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IN THE UTAH BUSINESS AND CHANCERY COURT

BAMF SALEM 1, LLC, an Oregon limited liability company; CHRYSTAL LAW, an individual; and BENJAMIN GORMAN, an individual, Plaintiffs, vs. BAM FRANCHISING, INC., a Delaware corporation, Defendant.	**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S VERIFIED MOTION TO STAY AND TO COMPEL MEDIATION AND THEN ARBITRATION** **(Hearing Requested)** Case No. 260200029 Judge Rita Cornish

INTRODUCTION AND RELIEF REQUESTED

Plaintiffs BAMF Salem 1, LLC, Chrystal Law, and Benjamin Gorman oppose Defendant BAM Franchising, Inc.'s Verified Motion to Stay and to Compel Mediation and Then Arbitration (the "Motion"). The Court should deny it. If the Court finds any claim arbitrable, it should limit its order to that claim under Utah Code § 78B-11-108(7), decline to stay the rest, and decide Plaintiffs' pending Motion for Leave to File First Amended Complaint.

The Motion asks the Court to send this case to the American Arbitration Association on the premise that every claim in it "arises out of or relates to" the Franchise Agreement. That is the wrong question; the agreement to arbitrate is not a general one. Section 17.A begins with an exception, "except as expressly provided below." Section 17.A(4) then states what the parties "agree" the Agreement "does not obligate them to mediate or arbitrate": "claims or issues relating primarily to . . . Franchisor's rights to obtain possession of any real and personal property" and "intentional interruption by Franchisee or Franchisor of business operations." This case is about

BAM's agent entering Plaintiffs' store after hours on November 14, 2024, changing the locks, and taking everything inside, down to customers' layaway property and consigned goods, before any notice of termination was sent. And it is about BAM's continuing claim that it had the right to do so. Those are the claims and issues the parties kept out of arbitration.

Three things decide the Motion. First, under Utah Code § 78B-11-107(2), "[t]he court shall decide whether . . . a controversy is subject to an agreement to arbitrate," and BAM's Motion asks this Court to do exactly that. Second, the exclusion in Section 17.A(4) is a contract term, read by its plain language like any other; the policy favoring arbitration applies only to ambiguity and cannot rewrite plain language. *Zions Mgmt. Servs. v. Record*, 2013 UT 36, ¶ 36, 305 P.3d 1062. Third, read as written, Section 17.A(4) excludes the claims at the center of this case. The Motion's remaining premise, that Plaintiffs skipped mediation, is no longer true: the parties mediated on October 20, 2026, without resolution.

STATEMENT OF FACTS

A. The dispute-resolution provision and what it excludes

1. Section 17.A of the Franchise Agreement provides that "[a]ll claims, disputes, suits, actions, controversies, proceedings, or otherwise, of every kind . . . arising between or involving the Franchisor and the Franchisee *except as expressly provided below*, will be resolved as described in this Section." (Compl. Ex. B § 17.A (emphasis added).)

2. The "resolution process" has three steps: a face-to-face meeting (§ 17.A(1)); if either party believes the meeting did not resolve the claims, "non-binding mediation through the American Arbitration Association" (§ 17.A(2)); and, "if such mediation is not successful in resolving the dispute," "binding arbitration before and in accordance with the arbitration rules of AAA in Utah County, Utah" (§ 17.A(3)). (Compl. Ex. B § 17.A(1)–(3).)

3. Section 17.A(4) states what the parties did not agree to mediate or arbitrate:

> Franchisor and Franchisee agree that this Agreement does not obligate them to mediate or arbitrate claims or issues relating primarily to (i) the validity of the Marks, or any trademarks, service marks or other Intellectual Property licensed to Franchisee, (ii) Franchisor's rights to obtain possession of any real and personal property (including any action in unlawful detainer, ejectment or otherwise) (iii) Franchisor's or Franchisee's rights to obtain a writ of attachment and/or other pre-judgment remedies and/or (iv) Franchisor's rights to receive and enforce a temporary restraining order, preliminary injunction, permanent injunction or other equitable relief (including, but not limited to, Franchisor's rights to equitable relief with respect to Franchisee's unlawful use of any of the Marks and/or other Intellectual Property and Franchisee's breach of the confidentiality and/or non-compete provisions of this Agreement), intentional interruption by Franchisee or Franchisor of business operations with the exception of the provisions of Section 14 relating to Breaches, Defaults or Termination, and the exercise of any such rights and remedies will not be deemed a waiver of the rights to require or use mediation and/or arbitration. (Compl. Ex. B § 17.A(4).)

