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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 TAVARUA RESTAURANTS, INC., et al.,
12 Plaintiffs/Counter-Defendants,
13 v.
14 McDONALD'S USA, LLC,
15 Defendant/Counterclaimant.

Case No. 19cv21-MMA (LL)

**ORDER GRANTING McDONALD'S
USA, LLC'S MOTION FOR
PARTIAL JUDGMENT ON THE
PLEADINGS**

[Doc. No. 28]

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19 Plaintiffs Tavarua Restaurants, Inc., Scarab, Inc., and Carole Casale (collectively
20 "Plaintiffs") bring this action for declaratory and injunctive relief against Defendant
21 McDonald's USA, LLC ("McDonald's") based on a dispute over the proposed purchase
22 and sale of eight McDonald's franchises in San Diego County. *See* Doc. No. 1.
23 McDonald's countersues for breach of contract and declaratory judgment. *See* Doc. No.
24 10. McDonald's moves for judgment on the pleadings as to its declaratory judgment
25 counterclaim. *See* Doc. No. 28. Plaintiffs filed a response in opposition, to which
26 McDonald's replied. *See* Doc. Nos. 29, 30. The Court took the motion under submission
27 on the briefs pursuant to Civil Local Rule 7.1.d.1. *See* Doc. No. 31. For the reasons set
28 forth below, the Court **GRANTS** McDonald's motion.

1 **BACKGROUND**

2 This action arises out of the attempted sale of stock in two privately held
3 corporations which own franchise rights to eight McDonald’s restaurants in San Diego
4 county. The corporations are owned by a trust established by decedent Robin Seder (the
5 “Seder Trust”). Prior to his death, Mr. Seder selected his friend, John Cook, to be the
6 next owner and operator of the eight McDonald’s restaurants. Upon Mr. Seder’s death,
7 successor trustee Carole Casale negotiated a Purchase and Sale Agreement (“PSA”) with
8 Cook to purchase the corporate stock for \$17.5 million, and assume ownership and
9 operation of the McDonald’s restaurants. The PSA further provides, *inter alia*, that Cook
10 will purchase an office and storage facility located in Imperial Beach, California, for “the
11 appraised value reflected in the 2018 Appraisal reduced by 6% of such appraised value.”
12 PSA ¶ 6.9.

13 The terms of the individual franchise agreements entered into by Mr. Seder and
14 McDonald’s obligated Casale, in her capacity as trustee, to obtain the written consent of
15 McDonald’s prior to completing the purchase and sale of the corporate stock to Cook.
16 Casale notified McDonald’s accordingly. McDonald’s chose to exercise its first option
17 under the franchise agreements to purchase the eight franchises and related restaurant
18 assets for a purchase price of \$17.5 million. However, McDonald’s refused to purchase
19 any additional assets of the corporations unrelated to the restaurant franchises, such as the
20 office and storage facility. Based upon McDonald’s refusal to accept all of the terms and
21 conditions of the PSA, Casale rejected McDonald’s attempt to purchase the franchises.
22 This lawsuit ensued.

23 Plaintiffs seek a declaratory judgment that “McDonald’s failed to validly exercise
24 its first option(s) to purchase under Section 15(c) of the Seder Franchise Agreements;
25 and therefore, McDonald’s has irrevocably waived its purchase option rights under
26 that Section in each of the Seder franchise agreements.” Pl. Compl. at 11. Plaintiffs also
27 request that the Court enjoin McDonald’s from further interfering with the execution of
28 the PSA.

1 McDonald's brings two counterclaims against Plaintiffs. First, McDonald's
2 alleges breach of the franchise agreements based on Plaintiffs' refusal to honor
3 McDonald's first option to purchase the restaurant franchises. Second, McDonald's
4 seeks a declaratory judgment "that it validly invoked and exercised its right" to purchase
5 the restaurants "for the purchase price set forth in the PSA." Def. Counter Compl. at ¶¶
6 35-36. McDonald's moves for judgment in its favor as to its second counterclaim for
7 declaratory judgment.

