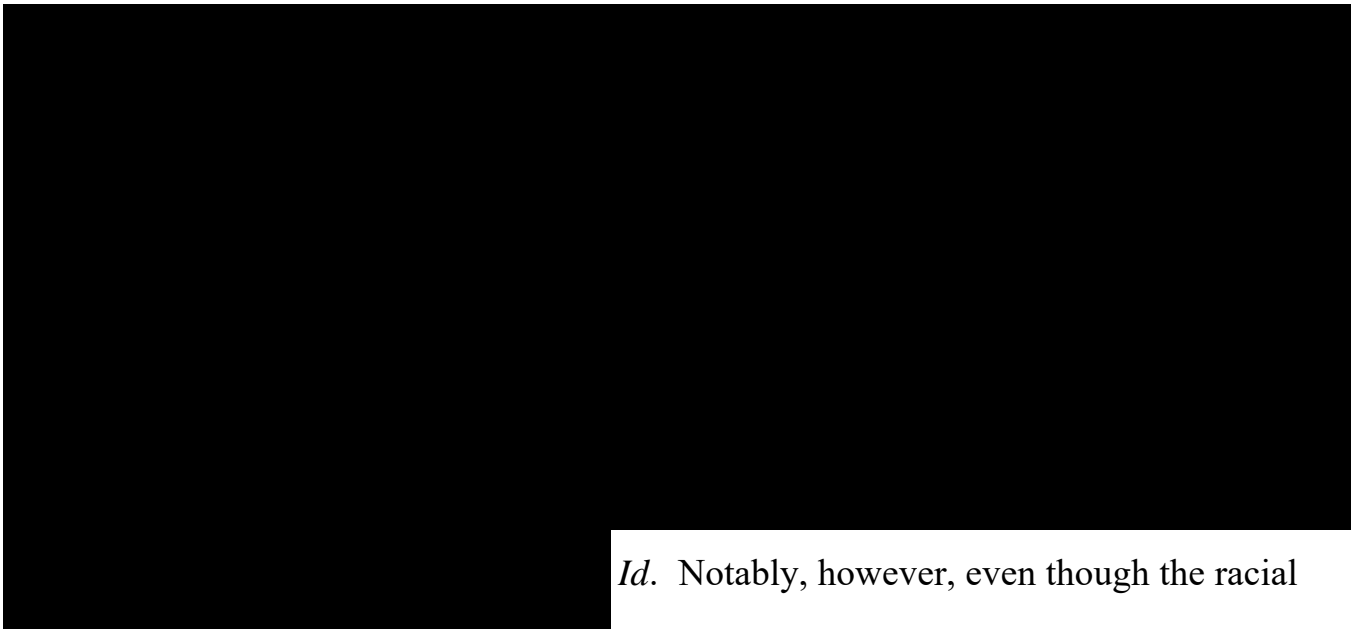
167. However, management claimed that



168. At a December 6, 2019 Board meeting, the Board was informed of a diversity report that stressed how “the Company has performed well in the area of diversity” but “[w]ith respect to African-American franchisee cash flow there were some gaps.” Nevertheless, Ecker reported “that the Company has a strong game plan to address these issues.” PG0000546.

169. Another accompanying presentation in January 2020 to the PPSC regarding “Franchise Engagement and Alignment”





Id. Notably, however, even though the racial

discrimination lawsuit was filed on January 8, 2020, the Board did not discuss the allegations pertaining to Easterbrook and Kempczinski systematically reducing the ranks of Black offices by more than 85% during their tenure, thus showing the Board's willingness to bury its head in the sand when it came to allegations against its top executives.

170. During the July 1, 2020 meeting, at the same time that the Board took a more active stance against Easterbrook for his past policy violations, the Board was informed of other HCM and discrimination-related litigation, thus revealing that the Board's sudden desire to punish Easterbrook was motivated by its desire to cover up for its other HCM failings, including learning of:

- (a) a draft complaint by 17 former Black franchisees who allege that the Company discriminated against them;

- (b) a new lawsuit against a McDonald's company restaurant in Florida alleging racial discrimination and a hostile work environment;
- (c) the search for female director candidates that "given recent events . . . was going to be temporarily suspended[;]"
- (d) "a number of successes on the legal and regulatory front as improvements in its employer reputation scores[;]" and
- (e) "an update on the Company's corporate reputation strategy" and "diversity and inclusion programs, specifically progress made within the supply chain and professional services area."

PG0001440.

171. In July 2020, the PPSC discussed "franchising diversity" and "the diversity advocacy groups and historical owner/operator entities represented by various diverse populations." PG0001595. Mr. Erlinger indicated that the Company had worked with financial institutions to find qualifying individuals who could be franchisees, and noted the emphasis the Company had placed on diversity. He highlighted average cash flow and restaurant sales statistics that were included in the materials and noted that a variety of factors likely contributed to any gaps." *Id.* But again, the Board did not consider allegations of systematic discrimination against Company employees, choosing to ignore those issues completely.

172. In October 2020, the Board received an update on the first franchisee lawsuit, whose response was led by former Attorney General Loretta Lynch. PG0002703. At the October 6-7, 2020 Board meeting, Eckert reported on the PPSC's review of "a presentation regarding the Crawford litigation [brought by former franchisees alleging racial discrimination] made by Loretta Lynch, former U.S. Attorney General, and currently a partner of the law firm of Paul, Weiss. [Eckert] [which] described the nature of the claims against the Company, the investigation completed by Ms. Lynch and her co-counsel, and her assessment of the claims." PG0002703. However, the Board again did not examine the claims of discrimination against Company employees that the earlier filed racial discrimination lawsuit raised, where there were allegations directly implicating Easterbrook and Kempczinski.

173. Furthermore, at its October 2020 meeting, the Board learned of "recent challenges and risks" to the Company brand, a proposed HCM metric for senior executives, and the *Crawford* litigation alleging racial discrimination by former franchisees." PG0002703. Meanwhile, the Board also reviewed its ERM process, which, as discussed above, filtered all information through the CEO to the Board, thus illustrating how the Board did not solve the underlying problem of over-reliance on officer information instead of direct Board oversight.

174. At the December 3, 2020 Compensation Committee, Capozzi reported on Bain Consulting’s work on assessing whether the Company was living up to its stated values, and “reported that overall employees believed that the Company was broadly living its core values and that satisfaction was high” and “opportunities . . . remain[ed]” to improve. PG0002781. But an accompanying presentation indicated that the Company’s problematic areas included “Diversity, Equity and Inclusion” and a “Relative lack of Corporate ‘*speak up*’ culture.” PG0002788 (emphasis in original). “To start to close the identified gaps, [the Company is] initially focused on DE&I and ‘Speak up’ culture.” *Id.*

175. Furthermore, at the December 3, 2020 Audit and Finance Committee meeting, it reviewed a memorandum concerning a review of the compliance program by Morrison & Foerster, which “prepared a memorandum that include[d] findings and recommendations” and the presentation also included “a summary of Compliance program enhancements that will be instituted in response to the recommendations.” PG000276. On December 4, 2020, the Board also received a report regarding Morrison & Foerster’s review of the Company’s compliance program where Morrison & Foerster “identified some opportunities for further enhancement of the compliance program and that management was working toward implementing these recommendations.” PG0002744.