4. Section 17.A(5) confirms that the parties "mutually selected . . . mediation and/or arbitration as provided in this Agreement to resolve any and all disputes and claims, except as expressly provided in Section 17.A(4)." (Compl. Ex. B § 17.A(5).)

5. Section 17 contains no express delegation clause and does not mention the Federal Arbitration Act. The Agreement "shall be construed under the laws of the State of Utah." (Compl. Ex. B § 18.E.)

6. Section 14.A, titled "Immediate Termination," provides that the Agreement "will automatically terminate without notice, at our discretion, if any of the following events occur," followed by twenty enumerated events, including "(xii.) Failure to Make Payments." Section 14.B, titled "Notice of Termination," gives BAM "the right to terminate this Agreement, effective upon 30 days after delivery of a notice of termination" for a breach that "remains uncured at the end of the 30-day period." (Compl. Ex. B §§ 14.A, 14.B.)

7. Nothing in Section 14 authorizes BAM to enter a franchisee's store, change the locks, or take inventory, fixtures, cash, records, or customer property. The Franchise Agreement's only provision for BAM to acquire a terminated franchisee's assets is Section 15.E, "Our Option

to Purchase Your Assets," which requires an "Appraisal Notice" within ten days of termination, a determination of "Fair Market Value," and purchase of inventory "at your invoice cost minus a 10% restocking fee." (Compl. Ex. B §§ 14, 15.E.)

B. The November 14, 2024 takeover

8. On the evening of November 14, 2024, Brandon Best was inside the Salem store after closing, while BAM's Director of Operations, Ki McAllister, participated by telephone. Ring camera footage places Mr. Best inside the store at 7:12 p.m. and still inside at 8:34 p.m. (Law Decl. ¶¶ 4–8 & Exs. 1–3.)

9. At 7:57 p.m., with Mr. Best already inside the store, Plaintiffs had received no notice of termination. BAM's counsel emailed a "Notice of Immediate Termination" later that night, after the takeover was underway. (Law Decl. ¶ 9; Compl. ¶¶ 13, 50 & Ex. D.)

10. On a recorded call with Ms. Law and Mr. Gorman that evening, Mr. McAllister, who participated in the takeover by telephone, stated that "the lease is technically in our our name still," that "[i]f you fight this, then then you're putting yourself into a whole lot of [expletive]," and, when asked whether that sounded like grace, "[i]t sounds like a threat . . . in a way, it is." (Law Decl. ¶ 10; Spencer Decl. Ex. G.)

11. BAM took all inventory, fixtures, equipment, cash on hand, and business records, together with customer layaway property and consigned property belonging to a third party. (Compl. ¶¶ 13, 48, 68, 118–128; Law Decl. ¶ 11.) BAM delivered no Appraisal Notice under Section 15.E and paid nothing for what it took. (Spencer Decl. ¶ 16.)

12. BAM has verified, in this Court, that it "issued a written 11/14/24 notice and thereby terminated the FA, repossessed the Salem LLC store and assets, and assumed the lease, . . . including any and all fixtures, inventory and other assets, and credited an estimated $30,000 and the paltry value thereof as an offset to the unpaid estimated $175,000 debt." (Mot. ¶ 6.) BAM's position is that the termination "occurred automatically" under Section 14.A and "is certainly not a 'claim,' 'dispute,' 'suit,' 'action,' 'controversy,' or 'proceeding'" within Section 17.A. (Mot. ¶ 7 & at 8.)