8 DISCUSSION

9 ***1. Legal Standard***

10 Pursuant to Federal Rule of Civil Procedure 12(c), "[a]fter the pleadings are closed
11 . . . a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). The factual
12 allegations of the nonmoving party are accepted as true. *See Hal Roach Studios v.*
13 *Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989). "Judgment on the pleadings
14 is properly granted when, accepting all factual allegations as true, there is no material fact
15 in dispute, and the moving party is entitled to judgment as a matter of law." *Chavez v.*
16 *United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (internal quotations omitted). Issues
17 of contract interpretation are usually questions of law for the Court. *See, e.g., Sheehy v.*
18 *Sheehy*, 299 Ill. App. 3d 996, 1000 (1998).¹ "If the language of the contract is facially
19 unambiguous, then the contract is interpreted by the trial court as a matter of law without
20 the use of parol evidence." *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462
21 (1999).

22 ***2. Declaratory Judgment Act***

23 The Declaratory Judgment Act provides that "[i]n a case of actual controversy
24 within its jurisdiction," federal courts "may declare the rights and other legal relations of
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27 ¹ The franchise agreements provide that they shall be governed by Illinois law. The parties appear to
28 agree, and Illinois courts generally honor a contract's choice-of-law provision. *See, e.g., Thomas v.*
Guardsmark, Inc., 381 F.3d 701, 705 (7th Cir. 2004). As such, the Court will apply Illinois law in
interpreting the franchise agreements at issue.

1 any interested party seeking such declaration, whether or not further relief is or could be
2 sought.” 28 U.S.C. § 2201(a). An actual case or controversy must exist, ripe for
3 determination, and thus lie within the court’s jurisdiction under Article III of the
4 Constitution. *See Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005).
5 The court must then decide whether to exercise jurisdiction over the dispute. *See Am.*
6 *States Ins. Co. v. Kearns*, 15 F.3d 142, 143-44 (9th Cir. 1994). Here, Plaintiffs do not
7 challenge the reviewability of McDonald’s counterclaim. Moreover, the Court finds the
8 contract dispute between the parties to be an actual dispute “that is sufficiently immediate
9 to warrant the issuance of a declaratory judgment,” *Principal Life Ins. Co.*, 394 F.3d at
10 672, and finds it appropriate to entertain McDonald’s counterclaim. *See generally*
11 *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491 (1942) (setting forth factors to be
12 considered by the court).

13 3. Analysis

14 McDonald’s seeks a declaration of its rights and obligations under paragraph 15(c)
15 of the franchise agreements at issue. This paragraph sets forth McDonald’s option to
16 purchase its franchises in preference to purchase by a third-party:

17 Franchisee or Franchisee’s representative shall, at least twenty (20) days prior
18 to the proposed effective date, give McDonald’s written notice of intent to sell
19 or otherwise transfer this Franchise pursuant to paragraph 15(d). The notice
20 shall set forth the name and address of the proposed purchaser and all the
21 terms and conditions of any offer. McDonald’s shall have the first option to
22 purchase the Restaurant by giving written notice to Franchisee of its intention
23 to purchase on the same terms as the offer within ten (10) days following
24 McDonald’s receipt of such notice. However, if McDonald’s fails to exercise
25 its option and the Restaurant is not subsequently sold to the proposed
26 purchaser for any reason, McDonald’s shall continue to have, upon the same
27 conditions, a first option to purchase the Restaurant upon the terms and
28 conditions of any subsequent offer.

Pl. Compl., Ex. B at 9.

McDonald’s asserts that the language of this provision is unambiguous in so far as
it governs the option to purchase the restaurant franchises. McDonald’s argues that the

1 option does not encompass, nor is it contingent upon, the purchase, sale, or transfer of
2 any assets unrelated to the restaurant franchises themselves. As such, McDonald's
3 contends that it validly exercised its option under the franchise agreements when it
4 offered to purchase the eight restaurant franchises from Plaintiffs for a purchase price of
5 \$17.5 million.

6 Plaintiffs agree that the language is unambiguous, but point to the requirement that
7 the option to purchase the restaurant franchises be "on the same terms as the offer" made
8 to the third-party purchaser. *Id.* Plaintiffs note that the terms and conditions set forth in
9 the PSA include the purchaser's acquisition of the office and storage facility located in
10 Imperial Beach. Plaintiffs contend that McDonald's must accept all of the terms in the
11 PSA in order to purchase the restaurant franchises, including the contingent purchase of
12 the Imperial Beach property.