176. At the December 4, 2020 Board meeting, the Board was “provided a summary update on the status of the pending complaint against former Chief Executive Officer Stephen Easterbrook and related matters, as well as an update on the *Crawford* litigation against the Company.” PG0002744. In addition, the Board received an update “on the status of the Delaware Section 220 stockholder demands.” *Id.* The Board was further informed of another lawsuit, this time by former franchisees, “alleging a history of systemic racial discrimination.” *Id.* The Board also appointed Eckert, the chair of the PPSC, to the Special Committee monitoring the Easterbrook litigation. But again, there was no examination of racial discrimination allegations against McDonald’s leadership of McDonald’s employees.

177. To date, there is no evidence of any investigation into Kempczinski regarding the allegations that he directed a course of systematic racial discrimination against McDonald’s executives, even though, through the regulator litigation updates the Board received, as well as the updates it received regarding 220 demands, the Board would have been informed of lawsuits alleging Kempczinski played a big part in systematically reducing black officers’ ranks.

178. Moreover, while Board has sued Easterbrook to claw back his compensation for violations of the Company’s anti-dating policy, the Board has never investigated allegations that Easterbrook directed systematic racial

discrimination against Black executives. This apparent gap in seeking ammunition in a lawsuit against the former CEO is likely a result of how an investigation into racial discrimination allegations would also implicate the current CEO, Kempczinski because, as the US head of McDonald's at the time, he is alleged to have been a part of the same scheme.

IV. THE BOARD TOOK BELATED ACTIONS AGAINST FAIRHURST AND EASTERBROOK

179. In addition to and as a result of structuring its oversight poorly so that it could deliberately stick its head in the sand, the Board also refused to adequately discipline or investigate officers for misconduct even when put on notice, instead choosing to do nothing or engaging in half measures that are so inadequate that they could only be a result of bad faith and not merely negligence.

A. The Board Allowed Fairhurst to Remain as CPO Even After Repeated Complaints Against Him

180. The Board failed to discipline Fairhurst, despite his key position as the chief people officer ("CPO") – the global head of *all* human resources at McDonald's – when it was notified of his serious misconduct in December 2018.

181. Indeed, the full Board did not even receive a report. Rather, Krulewitch informed the Audit Committee "at the November 28, 2018 meeting during executive session" and Easterbrook gave the Audit Committee a more detailed account of the wrongdoing and disciplinary measures undertaken at a December 13, 2018 Audit

Committee meeting. PG0001492. The minutes state that Easterbrook informed the Committee:

[A]fter a thorough investigation, the Compliance department had concluded that David Fairhurst behaved and put himself in a position inconsistent with the Company's Standards of Business Conduct. Mr. Easterbrook then provided additional details about the matter noting that on November 8, 2018, there had been events at a HR business function that had created a hostile work environment. Mr. Easterbrook noted that a female employee sat in Mr. Fairhurst's lap and that a number of the 30 plus employees who were present reported the circumstances surrounding the matter to the Compliance department. Mr. Easterbrook then described events reported by another employee about matters with Mr. Fairhurst in December 2016 that had not been previously reported to Compliance. Finally, Mr. Easterbrook noted that Mr. Fairhurst had once before been warned about excessive drinking at Company events in the past.

Mr. Easterbrook explained that management had engaged Steve Wall of Morgan Lewis to assist the Company in assessing its options. He further indicated that he had an opportunity to calibrate with Mr. Hernandez, as Chairman, and Mr. Mulligan, as Chair of the Audit Committee. He proposed that the discipline for Mr. Fairhurst would include: forfeiting 50% of his TIP bonus payment for 2018, signing an agreement regarding the conduct, as well as signing a release. It was further planned that Senior Vice President, U.S. HR, Melissa Kersey, would communicate to all participants at the event that management had appropriately addressed the matter.

Mr. Easterbrook concluded by noting that management had considered the potential for external media leaks, as well as internal cultural considerations from the events. Members of the Committee made a number of inquiries about the events described as well as management's plans to address the circumstances. All of the Committee's questions were answered to their satisfaction.

182. Notably, Easterbrook's report informed the Audit Committee that Fairhurst's misconduct occurred at a Company event with over 30 witnesses, that

another employee reported another incident involving Fairhurst that occurred in 2016, and that Fairhurst had *already* “been warned about excessive drinking at Company events in the past.” Despite recounting Fairhurst’s repeated misconduct as the head of HR, Easterbrook proposed that Fairhurst’s discipline be limited to a reduction in his bonus. The Audit Committee appeared to have accepted this proposed disciplinary measure. The 220 documents do not show that the PPSC (which purportedly oversees human capital management), the Compensation Committee (which purportedly oversees executive compensation), or the full Board received a full report. Thus, it can be inferred that these committees and the full Board were not informed.

183. Furthermore, the Audit Committee appeared to be more concerned about “external media leaks” rather than the actual discipline to be proposed. This concern with keeping misconduct from being publicized was a further problematic sign that McDonald’s leadership was more concerned about burnishing the Company’s image than with concrete reform.

184. It is also problematic that the Audit Committee’s relied on Easterbrook’s report without independent verification – without so much as checking with the Board chair, who Easterbrook told the Committee he had consulted, or with Melissa Kersey, the human resources executive Easterbrook mentioned would inform event participants that the incident had been addressed, or

Steve Wall, the Morgan Lewis attorney Easterbrook noted he had sought advice from. Easterbrook, as the Audit Committee knew, was Fairhurst's boss in the United Kingdom, and had brought over and promoted Fairhurst when Easterbrook was promoted to CEO. Thus, Easterbrook would not have been the most objective source for either a report of Fairhurst's misconduct or for suggesting discipline.

185. Moreover, even though the Chairman of the full Board was informed of Fairhurst's misconduct, he did not call for a full Board meeting. So the Board was never informed of Fairhurst's misconduct or the inadequate discipline that was imposed.

186. Moreover, allowing Fairhurst to continue to head all human resources at McDonald's, when he had engaged in repeated misconduct, showed that McDonald's senior leadership and the Board had no real interest in addressing the allegations of systematic misconduct that were the source of numerous lawsuits and other complaints.

187. Indeed, allowing a recidivist to stay in his position led to the predictable result that Fairhurst would be terminated approximately one year later, a day after Easterbrook's own termination from the Company.

188. Even so, Fairhurst's termination was given a cursory discussion at the Board meeting where the Board decided to terminate Easterbrook. The Board was merely informed by Krulewitch of "an update on the employment matters related to

Mr. David Fairhurst.” The Board then delegated the authority to “finalize a separation agreement for Mr. Fairhurst” to Krulewitch, Hernandez, and Richard Lenny, the Compensation Committee chair. No other 220 documents were produced concerning Fairhurst’s termination, which suggests the Board gave no further consideration to the matter.

B. The Board Turned a Blind Eye to Easterbrook’s Misconduct, Thereby Committing Waste When It Awarded Him a Lavish Severance Package

189. The Board’s initial investigation of Easterbrook was also grossly inadequate, to a point where it could only have been bad faith willful blindness rather than merely negligence or even gross negligence. The Board negotiated a generous severance package for Easterbrook based on his representation that he had violated the Company’s non-fraternization policy only once, and only through a relationship that included text messages but no physical contact. But the Board merely took his word for it and did not bother to check all of Easterbrook’s devices.

190. The entire investigation lasted no more than *10 days*. On October 16, 2019, McDonald’s received a tip that Easterbrook was engaged in a relationship with an employee. By October 26, 2019, the Board received a report of the investigation findings. The investigation itself consisted of: interviewing Easterbrook and the employee; then checking Easterbrook’s company phone to verify his and the employee’s account that he had no other relationships. There was no search of

Easterbrook's email. There also does not appear to have been any other interviews. The extremely limited fact-finding, which relied mostly on trust with minimal attempts at verification, led to a rushed result. The rushed result led to the uninformed conclusion that Easterbrook should be terminated without cause to the tune of tens of millions of dollars in severance.