13. BAM has verified, in the Fourth District Court, that it "exercised its priority rights to the collateral in the Security Agreement, pre-scheduled a repossession with Chrystal and repossessed the Salem LLC store on or after 11/14/24 and assumed the lease"; that it "assumed possession of the premises and all assets located within the store as part of lawful recovery actions"; that it "acquired the store's assets as a bona fide purchaser for value"; and that in the first quarter of 2025 it sold the store and its assets to Baker Bricks, LLC dba Salem-Baker Bricks, Inc., owned by Joshua Johnson and Brandon Best. (Spencer Decl. Ex. H ¶¶ 27, 40, 43, 45–46.)

C. Plaintiffs performed every pre-arbitration step; BAM chose a court for its own claims

14. On January 2, 2026, Plaintiffs' counsel sent BAM a Formal Dispute Notice and Demand for Face-to-Face Meeting invoking Section 17.A(1). The letter stated: "All rights are expressly reserved." (Mot. Ex. 1; Spencer Decl. ¶ 3.)

15. The face-to-face meeting required by Section 17.A(1) was held by videoconference on February 5, 2026, by written agreement of counsel. BAM concedes that it occurred. (Spencer Decl. ¶¶ 5–8 & Ex. A; Mot. ¶ 8.)

16. On February 11, 2026, Plaintiffs requested mediation under Section 17.A(2) and asked BAM to propose mediators. BAM did not agree unconditionally. BAM, through Mr. McNeff, conditioned mediation on a document production that Section 17 does not require, and proposed another unpaid videoconference instead. (Spencer Decl. ¶¶ 9–14 & Exs. B–F.)

17. Plaintiffs filed this action on March 27, 2026. The Complaint pleads twelve causes of action and, at paragraphs 11 through 21, why Section 17 does not require arbitration of them. (Compl. ¶¶ 11–21, 82–168.)

18. BAM filed its Verified Motion on May 27, 2026. The Motion asserts that "BAM has never initiated any claims against Plaintiffs." (Mot. at 13.)

19. That same day, BAM, Ammon McNeff, Matthew McNeff, Joshua Johnson, Brandon Best, and Baker Bricks, LLC dba Salem-Baker Bricks, Inc. filed a Verified Complaint in the Fourth Judicial District Court, No. 260402353, about the Salem store's repossession. The Verified Complaint alleges that the defendants there "conspired together and with co-Defendants

and Chrystal Law ('Chrystal') and Benjamin Gorman ('Benjamin') (also potential DOE 1-15 defendants)." (Spencer Decl. Ex. H ¶ 9; see id. ¶¶ 10, 19.) A temporary restraining order followed on May 28, 2026, and, after removal to the District of Utah (No. 2:26-cv-00593), a stipulated preliminary injunction on July 7, 2026. (Spencer Decl. ¶¶ 18–20 & Exs. H–J.)

20. On August 14, 2026, Plaintiffs moved for leave to file a First Amended Complaint adding as defendants Baker Bricks, LLC, Salem-Baker Bricks, Inc., Brandon Best, Joshua Johnson, Matthew McNeff, and Ammon McNeff. None is a party to the Franchise Agreement. That motion is pending. (Spencer Decl. ¶ 21.)

21. On September 8, 2026, Plaintiffs filed a Notice of Mediation and Status Report advising the Court that the parties had agreed to mediate on October 20, 2026, and that briefing on both pending motions was held until the mediation concluded. (Spencer Decl. ¶ 22.)

22. On October 20, 2026, the parties attended a mediation with Rick Rose of Utah ADR Services in Salt Lake City. The mediation ended around noon, shortly after lunch was served, without resolving the case. (Spencer Decl. ¶ 23.)

23. BAM has never filed a demand for mediation or arbitration with the American Arbitration Association on any claim between the parties. (Spencer Decl. ¶ 24.)