13 It is a "basic principle of contract law . . . that for the exercise of an option to be
14 valid, the acceptance must be in the precise terms of the offer *contained in the option.*"
15 *Farley v. Roosevelt Mem'l Hosp.*, 67 Ill. App. 3d 700, 703 (1978) (emphasis added).
16 Here, a valid exercise of the option to purchase the restaurant franchises requires
17 McDonald's to give "written notice to Franchisee of its intention to purchase on the same
18 terms" as the third-party offer. Pl. Compl., Ex. B at 9. On December 11, 2018,
19 McDonald's notified Plaintiffs in writing as follows: "Pursuant to Section 15(c) of Mr.
20 Seder's Franchise Agreements for the Restaurants, McDonald's hereby exercises its First
21 Option to Purchase the franchises for, and assets of, the Restaurants on the same terms as
22 set forth in the [PSA]." Pl. Compl., Ex. C., Attachment. McDonald's provided this
23 written notice within one week of receiving notice from Plaintiffs of "all the terms and
24 conditions" material to the purchase of the restaurant franchises.² McDonald's notice
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27 ² Plaintiffs argue that because Casale provided McDonald's with notice of the PSA on November 26,
28 2018, McDonald's notice was untimely in light of the ten-day window set forth by paragraph 15(c) of
the franchise agreements. However, Plaintiffs attach correspondence to their complaint demonstrating
that Casale did not provide adequate documentation of "all the terms and conditions" of the PSA

1 therefore “constituted a timely, effective exercise of the option and gave rise to a binding
2 contract of purchase.” *Wentcher v. Busby*, 98 Ill. App. 3d 775, 783 (1981).

3 Plaintiffs argue that McDonald’s should not be permitted to “cherry-pick,”
4 agreeing to some but not all terms of the PSA. Pl. Compl. ¶ 29. Plaintiffs’ primary
5 complaint involves McDonald’s refusal to purchase the office and storage facility.
6 However, the additional terms and conditions in the PSA regarding the Imperial Beach
7 property are outside the scope of the franchise agreements. The franchise agreements set
8 forth the terms of the option, which concerns the purchase of the restaurant franchises –
9 nothing more. Accordingly, “[t]he option, when accepted, resulted in a present contract
10 for the sale” of the restaurant franchises only. *Welsh v. Jakstas*, 401 Ill. 288, 297 (1948).
11 And while “[t]here is nothing in the option which prevents the parties from entering into
12 additional covenants and agreements concerning the details of the sale or matters
13 incidental to the sale, or from incorporating such additional covenants and agreements
14 into the written contract,” *id.*, there is also nothing in paragraph 15(c) of the franchise
15 agreements which requires McDonald’s to do so.

16 In sum, McDonald’s option to purchase is governed by the franchise agreements,
17 not the PSA. The inclusion in the PSA of “additional covenants and agreements”
18 unrelated to the purchase of the restaurant franchises has no legal effect on McDonald’s
19 valid exercise of the option. Accordingly, McDonald’s is entitled to judgment in its favor
20 on its second counterclaim.

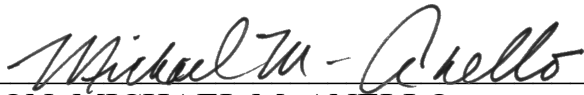
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23 relevant to the purchase of the restaurant franchises until December 4, 2018 (despite being asked to do
24 so on November 29, 2018). *See* Pl. Compl., Ex. C. The relevant documents include several exhibits
25 attached to the PSA and incorporated by reference therein. At least one of those exhibits, Exhibit H,
26 contains information bearing directly on the purchase price of the restaurants. *See* Pl. Compl., Ex. A at
27 9 (PSA § 4.7) (“The amount of each and every indebtedness resulting from any mortgage, lease, pledge,
28 lien, security interest, or encumbrances of any nature *is listed on Exhibit H which amount shall be
deducted from the PURCHASE PRICE.*”). The purchase price of the restaurant franchises constitutes an
essential term of the offer and is material to McDonald’s exercise of its purchase option. Therefore,
McDonald’s was not obligated to notify Plaintiffs of its election any sooner than ten days after receipt of
the requested documentation.

1 CONCLUSION

2 Based on the foregoing, the Court **GRANTS** McDonald's motion for partial
3 judgment on the pleadings. The Court **DECLARES** that McDonald's validly exercised
4 its option to purchase the eight restaurant franchises at issue and is therefore entitled to
5 purchase said restaurant franchises for the purchase price set forth in the PSA.

6 **IT IS SO ORDERED.**

7 DATE: August 16, 2019

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10 HON. MICHAEL M. ANELLO
11 United States District Judge
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