191. The Board taking Easterbrook at his word that he had only *one* relationship with a Company employee was especially puzzling because it already knew that Easterbrook had a previous relationship with a McDonald's vendor— his documented relationship with Denise Paleothodoros who he had sought and obtained the Board's approval for.

192. In 2014, when Easterbrook was still the chief brand officer in the U.K., he met Paleothodoros through a work event, when she was servicing the McDonald's account for the public relations firm, Golin. They eventually started dating and Easterbrook sought and obtained approval for the relationship from the Board, and Paleothodoros was taken off the McDonald's account. However, from Easterbrook's mixing work events with romance earlier in his career, it would have been clear to the Board that he had a history of intra-office romances. Therefore, if the Board had conducted even the barest investigation, they could have verified whether Easterbrook indeed had only one relationship as he purported.

193. As a result, the Board allowed Easterbrook to resign from his Board and CEO positions, and to keep options and stocks that were valued between \$40 million-\$70 million.

194. A special meeting of the Compensation Committee was called on November 1, 2019 “to consider potential compensation arrangements in light of the Board’s anticipated approval of a leadership transition at its meeting later that day, namely the termination of President and Chief Executive Officer, Stephen Easterbrook, the election of his successor, Christopher Kempczinski, currently President, McDonald’s USA and the election of Joseph Erlinger, currently President of McDonald’s International Operated Markets, to President, McDonald’s USA.” PG0000504. Lenny, the Compensation Committee chair, “not[ed] that the Board would consider the advisability of terminating his employment without cause at its upcoming meeting.” *Id.* Lenny then “asked the Committee to consider [the] proposed separation benefit for Mr. Easterbrook, which w[as] consistent with those previously afforded to executives terminated without cause under the Company’s compensation plans and arrangements.” *Id.* In exchange, “Mr. Easterbrook would be bound by an extended non-competition agreement (24 months) as well as other restrictive covenants in consideration of such benefits.” *Id.* “Following a discussion, the Committee agreed to recommend that the Board approve the proposed separation benefits in the event that the Board determined that it was

advisable to terminate Mr. Easterbrook’s employment without cause.” *Id.* But notably, the Compensation Committee’s entire discussion was premised on terminating Easterbrook *without* cause; there was no discussion of how a termination *with* cause would work out, so the Compensation Committee had no comparison of the two options.

195. FwC provided a presentation to the Compensation Committee. PG0000648. It valued Easterbrook’s severance package as follows, which “are consistent with [Easterbrook’s] entitlements under the Company’s Officer Severance Plan and [Easterbrook’s] equity award agreements upon a termination of employment by the Company without cause”:

- (a) a \$700,000 cash payment equal to 26 weeks of base salary;
- (b) a pro-rated annual bonus for the months worked in 2019 that is “based on actual performance, per the Company’s TIP program” – which FwC estimated to be at \$2,840,958;
- (c) approximately \$2,446 worth of health insurance until May 21, 2020;
- (d) equity awards (options and PRSUs), which will continue to vest and which Easterbrook will have the right to exercise (if already vested) for three years following termination, estimated to be worth \$43,990,937 (with the options alone estimated to be worth \$47,534,341).

196. Thus, FwC estimated the entire severance package to be worth \$47,534,241. In turn, Easterbrook would resign from all McDonald's subjects, release any potential "claims in favor of the Company and its affiliates," not compete or solicit McDonald's employees for two years, agree to a permanent non-disclosure, non-disparagement, and cooperation provision, and be subject to a "[f]ive-year limitation on publications and interviews following termination." PG0000648.

197. On the same day, November 1, 2019, the full Board met in a special meeting. The minutes for that meeting also described a meeting of the Board (except for Easterbrook) on October 26, 2019, and an October 29, 2019 meeting among Hernandez, Krulewitch, and Easterbrook where he was given a draft separation agreement. Hernandez informed the Board that he had discussed succession with Kempczinski and "Mr. Hernandez said that, based on their discussions he believed Mr. Kempczinski is 'the right person for the job,' and that he is 'extraordinarily intelligent' and someone who could bring the team together and maintain stability at the Company." PG0000858.

198. The November 1, 2019 Board minutes state that "on October 17, 2019, the Company was notified of an allegation that Mr. Easterbrook had been engaged in an undisclosed relationship with an employee of the Company." PG0000858. On October 18, 2019, the independent directors of the Executive Committee and Penrose (the SCRC chair) met "to discuss the matter" and "instructed Mr.

Krulewitch to retain outside counsel to conduct an investigation of the matter with the goal of making a report to the independent directors of the Board at the earliest practical date.” *Id.*

199. On October 26, 2019, the Board (except for Easterbrook) met. Also attending were in-house and outside counsel, including Andrew Brownstein of Wachtell Lipton, Steven Wall of Morgan Lewis, and Joele Frank, an “investment relations advisor, who had been retained by Wachtell.” PG0000858. Over the course of “several hours[,]” Wall “presented the results of his investigation of the allegations against Mr. Easterbrook.” *Id.* Since Krulewitch had only been instructed to retain counsel on October 18, 2019, that means Wall’s entire investigation took 8 days – or less.

200. At the October 26, 2019 meeting, acting on information from a hurried investigation that lasted approximately one week (or less), “the directors determined that Mr. Easterbrook violated Company policy and demonstrated poor judgment involving a recent consensual relationship with an employee.” PG0000858. Wachtell “advised the directors of their legal duties.” *Id.*:

The directors discussed options for succession should Mr. Easterbrook be separated from his role as President and chief Executive Officer of the Company. They discussed various possible terms of separation of Mr. Easterbrook, including whether or not Mr. Easterbrook’s separation would be a termination with or without cause and the implication of that decision to Mr. Easterbrook and the Company. The directors noted that a termination for cause would likely be challenged by Mr. Easterbrook, which could result in a disruptive public dispute

that would continue for a substantial period. The directors also discussed the relative strength of the Company's position, and of Mr. Easterbrook's, were there to be a dispute over a termination for cause, recognizing that there was uncertainty as to whether the Company would prevail in such a dispute. The directors also discussed the potential impact of Mr. Easterbrook's separation upon the Company's various stakeholders and the benefits of seeking to manage a possible leadership transition with a goal of minimizing disruption to the Company and its stakeholders. The directors concluded that on balance it would be in the best interest of the Company if Mr. Easterbrook's separation from the Company were accomplished with as little disruption as possible and that while the Company should seek Mr. Easterbrook's cooperation and certain other benefits (including noncompetition, non-disparagement and confidentiality agreements and a release) it not seek to effect a termination of Mr. Easterbrook's employment for cause.

PG000858.

201. At the October 26, 2019 meeting, the directors also received advice from Joele Frank "to address implications to external stakeholders." After discussing with several advisors, "[i]t was the sense of the independent directors that Mr. Easterbrook should be told to leave the Company and that Mr. Kempczinski should be approached about becoming President and Chief Executive Officer. The directors plan for a public roll-out of these actions to . . . stakeholders . . . presenting the results to the Board for final decision and action at a formal Board meeting to be scheduled in approximately one week." PG0000858.