ARGUMENT

I. This Court decides whether Plaintiffs' claims are subject to the agreement to arbitrate, and BAM has asked it to.

The Utah Uniform Arbitration Act assigns the question. "The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate." Utah Code § 78B-11-107(2); see id. § 78B-11-108(1)(b). An agreement to arbitrate is enforceable as to a claim only if it "binds the party whose submission to arbitration is sought" and "the dispute to be arbitrated [falls] within the scope of the agreement." *Bybee v. Abdulla*, 2008 UT 35, ¶ 26, 189 P.3d 40; *HITORQ, LLC v. TCC Veterinary Servs., Inc.*, 2021 UT 69, ¶ 24, 502 P.3d 281.

BAM agrees. Its Motion quotes § 78B-11-107: "a court may decide whether an agreement to arbitrate 'exists' or whether a controversy is subject to an agreement to arbitrate," reserving to

the arbitrator only "whether a contract containing a valid agreement to arbitrate is enforceable." (Mot. at 9.) It then spends three pages asking this Court to construe Section 17.A(4). (Mot. at 11–13.) BAM did not argue that an arbitrator should decide scope. It may not do so for the first time in reply. The Court should decide the question BAM presented.

Nor does Section 17.A(3)'s reference to "the arbitration rules of AAA" move the question. The Supreme Court has instructed that courts "should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 72 (2019) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)) (alterations omitted). Where, as here, the arbitration clause opens with an exception and then excludes categories of claims, the AAA reference reaches only the arbitrations the parties agreed to. It says nothing about who decides whether a claim was excluded. On remand in *Henry Schein*, the Fifth Circuit held that a clause sending "[a]ny dispute arising under or related to this Agreement (except for actions seeking injunctive relief . . .)" to arbitration under the AAA rules, *Archer & White Sales, Inc. v. Henry Schein, Inc.*, 935 F.3d 274, 278 (5th Cir. 2019), cert. granted, 141 S. Ct. 107 (2020), cert. dismissed as improvidently granted, No. 19-963 (U.S. Jan. 25, 2021), did not clearly and unmistakably delegate arbitrability of the carved-out claims: "The plain language incorporates the AAA rules—and therefore delegates arbitrability—for all disputes except those under the carve-out. Given that carve-out, we cannot say that the Dealer Agreement evinces a 'clear and unmistakable' intent to delegate arbitrability." *Id.* at 281–82. The Second Circuit agrees: a clause "subject to a qualifying provision that at least arguably covers the present dispute" does not clearly and unmistakably delegate arbitrability. *NASDAQ OMX Grp., Inc. v. UBS Sec., LLC*, 770 F.3d 1010, 1031 (2d Cir. 2014). That a clause naming the AAA rules incorporates them for the arbitrations the parties agreed to, *see Peterson & Simpson v. IHC Health Servs., Inc.*, 2009 UT 54, ¶ 15, 217 P.3d 716, is not the question. The question is whether the parties clearly and unmistakably agreed that an arbitrator, not the Court, would decide whether a claim falls within an exclusion written into the same provision. The Ninth Circuit reached a different result in *Oracle Am., Inc. v. Myriad Grp. A.G.*, 724 F.3d 1069, 1075–

76 (9th Cir. 2013), reasoning that the argument "conflates the scope of the arbitration clause, i.e., which claims fall within the carve-out provision, with the question of who decides arbitrability." The Fifth Circuit considered *Oracle* and held that where the exception is written into the arbitration sentence itself, "the placement of the carve-out here is dispositive." *Archer & White*, 935 F.3d at 281. Section 17.A is built like the clauses in *NASDAQ* and *Archer & White*. The exception sits in the governing sentence: "All claims . . . except as expressly provided below, will be resolved as described in this Section." The three steps follow, with the AAA rules appearing only in the third, and Section 17.A(4) then states what the parties did "not" agree to arbitrate. (Facts ¶¶ 1–3.) The Tenth Circuit's decision in *Belnap v. Iasis Healthcare*, 844 F.3d 1272, 1281–85 (10th Cir. 2017), is not to the contrary. The agreement there contained no exclusion written into the arbitration sentence, and the only delegation question litigated was whether the JAMS rules had been incorporated at all. The court's discussion of *Oracle* and *Chevron*, 844 F.3d at 1291–92, came in declining the "wholly groundless" exception, and it predates *Archer & White*, which distinguished *Oracle* on the placement of the carve-out.