202. At the November 1, 2019 meeting, the Board was informed of negotiations with Easterbrook:

[T]he separation agreement with Mr. Easterbrook effectuates a termination without cause that provides for a cash severance payment equal to 26 weeks of base salary, a prorated annual bonus for 2019, health insurance continuation at active employee rates for approximately six months post-termination, continued vesting of stock options for three years post-termination and prorated vesting of performance-based restricted stock units (to the extent applicable performance goals are satisfied). In consideration for such benefits, Mr. Easterbrook will execute a release of claims and various restrictive covenants, including noncompetition for two years post-termination (which is six months longer and more comprehensive than his existing noncompetition commitments), non-solicitation of employees and non-interference with business partners for two years post-termination, non-disclosure of confidential information and non-disparagement perpetually and a five-year limitation on publications and interviews. In addition, Mr. Easterbrook has agreed to a perpetual covenant requiring him to cooperate with the Company in connection with various matters post-termination. In order to better ensure a smooth transition, Mr. Easterbrook also agreed to write a letter to employees, in a form agreed with the Company, acknowledging that he made a mistake, that he agrees with the Board's decision that it is time for him to move on, and that he endorses Mr. Kempczinski as his successor.

PG0000858.

203. Lenny, as the Compensation Committee chair, reported “that the Compensation Committee had reviewed and discussed the proposed agreement with Mr. Easterbrook and recommends its approval to the Board.” PG0000858.

204. Almost as an afterthought, at the same November 1, 2019 meeting – and with no indication that the Board was informed beforehand or when the alleged misconduct occurred, the Board was “provide[d] an update on the employment matters related to Mr. David Fairhurst.” PG0000858. The directors then “delegat[ed] authority to” Hernandez, Lenny, and Krulewitch “to finalize a

separation agreement for Mr. Fairhurst.” *Id.* The Company’s CFO then “describe[ed] the communication plan for announcement of the management transitions” and “the status of the communications material and the expected timing for release.” *Id.*

205. The Board faced almost immediate investor pushback for the generous severance that it granted Easterbrook. At the December 6, 2019 PPSC meeting, Krulewitch informed the committee that several large institutional investors “recently sent a letter to Mr. Hernandez to express their reaction to the facts and circumstances, as well as the severance agreement, associated with Steve Easterbrook’s, the Company’s former Chief Executive Officer, departure from the Company.” PG0000883.

206. Despite beginning to receive pushback from investors, initially, the Board continued to press forward with Easterbrook’s severance package. At a January 23, 2020 meeting, the Compensation Committee approved 2019 TIP (performance-based cash bonuses) for executives, including \$3,063,872 for Easterbrook – which was approximately \$200,000 more than FwC had estimated in November 2019. PG0000612. The payments would be made by no later than March 15, 2020. PG0000528.

207. Meanwhile, the Board faced increasing investor hostility toward Easterbrook’s severance. The Governance Committee was informed, in March

2020, of some resistance, though Management tried to frame it as a minority viewpoint:

Leadership Transition. Investors have been interested in talking about the leadership changes that took place at the end of 2019. Some investors have made specific inquiries regarding the Board’s oversight of the transition, including the selection of Chris Kempczinski as the new President and Chief Executive Officer. A few investors have asked about the compensation associated with Steve Easterbrook’s departure. In general, though, shareholders have been positive about the change.

PG0002690.

208. At the April 2, 2020 Board meeting, the full Board was informed of a “series of Section 220 demands to inspect Company records made by shareholders under Delaware law.” PG0001181. The Board was thus informed that several stockholders were concerned with the Easterbrook compensation.

209. Furthermore, the Board and the Compensation Committee were informed after the fact of stiff institutional investor resistance to the Easterbrook compensation package, even though the Company did not ultimately lose any votes. At the May 20, 2020 Compensation Committee, Krulewitch informed the committee of the “2020 Say on Pay voting results.” PG0002359:

Mr. Krulewitch began by noting that CtW Investment Group had initiated a ‘vote no’ campaign in response to the compensation paid upon the termination of former CEO Stephen Easterbrook, which urged shareholders to vote ‘against’ the Company’s 2020 Say on Pay proposal, as well as ‘against’ the re-election of Directors Hernandez and Lenny. Mr. Krulewitch continued by detailing management’s efforts in response to this campaign, including engagements with a significant number of top shareholders and the proxy advisory firm ISS,

which focused on the Board's decision-making process leading up to Mr. Easterbrook's termination. Mr. Krulewitch remarked that Mr. Lenny and Governance Committee Chair, Miles White, played key roles in select engagements. He noted that the engagements yielded a favorable voting recommendation from ISS as well as favorable vote outcomes from Vanguard, State Street, BlackRock and other top investors. He concluded his remarks by providing preliminary voting results for the Say on Pay proposal, as well as Directors Hernandez and Lenny, all of which were favorable. A brief discussion ensued with regard to the successful outcome of the Company's extensive engagement efforts.

PG0002359.

210. An accompanying memorandum to the Compensation Committee indicated that "84% of the shares voted as of May 12, 2020 have voted 'for' approval of the Say on Pay proposal. . . . Our proxy solicitor, Klingsdale, projects that the Say on Pay proposal will pass, although with estimated support in the high 70th or low 80th percentile." PG0002389. Moreover, the Compensation Committee was informed that "Glass Lewis . . . recommended that shareholders vote 'against' the Say on Pay proposal and 'against' Mr. Lenny's re-election due to the Committee's association with Mr. Easterbrook's separation benefits, specifically the treatment of his equity awards." *Id.*

211. On May 21, 2020, at a full Board meeting, the Board was informed of "the Company's engagement with proxy advisors and shareholders in light of the vote-no campaign that was lodged against Messrs. Hernandez and Lenny as well as the Company's Say on Pay proposal. He described his and Mr. White's engagement

with ISS as they addressed the issues raised in the campaign as well as the strong support received from ISS following the discussions.” PG0001317. Krulewitch also “addressed the status of the Section 220 demands by shareholders seeking to inspect the Company’s books and records.” *Id.*

212. The Board was also given copies of the ISS and the Glass Lewis reports in advance of the May 21, 2020 meeting. The ISS report noted CtW’s “vote no” campaign but ultimately concluded that “the board’s actions sent a profound message throughout the company that it was holding senior executives accountable to company conduct and values.” PG0001366. But Glass Lewis emphasized that CtW had concluded that “the board made a critical error in judgment by allowing a significant equity award to continue to vest, despite the circumstances leading to Mr. Easterbrook’s termination, and that the retentive aspect of such awards has therefore been completely undermined.” PG0001405. Moreover, Glass Lewis “identified sufficient concerns to warrant a recommendation against both this year’s advisory vote and compensation committee chair Richard Lenny.” *Id.* Glass Lewis further explained:

In our view, the members of the compensation committee have the responsibility of reviewing all aspects of the compensation program for the Company’s executive officers. It appears to us that members of this committee may not be effectively serving shareholders in this regard. As discussed further in our analysis of proposal 2, considering the nature of his departure from the Company, we have substantial concerns with the board’s decision to terminate former CEO Stephen Easterbrook ‘without cause.’ [/p] With this decision, the board allowed

a significant portion of Mr. Easterbrook's outstanding equity awards to continue vesting after his departure when they would not otherwise have done so if the board had terminated him 'for cause.' In our opinion, this decision illustrates a lack of willingness on the board's part to appropriately enforce the Company policy violated by Mr. Easterbrook, and sets a poor precedent for the remaining executive team. In this case, we believe our concerns are severe enough to warrant opposing the election of the chair of the compensation committee at this time. We will monitor the Company's compensation practices going forward.

...

PG0001405.

213. Glass Lewis also recommended a "no" vote on Say on Pay:

[W]e believe shareholders may reasonably withhold support from the [say on pay] proposal in light of the committee's decision with regard to Mr. Easterbrook's post-separation equity award treatment. Ultimately, while we recognize that a board must rely heavily on its discretion in situations such as these, we nonetheless believe that exempting CEOs from key provision of crucial rules around corporate policy sets a questionable tone at the top, with negative potential ramifications for a firm's culture and even the opportunity to create new, unique governance risk. As such, we believe a vote against the plan to be warranted at this time.

PG0001405.

214. Furthermore, among the "NEGATIVE[S]" (capitalization in original) of the compensation policy, Glass Lewis pointed to the "[e]quity award treatment for Mr. Easterbrook upon termination[.]" "[l]imited clawback" and "[i]nsufficient disclosure of STIP and LTIP." PG0001405. Glass Lewis also had, as "AREAS OF FOCUS" (capitalization in original):

- (a) “Vesting Below Median” – “Long-term incentive plans that allow for significant payouts for below-median performance effectively may reward NEOs for significant underperformance. Shareholders may question whether such structures are fully appropriate.”
- (b) “Vote-No Campaign” – “Shareholders should be aware that this proposal is the subject of a vote-no campaign, focusing on the board’s decision-making with regard to Mr. Easterbrook’s equity award treatment upon his separation from the Company.”
- (c) “Limited Recoupment Policy” – “In this case, we note that the Company does maintain a clawback compliant with the draft rules of the 2010 Dodd-Frank Act, which we believe to be a positive factor in the Company’s overall risk profile. However, shareholders should be aware that had the Company adopted a more expansive clawback policy, inclusive of reputational damage to the Company, certain payments to Mr. Easterbrook may well have been impacted by such a provision upon his violation of Company policy. In general, we believe such provisions have the ability to give the board additional avenues to address a substantial adverse situation. As such, we believe shareholders should carefully consider the lack of

such features under the Company’s current recoupment provisions, particularly in light of recent events.”

(d) “Insufficient Disclosures of STIP Modifier and LTIP Weightings” – “The Company has not clearly disclosed certain elements of its short- and long-term incentive plans. Descriptions of metric, weightings and goals enable shareholders to understand and evaluate the Company’s procedures for quantifying performance and translating it into payouts for executives.”

(e) “Equity Awards Treatment Upon Termination for Mr. Easterbrook”

i. “Treatment of equity awards upon termination that deviate from standard practice or stated agreements may be necessary to secure concessions or guarantees from departing executives. Still, we believe that shareholders should carefully weigh any deviations from previously agreed upon and disclosed pay practices.”

ii. “As shareholders are likely aware, Mr. Easterbrook separated from the Company on November 1, 2019 following the board’s determination that he violated company policy, in connection with his departure. Mr. Easterbrook entered into

a separation and general release agreement with the Company that entitled him to, among other benefits, termination without cause treatments for all equity awards held as of the termination date. In this case, shareholders should note that the equity treatment provided to Mr. Easterbrook differs drastically from the treatment he would have received had the board determined that he was terminated for cause in connection with a policy violation. Indeed, the relevant award provisions state that had Mr. Easterbrook's termination been deemed for cause, all unvested options and PRSUs would have been immediately forfeited. Instead, Mr. Easterbrook received pro-rated vesting of 72,163 unvested PRSUs held as of his termination date, as well as the continued vesting and continued exercisability of any vested or exercisable options or options that would have become vested or exercisable within three years of the termination date. Based on the Company's disclosure, this represents a total of 944,592 options, which will remain exercisable until the third anniversary of his termination date. While we do acknowledge that the specific terms of the separation and

release agreement represent an increase in the length of Mr. Easterbrook's non-compete covenants by six months, we nonetheless believe shareholders may seriously question the board's decision in this regard. For cause termination treatment and policy violation clauses are only as strong as a board's willingness to enforce the, and in this case, the board has chosen not to do so."

PG0001405.

215. Glass Lewis was also troubled by how, "[d]uring the past year, the board adopted a forum selection clause." PG0001405. Noting that "the Company has not provided a compelling case why shareholders should accept any limitations on their legal remedy, including choice of venue" and that "this restriction on shareholder rights was adopted without shareholder approval," Glass Lewis also recommended against the election of White, the Governance Committee chair. *Id.*

216. Only two months after the 2020 annual meeting, and after a series of meetings where the Board learned of stockholder resistance to the Easterbrook compensation, stockholder inquiries through 220 demands, and other litigation and stockholder concerns over the Company's reputation and HCM, the Board received information that Easterbrook had actually engaged in more relationships than it admitted, at a July 20, 2020 Executive Committee meeting, attended by Hernandez,

Eckert, Kempczinski, Mulligan, Penrose, and White and where Krulewitch and Wall were also present:

Mr. Hernandez provided Committee members with a brief update reminding them of the circumstances surrounding the departure of Steve Easterbrook. He noted that subsequent to a recent employee complaint regarding [privacy redactions re Employee-2] compliance had initiated a new investigation into a possible relationship between Mr. Easterbrook and [employee 2]. During the course of the new investigation, the Company had discovered multiple emails sent by Mr. Easterbrook to a United Kingdom email account in which in excess of 40 nude or sexually explicit photographs were found. Mr. Hernandez explained that Mr. Wall would present the Committee with the findings of the recent investigation and Mr. Krulewitch would then discuss the legal implications of the investigation.

[privileged redactions reflecting reports by Wall and Krulewitch]

Throughout his discussion, Committee members asked questions, and Mr. Krulewitch provided answers.

Following this discussion, Mr. Kempczinski then inquired of the Committee members as to whether there were any matters for Executive Session. An Executive Session of only the Committee members followed in which they continued their discussion of the recent matters and discussed its options and the recommendations to be made by the Committee to the full Board the following days.

PG0001656.

217. On July 21, 2020, the full Board met to discuss the recent Easterbrook findings:

Mr. Hernandez then outlined for the Board an Executive Committee meeting that had taken place the previous day. Mr. Hernandez reintroduced Steven Wall [Morgan Lewis] to the Board. Mr. Hernandez then provided a brief update of the circumstances surrounding the departure of Steve Easterbrook, including that Mr.

Easterbrook had denied having a relationship with any employees other than the single employee that led to his termination. He reminded the Board that following his separation, there was an investigation of a rumor that [private employee info redaction] ["Employee – 2" redaction] had engaged in a sexual relationship with Mr. Easterbrook prior to his departure. He then noted that a recent complaint regarding [redacted Employee – 2] had led to compliance initiating a new investigation into the possible relationship between Mr. Easterbrook and [Employee – 2]. During the course of the new investigation, the Company had discovered multiple emails sent by Mr. Easterbrook to a United Kingdom email account in which in excess of 40 nude or sexually explicit photographs were found.

Mr. Hernandez noted that a substantial portion of Mr. Easterbrook's separation compensation remained in a Merrill Lynch account under the Company's control. He explained that he and the Executive Committee believed the Company should pursue a clawback of Mr. Easterbrook's compensation based upon the lies told by Mr. Easterbrook at the time of his separation. Mr. Hernandez expressed his view that when confronted with challenging circumstances in the past, the Board had done the right thing, and that he expected the Board would continue to do the right thing in his situation."

Mr. Hernandez explained that Mr. Wall would present to the Board the findings of the recent investigation and Mr. Krulewitch would then discuss the legal implications of the investigation.

Under express legal privilege, Mr. Wall then provided the Board with the results of the investigation. [priv redacted discussion].

During the course of Mr. Wall's presentation, Board members asked Mr. Wall various questions to which he answered related to the subjects outlined.

Mr. Hernandez then requested Mr. Krulewitch to discuss the legal implications of the investigation. [privilege redacted discussion].