II. Section 17.A(4) excludes the claims at the center of this case.

A. The exclusion is read by its plain language, and the presumption of arbitrability does not rewrite it.

"Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Cade v. Zions First Nat'l Bank*, 956 P.2d 1073, 1076–77 (Utah Ct. App. 1998) (quoting *AT&T Techs., Inc. v. Commc'ns Workers*, 475 U.S. 643, 648 (1986)) (citation omitted); *accord Cent. Fla. Invs., Inc. v. Parkwest Assocs.*, 2002 UT 3, ¶ 10, 40 P.3d 599 (whether a motion to compel was properly denied "is first a matter of contract interpretation"). In *Zions Management Services v. Record*, the Court refused to "rewrite an unambiguous contract" and "reaffirm[ed]" that "[w]hile there is a presumption in favor of arbitration, that presumption applies only when arbitration is a bargained-for remedy of the parties . . . ." 2013 UT 36, ¶¶ 32, 36 (citations omitted) (quoting *Bybee*, 2008 UT 35, ¶ 27). It added: "state and federal policies favoring arbitration cannot be used to defeat the plain language

of the parties' contract, nor can they be used to create ambiguities where there are none." *Id.* ¶ 36. And in July the Court, reviewing an award, "disavow[ed]" the "overbroad use" of the phrase "resolve all doubts in favor of arbitration," explaining that "[i]n its original context, the principle operated as a gateway rule—favoring arbitration only when there was uncertainty about whether a particular dispute was subject to arbitration in the first place." *RV Holdings 4, LLC v. Standard Fiber Investors, LLC*, 2026 UT 15, ¶¶ 22, 24, 26, 594 P.3d 513.

The presumption BAM invokes, then, operates only on an ambiguous clause. *Docutel Olivetti Corp. v. Dick Brady Sys., Inc.*, 731 P.2d 475, 479 (Utah 1986), on which BAM relies, illustrates the point. There the Court observed that "[i]f Docutel had intended to exclude any provision from the arbitration clause, it could have done so simply by adding the phrase 'except as provided in paragraph 10' to the arbitration clause." *Id.* BAM, which drafted the Franchise Agreement, did precisely that: Section 17.A applies "except as expressly provided below," and Section 17.A(4) is the express provision. (Facts ¶¶ 1, 3.) An exclusion the drafter wrote into its own form is enforced as written.

B. "Intentional interruption by Franchisee or Franchisor of business operations" is a category of excluded claims, and it describes this case.

Section 17.A(4) lists the excluded claims. (Facts ¶ 3.) After item (iv)'s parenthetical, the list continues: "intentional interruption by Franchisee or Franchisor of business operations with the exception of the provisions of Section 14 relating to Breaches, Defaults or Termination."

BAM reads "intentional interruption by Franchisee or Franchisor of business operations" as one more illustration of the equitable relief a franchisor may seek under item (iv). (Mot. at 11.) The words will not bear that reading, for four reasons.

First, item (iv) is about "Franchisor's rights." The interruption clause is about interruption "by Franchisee *or Franchisor*." The only party with a claim arising from "intentional interruption by . . . Franchisor of business operations" is the franchisee. If the clause were an example of item (iv), the words "or Franchisor" would do nothing. Utah courts "attempt to harmonize all of the

contract's provisions and all of its terms." *Cent. Fla. Invs.*, 2002 UT 3, ¶ 12. BAM's reading discards the phrase it finds inconvenient.

Second, item (iv)'s illustrations are enclosed in a parenthetical that closes before the interruption clause begins: "(including, but not limited to, Franchisor's rights to equitable relief with respect to Franchisee's unlawful use of any of the Marks . . . and Franchisee's breach of the confidentiality and/or non-compete provisions of this Agreement), intentional interruption . . . ." The drafter put the examples of item (iv) inside the parentheses and put the interruption clause outside them, after a comma.