Throughout his discussion, Board members asked questions, and Mr. Krulewitch provided answers.

Following this discussion, Mr. Hernandez requested that the Directors discuss the matters in Executive Session. During the Executive Session, the Board discussed what actions should be taken; what investigation should be continued; what disclosure was legally appropriate and required; and, finally, what additional issues needed to be considered.

Following the Executive Session, Mr. Krulewitch joined the meeting. The Directors instructed management to take immediate action to ensure that the Company detects, and responds appropriately to, serious executive misconduct of the sort it has learned was engaged in by Mr. Easterbrook. Management recommended various actions to achieve that goal, and at the conclusion of that discussion, the Board directed management and outside counsel to extend their investigation in the immediate term; to identify and recommend further investigatory steps; and to keep the Board closely apprised of their work and its results.

Resolutions for Litigation

WHEREAS, on November 1, 2019, McDonald's Corporation (the "Company") terminated the service of Stephen J. Easterbrook ("Executive") as an officer and director of the Company;

WHEREAS, based on the findings of an investigation and certain representations made by Executive, the Board of Directors of the Company (the Board") determined that the termination of Executive's service was without "cause" and therefore, Executive would receive the compensation and benefits contemplated by the Company's benefit plans in connection with such a termination, pursuant to the Separation Agreement, dated as of November 1, 2019, by and between Executive and the Company (the "Separation Agreement");

WHEREAS, the Board subsequently became aware of certain information bearing on its prior determination that Executive's termination was without "cause"; and

WHEREAS, the Board, based upon its discussions and such other matters as it determined relevant, has determined that it is advisable and in the best interest of the Company to pursue claims against Executive with respect to the circumstances of his termination

of service and the compensation and benefits provided (or to be provided) to him pursuant to the Separation Agreement.

NOW, THEREFORE, IT IS RESOLVED, That, based upon is discussions and upon such other matters as were determined relevant by the Board, the Board authorizes and directs the Corporate Executive Vice President, General Counsel and Secretary to pursue the Company's claims to reduce the amount of compensation provided (or to be provided) to Executive consistent with the Board's discussion.

FURTHER RESOLVED, That, if the Company is unable to reach agreement with Executive consistent with the Board's discussion and such other matters as it has determined relevant, the Vice President, General Counsel and Secretary is authorized to commence legal action with respect to such claims against Executive.

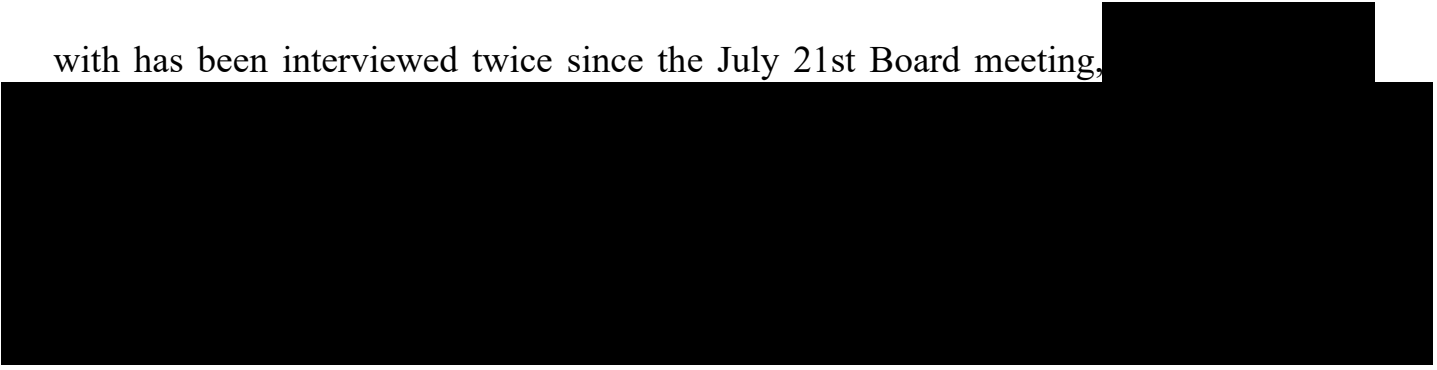
FURTHER RESOLVED, That a Special Committee of the Board consisting of the Chairperson of the Board, Enrique Hernandez, Jr.; Chairperson of the Compensation Committee, Richard H. Lenny; Chairperson of the Audit Committee, John J. Mulligan; Chairperson of the Sustainability and Corporate Responsibility Committee, Sheila Penrose; and the CEO, Christopher J. Kempczinski to receive interim updates regarding the investigation, litigation and related matters and to authorize any action required between regularly scheduled Board meetings.

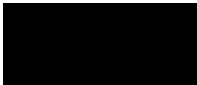
FURTHER RESOLVED, that all actions taken by any of the directors, officers, representatives or agents of the Company, or any of their affiliates in connection with the foregoing resolutions be, and each of the same hereby is, ratified, confirmed and approved in all respects as the act and deed of the Company.

PG0001440.

218. The Board continued to press Easterbrook to voluntarily return his severance over the next few days. On August 3, 2020, Special Committee meeting minutes reflect a report on "conservations with Mr. Easterbrook's attorney as well

as an update on the status of the employment of [employee-2 redactions] who had been discovered to have engaged in a sexual relationship with Mr. Easterbrook prior to his departure.” PG0001660. Hernandez stressed to the Special Committee that it would need to “fully consider the likelihood that the Company, at the Board’s direction, would move forward with litigation against Mr. Easterbrook.” *Id.* Krulewitch then told the Special Committee that “consistent with the Board’s direction, the Company had sent Mr. Easterbrook a demand letter on July 22, 2020 requesting that he return all of the compensation he had retained at the time of his separation or the Company would institute litigation against him. Mr. Krulewitch outlined the timing, tenor and substance of Mr. Easterbrook’s response.” *Id.* He also reported that the unnamed second employee that Easterbrook had a relationship with has been interviewed twice since the July 21st Board meeting,



 d. The Committee then discussed “the status of the pending investigation and information discovered through it.” *Id.*

219. On August 5, 2020, the full Board met where Hernandez updated the Board “on the status of the conversations with Mr. Easterbrook’s attorney as well as an update on the status of employment of [redacted privacy] [‘Employee-2’] who

had been discovered to have engaged in a sexual relationship with Mr. Easterbrook prior to his departure. Mr. Hernandez stated that he wanted the Board to fully consider the likelihood that the Company, at the Board's direction, would move forward with litigation against Mr. Easterbrook." PG0001490. Krulewitch then discussed the Company's demand letter to Easterbrook, the latter's response, the interviews and pending separation from the employee who had a relationship with Easterbrook, and the status of the investigation. Showing that the Board was ready to move forward with a lawsuit after approximately a two-week investigation, the Board then discussed a proposed complaint that was being prepared by Wachtel Lipton. Paul Verbinnen, of the communications firm Sard Verbinnen & Co., then "update[d] the Board on the external implications of filing such a suit. Mr. Verbinnen explained how the suit would be perceived by third party stakeholders, including the media. He noted how his firm recommended that the communications strategy be managed. Following his presentation, a discussion ensued on the implications of such a suit." *Id.* The Board continued to discuss litigation with Ronald Olson of the law firm of Munger, Tolles & Olson LLP:

Mr. Olson reminded the Board of its fiduciary duties in such circumstances and provided guidance on the actions that the Board could consider taking. An extended conversation ensued in which the Board evaluated its options in terms of pursuing a course in the best interest of all stakeholders. Following the discussion, the Board concluded that it would reaffirm the resolutions previously approved and authorize the Company to pursue litigation against Mr. Easterbrook, and the Board provided feedback and guidance for legal

counsel concerning the draft complaint that had previously been provided to it.

PG0001490.

220. On August 9, 2020, the Special Committee again heard about the investigation, and “that there was no new information to provide regarding Mr. Easterbrook’s response to the Company’s demand letter.” PG0001662. The Special Committee then authorized Krulewitch to work with Hernandez “to finalize the filing of the complaint.” *Id.*

221. Perhaps feeling that it had the chance to redeem itself from its initial decision, the Board immediately began to deliberate seeking to claw back the majority of Easterbrook’s compensation. But other than the facts being somewhat more salacious – including nude photographs on company servers – rather than only text messages – the basic policy violation was still the same: Easterbrook’s violation of the non-fraternization policy. Whether Easterbrook violated the policy once or three times, it would have provided a sufficient reason to terminate Easterbrook for cause. Easterbrook was not alleged to have coerced anyone into a relationship. Rather, as far as the Board could determine, all the relationships were consensual.

222. But in contrast to the Board’s previously generous treatment of Easterbrook, after having received institutional investor resistance and negative publicity, the Board now took a hard line and in July 2020, demanded that

Easterbrook return or forfeit most of the compensation he was granted. When Easterbrook failed to respond, the Board immediately began to explore litigation.

223. In August 2020, McDonald's shocked the investor community by filing a lawsuit against Easterbrook. But the lawsuit implicated the Board as much as it did Easterbrook. While McDonald's complained that Easterbrook had lied in the internal investigation, what struck many members of the business press, and investor community was how Easterbrook's "lies" could readily have been uncovered by the barest investigation beyond merely trusting Easterbrook at his word. The new evidence that the Board found was on *Company* computer servers: Easterbrook had used his company email account to send explicit photographs to his personal email account. Moreover, the Company stated in its complaint against Easterbrook that the reason why these emails did not appear on Easterbrook's phone when it was searched in the initial investigation was that Easterbrook had deliberately deleted these emails from his phone to conceal evidence of wrongdoing. But this complaint admission raises the further concern as to why the Board and its investigator did not check for deleted emails to begin with (in addition to not checking emails on the servers rather than only on the phone), since it is basic investigation protocol to check emails and to check deleted emails in particular since every investigator would have known of the possibility that the target of an investigation may hide evidence of wrongdoing.

224. Therefore, seeking to now claw back a compensation package was an action that was wasteful because the Board could easily have found the same evidence at the time of its initial termination decision – as the information was readily available through a quick company computer search, rather than merely trusting Easterbrook at his word.

225. Furthermore, the Board made no new determination except that Easterbrook had lied about the extent of his policy violations. But the underlying policy violation was still the same. So if multiple policy violations convinced the Board that it could or purportedly would have terminated Easterbrook for cause, there was no explanation for why *one* policy violation made the Board determine it could *not* initially fire Easterbrook for cause.

226. Now, because of the Board’s initial haphazard investigation that led it to decide to grant Easterbrook a generous severance package, which it expressed buyer’s remorse for after investor resistance, the Board is instead engaged in a protracted and reputation-damaging fight to claw back a compensation package it should never have granted in the first place.

227. Furthermore, the Board’s actions were not welcomed by the investor community, because the Board *again* faced a “vote no” campaign for the second year in a row.

228. After authorizing the lawsuit against Easterbrook, the Board remained concerned largely with its image. In October 2020, it was presented with an update on the lawsuit, and it was also presented with a report, by another expensive law firm, Paul Weiss, regarding “the Company’s communications strategy[,]” including “the framework of the proposed messages as well as the cross-functional team and processes that had been put in place.” PG0002703.

C. Morgan Lewis Created an Information Vacuum and Knowingly Caused the Board to Breach its Fiduciary Duties

229. The initial investigation into Easterbrook’s misconduct was conducted by Morgan Lewis, a global, full-service law firm with expertise in conducting internal investigations and in labor and employment matters.

230. Despite Morgan Lewis’s deep experience, it inexplicably failed to collect and check Easterbrook’s emails as part of its initial investigation. Instead, apparently, Morgan Lewis took Easterbrook’s word that: (1) he had only one consensual relationship with a McDonald’s employee; and (2) documents relating to that relationship were solely found in text messages on Easterbrook’s phone.

231. As a result, Morgan Lewis undertook only a cursory investigation into Easterbrook’s misconduct, and as a result, provided a grossly incomplete amount of information to the Board.

232. Morgan Lewis, as a global, full-service law firm, would also have known that the Board relied on the information it provided to assess its options

regarding Easterbrook. Morgan Lewis would also have understood that the Board's award of excessive compensation to Easterbrook, based on inadequate information from an internal investigation, would then expose the Board to claims of corporate waste.

233. Despite this knowledge and expertise, Morgan Lewis conducted a grossly inadequate investigation, and thus presented to the Board an incomplete picture of the extent of wrongdoing by the CEO. Moreover, Morgan Lewis rushed through the investigation in eight days or less.

234. As a result, Morgan Lewis knowingly or recklessly caused the Board to make a severance determination that resulted in corporate waste.

235. Furthermore, less than a year later, Morgan Lewis again conducted an investigation – this time taking less than two weeks – on complaints of wrongdoing by Easterbrook, and was able to discover extensive documentary evidence hiding in plain sight, on the Company's servers, of Easterbrook's other instances of wrongdoing. Morgan Lewis's ability to uncover this information rapidly further shows how inadequate its first investigation was, since the information located on Company servers could easily have been found based on the most cursory of earlier searches.

236. Morgan Lewis, as a result of creating an information vacuum through its grossly inadequate investigation, thus aided and abetted the Board in its breaches of fiduciary duty.

V. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

A. Plaintiff Is a Fair and Adequate Representative

237. Plaintiff brings this action derivatively in the right of, and for the benefit of, McDonald's to redress the breaches of fiduciary duty and other violations of law committed by the Director Defendants, as alleged herein.

238. Plaintiff will adequately and fairly represent the interests of McDonald's and its stockholders in enforcing and prosecuting the Company's rights. Plaintiff has retained counsel experienced in prosecuting this type of derivative action. Plaintiff has continuously held McDonald's stock during the relevant period and will continue to hold McDonald's stock through the resolution of this action.

239. Plaintiff has not made a pre-suit demand on the Board to assert the claims set forth herein against the Director Defendants because such a demand would have been futile, and is thereby excused. A demand on the Board to bring the claims asserted herein would be futile because there is a reasonable doubt that a majority of the directors can disinterestedly or independently assess Plaintiff's demand, because a majority of directors face a substantial likelihood of liability for their actions and inactions.

B. The Easterbrook Director Defendants' Decision to Award Easterbrook Full Severance Was Not a Valid Exercise of Business Judgment

240. The Easterbrook Director Defendants voted on the initial decision to award Easterbrook full severance. All of these directors remain on the Board, and they constitute a majority of the Board. Out of the 12 directors on the current Board, 10 participated in the initial decision to award severance to Easterbrook: Hernandez, Dean, Eckert, Georgiadis, Lenny, Mulligan, Penrose, Rogers, Walsh, and White.

241. The Board's subsequent decision to sue Easterbrook did not correct the initially incorrect decision. Facts revealed in the subsequent decision to sue confirm that the Board did not exercise valid business judgment in its first decision because they revealed the uninformed nature of that decision.

242. Therefore, under the *Aronson* test, demand is futile as to these directors because their decision constitutes waste.