Third, BAM's reading leaves the Section 14 carve-back with no work to do. BAM says the carve-back means a party "may not invoke that judicial remedy to challenge or circumvent the termination procedures set forth in Section 14." (Mot. at 11–12.) But item (iv) already belongs only to the Franchisor, and the Franchisor has no occasion to seek an injunction against its own termination. The carve-back makes sense only if the interruption clause creates a category of claims both parties may bring in court, claims about one side intentionally shutting down the other's business, and then narrows it by excepting disputes about "the provisions of Section 14." Read that way, every word has effect.

Fourth, the Franchise Agreement itself distinguishes between termination and interruption. Under Section 14.A, the Agreement "will automatically terminate without notice, at our discretion," upon an enumerated event. (Facts ¶ 6.) BAM insists that its termination "occurred automatically" and "is certainly not a 'claim,' 'dispute,' 'suit,' 'action,' 'controversy,' or 'proceeding.'" (Facts ¶ 12.) Taken at its word, the termination was an event on paper. What happened inside the store that night was something else. Section 14 says nothing about entering the premises or taking property; the Agreement's only mechanism for BAM to acquire a terminated franchisee's assets is Section 15.E, which BAM never used. (Facts ¶¶ 7, 11.) BAM's own verified account is that it "repossessed the Salem LLC store and assets," "assumed the lease," and did so by "exercis[ing] its priority rights to the collateral in the Security Agreement," not under any provision of Section 14. (Facts ¶¶ 12–13.) An after-hours seizure of a running store, before

the termination notice was sent, is "intentional interruption by . . . Franchisor of business operations" in the ordinary meaning of those words. It is not a "provision[] of Section 14."

C. The Section 14 carve-back is limited to disputes about the provisions of Section 14, and BAM's reading of it would swallow the exclusion.

BAM's fallback is that "all of Plaintiffs' claims . . . arise from the same nucleus of facts: BAM's termination of the FA and BAM's rightful post-termination disposition of franchise assets," and are therefore "quintessential 'provisions of Section 14.'" (Mot. at 12.) The carve-back does not say "claims arising from a termination." It says "the provisions of Section 14 relating to Breaches, Defaults or Termination." A "provision" is a term of the contract. Disputes about the provisions of Section 14 go to arbitration: whether a listed event occurred, whether Section 14.B required notice and a cure period, whether a termination was effective. A claim that BAM, having declared the Agreement terminated, physically took a business and its contents without any authority under the Franchise Agreement is not a dispute about a provision of Section 14; Section 14 has no provision on the subject. (Facts ¶ 7.) BAM's reading makes the carve-back the rule and the exclusion nothing: any franchisor could place any seizure beyond the exclusion by first announcing a termination. The parties did not write it that way, and the Court "will not rewrite an unambiguous contract." *Zions Mgmt.*, 2013 UT 36, ¶ 32 (citation omitted).

BAM also warns that Plaintiffs' reading lets any franchisee "escape arbitration simply by alleging that the other side's termination was procedurally defective." (Mot. at 12.) The exclusion turns on what the claim is about: an intentional interruption of business operations, or the Franchisor's asserted right to possession of property. A franchisee whose complaint is that a notice was short by ten days has a dispute about a provision of Section 14 and will arbitrate it. A franchisee whose complaint is that the franchisor entered its store at night, took its inventory and its customers' property, and sold the business to a new operator has a claim the parties agreed to keep in court. The Fifth Circuit rejected the same "absurd results" argument: the fact that a clause "permits [a party] to avoid arbitration by adding a claim" of the excluded kind "does not change the clause's plain meaning." *Archer & White*, 935 F.3d at 283.

D. Independently, the claims relate primarily to BAM's asserted "rights to obtain possession of any real and personal property."

Item (ii) excludes "claims or issues relating primarily to . . . Franchisor's rights to obtain possession of any real and personal property (including any action in unlawful detainer, ejectment or otherwise)." (Facts ¶ 3.) The exclusion covers "claims or issues," not just actions the Franchisor brings, and "or otherwise" reaches beyond landlord-tenant actions. BAM's defense to this entire case is that it had the right to take possession of the premises and of everything in them. It has verified as much. (Facts ¶¶ 12–13.) Whether BAM had those rights is the issue on which Plaintiffs' claims for breach of contract, conversion, unjust enrichment, and declaratory relief turn, and it is the issue the parties agreed the Agreement "does not obligate them to mediate or arbitrate."

BAM's conduct confirms that reading. On the day it filed this Motion, BAM and its affiliates filed a verified complaint in the Fourth District Court about the same store and the same repossession, pleading that Ms. Law and Mr. Gorman "conspired" with the defendants there. (Facts ¶¶ 13, 19.) BAM chose a court, not the AAA, for its own claims "involving the Franchisor and the Franchisee" about possession of the Salem store. Section 17.A(4) permits that, says the exercise of carve-out rights "will not be deemed a waiver," and permits the same for Plaintiffs. BAM cannot claim the exclusion for itself and deny it to the party across the table.

E. Applied claim by claim, the exclusion covers the Complaint.

Section 17.A(4) asks whether a claim or issue "relat[es] primarily to" an excluded subject. Applied to the Complaint, the answer is yes for each count, with one theory addressed further in Part IV:

Count	**What the claim is about**	**Why Section 17.A(4) excludes it**
III (Breach of Contract, ¶¶ 107–110) and IV (Implied Covenant, ¶¶ 111–117)	BAM's failure to deliver the lease and bank account it sold, and its seizure of the store and assets without notice, cure, appraisal, or payment. (Compl. ¶¶ 16–17, 108–109.)	Intentional interruption by Franchisor; BAM's asserted right to possession of the premises and assets. The lease BAM "assumed" is the instrument of possession.

Count	What the claim is about	Why Section 17.A(4) excludes it
V (Conversion, ¶¶ 118–128) and XI (Unjust Enrichment, ¶¶ 159–164)	BAM took and sold inventory, fixtures, cash, records, layaway property, and consigned goods. (Compl. ¶¶ 13, 118–128; Facts ¶¶ 11–13.)	Franchisor's asserted rights to possession of personal property; the interruption itself.
I (Fraud in the Inducement, ¶¶ 82–100) and II (Negligent Misrepresentation, ¶¶ 101–106), as to the "turnkey" and present-intent representations	BAM sold a "turnkey" business while retaining the lease and account it later used to retake the store. (Compl. ¶¶ 83(a), 83(d), 84, 86(b)–(c).)	The pleaded falsity is BAM's retention of the instruments of possession; the injury is the loss of the business BAM took.
VI (Tortious Interference, ¶¶ 129–132), VII (Defamation, ¶¶ 133–140), VIII (Injurious Falsehood, ¶¶ 141–146), and IX (Civil Conspiracy, ¶¶ 147–152)	BAM and its agents told customers, vendors, and the public that Plaintiffs stole inventory and consigned goods, and interfered with Plaintiffs' relationships. (Compl. ¶¶ 129–152.)	Who had the right to possess the inventory and consigned goods is the issue in each count; the statements were the means of the interruption.
X (Oregon UTPA, ¶¶ 153–158), and I–II as to the LEGO-authorization representations	BAM represented "authorized LEGO reseller" status that did not exist. (Compl. ¶¶ 83(c), 155–156.)	The misrepresentation induced the purchase of the business BAM later took; the loss claimed is that taking. If severable, Part IV applies.
XII (Declaratory Judgment, ¶ 167(a)–(f))	Whether the termination and seizure were wrongful; whether the Note was satisfied by the assets taken; whether Plaintiffs stole anything; whether BAM must account; and whether Section 17.A applies. (Compl. ¶ 167.)	Subparagraphs (b), (e), and (f) relate primarily to possession of the seized property; (a) to the interruption; (d) is for this Court under § 78B-11-107(2). Subparagraph (c), if severable, is addressed in Part IV.