C. A Majority of the Board Faces a Substantial Likelihood of Personal Liability

243. In addition to constituting waste, the decision to award Easterbrook full severance was a breach of fiduciary duty. The Easterbrook Director Defendants face a substantial likelihood of liability for that decision.

244. The Easterbrook Director Defendants also face a substantial likelihood of liability for the decisions to allow Fairhurst to remain CPO for more than a year even after having found out he engaged in misconduct, and for allowing rampant

sexual harassment to occur in restaurants despite having been informed of the issue, partly because of their reluctance to impose mandatory standards on franchisees despite the numerous other mandatory impositions on franchisees and the importance of combatting sexual harassment to the brand.

245. Starting in January 2020, McDonald's has also faced numerous lawsuits that have alleged that Easterbrook and Kempczinski have systematically undercut Black executives and franchisees, and therefore, caused the Company to engage in illegal racial discrimination. Despite how these charges have been pending for more than a year, and despite the Board's awareness of the reputational harm racial discrimination would cause to the Company, the Board has turned a blind eye to these allegations because the 220 documents do not show *any* attempt to investigate these charges against Easterbrook or Kempczinski. The lawsuit and internal investigation against Easterbrook was limited to his relationships with Company employees, despite how allegations of racial discrimination have at least as great or a greater impact on the Company's overall reputation. Thus, the Board faces a substantial likelihood of personal liability for breaching their fiduciary duty of loyalty to the Company by turning a blind eye to claims of racial discrimination by the Company's most recent two CEOs. *All* of the current directors face this liability because the first lawsuit, alleging misconduct by Easterbrook and

Kempczinski, was filed in January 2020, and all incumbent directors were on the Board then.

246. The Director Defendants also face a substantial likelihood of liability because they have allowed for the abdication of direct oversight by: (1) allowing for management to exercise all the responsibilities of the Compensation Committee and the PPSC; and (2) allowing an ERM process where all information would be filtered through the CEO.

D. Demand Is Futile as to Kempczinski Because He Is Not Independent and He Faces a Substantial Likelihood of Personal Liability

247. Demand is futile as to Kempczinski because he faces a substantial likelihood of personal liability owing to the allegations against him in racial discrimination lawsuits the Company is facing. Therefore, he cannot disinterestedly evaluate a demand against himself.

248. Demand is also futile as to Kempczinski because he is unable to independently or disinterestedly evaluate a demand against the Board. The Board promoted Kempczinski to CEO in November 2019, evaluates his performance, and determines his compensation. Therefore, he depends on the Board for his livelihood, and, as a result, cannot independently or disinterestedly evaluate a demand against the Director Defendants.

249. Furthermore, Kempczinski's brother-in-law is the Vice President Client Service of Directions Research, which Kempczinski's most recent D&O questionnaire indicates means he is an "[e]mployee of [a] supplier." PG0003060. This would appear to violate the anti-nepotism policy, which indicates that Kempczinski would have gotten a Board waiver for his brother in law's work. This further puts him in the Board's debt.

CLAIMS FOR RELIEF

COUNT I

Breach of Fiduciary Duty of Loyalty (Against the Director Defendants Derivatively on Behalf of the Company)

250. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

251. As directors of McDonald's, the Director Defendants owed duties of care, good faith, and loyalty to the Company and its stockholders.

252. The Director Defendants breached their fiduciary duty of loyalty to McDonald's and its stockholders when they approved an extravagant severance package to the CEO, based on an uninformed assessment of the CEO's misconduct.

253. The Director Defendants also breached their fiduciary duty of loyalty by failing to conduct oversight into what they acknowledge to be mission-critical areas of human capital and the Company's reputation.

254. These breaches of fiduciary duty have harmed the Company by wasting its assets and by harming the Company's reputation.

255. For these reasons, the Director Defendants are liable to the Company for breaches of fiduciary duty.

COUNT II
Breach of Fiduciary Duties of Loyalty and Care
(Against the Officer Defendants,
Derivatively on Behalf of the Company)

256. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

257. The Officer Defendants owed duties of care, good faith, and loyalty to the Company and its stockholders.

258. The Officer Defendants breached their duty of care by exercising inadequate oversight over enterprise risk management.

259. The Officer Defendants breached their duties of loyalty by engaging in misconduct. Fairhurst violated Company policies by engaging in inappropriate conduct with female employees. Easterbrook violated Company policies by having relationships with employees and trying to cover up the fact of these relationships through deleting emails and lying in response to an internal investigation, as well as by inappropriately issuing stock grants to at least one employee. Easterbrook and Kempczinski violated their fiduciary duties of loyalty by engaging in a systematic attempt to undercut Black employees and franchisees. Strong violated his duty of

loyalty by engaging in racial discrimination, as evident by his stereotyping his colleagues as “angry Black women.”

260. These breaches of fiduciary duty have harmed the Company by harming its reputation. In Easterbrook’s case, he also harmed the Company by improperly taking a lavish severance package.

261. For these reasons, the Officer Defendants are liable to the Company for breaches of fiduciary duty.

COUNT III
Aiding and Abetting Breach of Fiduciary Duties
(Against Morgan Lewis,
Derivatively on Behalf of the Company)

262. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

263. Morgan Lewis, as a full-service law firm, knew how to conduct thorough or at the very least, a minimally adequate internal investigation, which would include review of emails and computer servers, and verifying assertions by the subject of the investigation.

264. Morgan Lewis was tasked with conducting such an investigation into allegations of misconduct by Easterbrook in October 2019. However, it did not conduct a minimally adequate investigation, because it did not check Company computer servers to verify assertions by Easterbrook that he only had text messages evidencing an improper relationship. Had Morgan Lewis conducted even a cursory

check of the Company's computer servers, it would have realized that Easterbrook was misrepresenting the extent to which he had relationships that violated Company policy.

265. Morgan Lewis, based on its grossly inadequate investigation, gave the Board a grossly inadequate amount of information to assess the allegations against Easterbrook. As a result, the Board reached a grossly uninformed decision and awarded Easterbrook a high severance package, which the Board later tacitly acknowledged was a mistake by suing Easterbrook to claw back the package.

266. Morgan Lewis, as a full-service law firm, also was aware of the fiduciary duties of the Board, including its duty to stay informed. By failing to give the Board adequate information, Morgan Lewis knowingly caused the Board to violate its fiduciary duties to the Company.

267. As a result of its misconduct, Morgan Lewis has damaged the Company through causing reputational harm and the high cost of litigation in seeking to claw back a compensation package.

268. As a result, Morgan Lewis is liable for aiding and abetting breaches of fiduciary duty by the Board.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. An order declaring that Plaintiff may maintain this action derivatively on behalf of McDonald's;

B. An order declaring that the Director and Officer Defendants have breached their fiduciary duties to McDonald's;

C. An order declaring that Morgan Lewis aided and abetted Director Defendants' breach of fiduciary duties to McDonald's;

D. An order determining and awarding to McDonald's the damages sustained by it as a result of the violations set forth above by Director and Officer Defendants, jointly and severally, together with pre-judgment and post-judgment interest thereon;

E. An order directing McDonald's and Director and Officer Defendants to take all necessary actions to reform and improve its corporate governance and internal procedures, to comply with applicable laws and to protect McDonald's and its shareholders from a repeat of the wrongful conduct described herein;

F. Awarding Plaintiff his costs and disbursements for this action, including reasonable attorneys' fees and expenses; and

G. Granting such other relief as this Court deems just and appropriate.

Dated: July 23, 2021

Of Counsel:

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