BAM's Motion does not engage with the claims individually. It asserts only that Plaintiffs "do not argue . . . that the claims do not arise out of or relate to the FA." (Mot. at 7.) Plaintiffs do not need to. A claim within Section 17.A(4) is outside the agreement to arbitrate whether or not it also "relates to" the Agreement. That is what an exclusion is.

III. The premise that Plaintiffs bypassed mediation is gone, and Plaintiffs' invocation of Section 17 waived nothing.

The Motion's theme is that Plaintiffs "expressly invoked the dispute resolution provisions" and then "have not attempted a mediation." (Mot. ¶¶ 10–12 & at 7.) Three answers. First, the parties have now mediated. The parties mediated on October 20, 2026; the case did not resolve. (Facts ¶ 22.) BAM's request that the Court "compel the parties to timely mediate" (Mot. at 14) is moot. Second, the pre-suit record is not what BAM describes. Plaintiffs demanded the Section 17.A(1) meeting, attended it, and requested mediation in writing; BAM, through Mr. McNeff, conditioned mediation on a document production the Agreement does not require and proposed another videoconference instead. (Facts ¶¶ 14–16.) Third, invoking Section 17.A(1) did not expand the agreement to arbitrate. The demand letter reserved "all rights," and Section 17.A(4) itself provides that exercising carve-out rights "will not be deemed a waiver." (Facts ¶¶ 3, 14.) A party does not lose a contractual exclusion by complying with the contract's meeting step.

IV. The non-signatory defendants and any severable claim.

Plaintiffs' pending Motion for Leave to File First Amended Complaint adds six defendants: the successor operator of the Salem store, its principals, and BAM's officers. None is a party to the Franchise Agreement. (Facts ¶ 20.) "[A]s a contractual right, arbitration 'may not be invoked by one who is not a party to the agreement and does not otherwise possess the right to compel arbitration.'" *Cade*, 956 P.2d at 1077 (citation omitted); *see Bybee*, 2008 UT 35, ¶ 26 (agreement must "bind[] the party whose submission to arbitration is sought"); *Belnap*, 844 F.3d at 1293–98 (applying Utah law and rejecting the nonsignatory defendants' estoppel and agency theories; they could not compel arbitration under an agreement "they never signed"). None of them has asserted any basis to enforce the arbitration clause; absent one, the claims against them proceed in this Court regardless of the Motion. That matters to the relief BAM seeks: a stay "on just terms," Utah Code § 78B-11-108(7), of claims the Court would try anyway is not just.

If the Court concludes that any claim or sub-claim is arbitrable (Plaintiffs submit none is, but the closest candidates are the LEGO-authorization theory in Counts I, II, and X and the request

in Count XII, ¶ 167(c), for a declaration regarding post-termination obligations under Section 15), the Act supplies the remedy: "If a claim subject to the arbitration is severable, the court may limit the stay to that claim." Utah Code § 78B-11-108(7). *See Peterson & Simpson*, 2009 UT 54, ¶ 22 (describing *Christiansen v. Farmers Ins. Exch.*, 2005 UT 21, 116 P.3d 259, where the contract claim went to arbitration and the severable bad-faith claim proceeded in court). The Court should limit any order to that claim and decline to stay the rest.

CONCLUSION

The parties agreed to arbitrate "except as expressly provided below," and what they provided below excludes claims relating primarily to the Franchisor's asserted possession rights and to intentional interruption of business operations. BAM entered Plaintiffs' store at night, took everything in it, and now says it had the right to. That is the case the parties kept in court. The Court should deny the Motion or, alternatively, limit any order to the claim it finds arbitrable, decline to stay the rest, and decide Plaintiffs' Motion for Leave to File First Amended Complaint.

DATED this 16th day of November, 2026.

Respectfully submitted,

SPENCERWILLSON, PLLC

/s/ Sarah Elizabeth Spencer
Sarah Elizabeth Spencer
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2026, I caused a true and correct copy of the foregoing **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S VERIFIED MOTION TO STAY AND TO COMPEL MEDIATION AND THEN ARBITRATION** to be served on all counsel of record via the Court's electronic filing system:

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