No.

In the Supreme Court of the United States

TECH MAHINDRA (AMERICAS) INC.,
PETITIONER,
v.
LEE WILLIAMS, INDIVIDUALLY AND IN HIS REPRESENTATIVE CAPACITY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When a party fails to obtain the leave of court necessary to file an amended complaint under Rule 15 of the Federal Rules of Civil Procedure, does the *attempted* filing of that amended complaint provide a basis for equitable tolling of a statute of limitations, as the Third and Sixth Circuits have held, or is the attempted filing treated as a legal nullity, as the Second, Fourth, Fifth, and Seventh Circuits have held?

2. When a plaintiff unsuccessfully attempts to pursue claims in an improper forum within the statute of limitations, and later re-files in an appropriate forum after the limitations period has expired, does the so-called "wrong-forum tolling" doctrine allow a court to consider not only the plaintiff's untimely individual claims but also the untimely claims of an entire class whom that plaintiff seeks to represent, notwithstanding the failure of the other class members to pursue their claims diligently?

PARTIES TO THE PROCEEDING

Petitioner here is Tech Mahindra (Americas) Inc., which was the defendant-appellee below.

Respondent here is Lee Williams, who was the plaintiff-appellant below.

RULE 29.6 STATEMENT

Tech Mahindra (Americas) Inc., a New Jersey corporation headquartered in Texas, is a wholly owned subsidiary of Tech Mahindra Ltd., a publicly held company headquartered and incorporated in India.

Mahindra & Mahindra Ltd., a publicly held company headquartered and incorporated in India, owns 10% or more of the stock of Tech Mahindra Ltd.

RELATED PROCEEDINGS

This case arises from the following proceedings:

Williams v. Tech Mahindra (Americas) Inc., No. 24-1434 (3d Cir. Dec. 10, 2024) (vacating dismissal).

Williams v. Tech Mahindra (Americas) Inc., No. 3:20-cv-04684 (D.N.J. Feb. 5, 2024) (granting motion to dismiss).

Williams v. Tech Mahindra (Americas) Inc., Nos. 21-1365 & 21-1394 (3d Cir. June 14, 2023) (vacating dismissal).

Williams v. Tech Mahindra (Americas) Inc., No. 3:20-cv-04684 (D.N.J. Jan. 29, 2021) (granting motion to dismiss).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Tech Mahindra (Americas) Inc. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a–11a) is not reported in the Federal Reporter but is available at 2024 WL 5055834. An earlier opinion of the court of appeals (App., *infra*, 28a–38a) is reported at 70 F.4th 646. The memorandum opinion of the district court (App., *infra*, 12a–27a) is not reported in the Federal Supplement but is available at 2024 WL 415689. An earlier opinion of the district court (App.,

infra, 39a–59a) is not reported in the Federal Supplement but is available at 2021 WL 302929.

JURISDICTION

The judgment of the court of appeals was entered on December 10, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1658(a) of Title 28 of the U.S. Code states: "Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after [December 1, 1990] may not be commenced later than 4 years after the cause of action accrues."

Section 1981(a) of Title 42 provides that: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." Section 1981(b) provides that "the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b); *see* Pub. L. No. 102-166, 105 Stat. 1071 (1991).

INTRODUCTION

In *China Agritech v. Resh*, 584 U.S. 732 (2018), this Court addressed the application of equitable tolling rules to class-action claims. The Court held that such rules, even when they may extend the limitations period on a plaintiff's individual claims, cannot be unthinkingly applied to the claims of an entire class. Doing so, the Court explained, would disserve the purposes of "efficiency and economy" underlying Rule 23, *id.* at 740 (internal quotation marks omitted), and could lead to the "[e]ndless tolling of a statute of limitations" in class actions, *id.* at 744.

In this case, the Third Circuit disregarded *China Agritech*'s warnings and held that the so-called doctrine of "wrong-forum tolling"—an equitable rule that can apply when "a prior timely action is dismissed for improper venue after the applicable statute of limitations has run," *Burnett v. N. Y. Cent. R.R. Co.*, 380 U.S. 424, 430 (1965)—could potentially provide a basis for extending the limitations period not only on a plaintiff's individual claims, but also on class claims. What is more, the Third Circuit held that wrong-forum tolling could be triggered by the mere submission of a proposed amended complaint in an earlier-filed action, even if leave to file that amended complaint was never granted.

The Third Circuit's decision is wrong, and it risks subjecting defendants to hundreds or even thousands of stale claims asserted on behalf of class members who took no action to protect their rights during the limitations period. Allowing would-be lead plaintiffs

to bring class claims after the limitations period has run disserves the purposes of "efficiency and economy" that motivated *China Agritech*, and it also opens the door to the "[e]ndless" extension of limitations periods that *China Agritech* sought to avoid. 584 U.S. at 744.

The Third Circuit also deepened a circuit split by holding that an *attempt* to amend a complaint can toll a plaintiff's statute of limitations, even when leave to file the amended complaint is not granted. *See* App., *infra*, 7a–8a. Until the decision below, only the Sixth Circuit had held that submission of an amended complaint can toll a statute of limitations when leave is not granted. Four other circuits to address the question have reached the opposite result. The majority position is correct, as "[t]he failure to obtain leave results in an amended complaint having no legal effect," and "[w]ithout legal effect, it cannot toll the statute of limitations period." *U.S. ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293, 296 (5th Cir. 2003).

This Court should grant review and hold that (1) the mere submission of an amended complaint cannot toll a statute of limitations unless leave to file has been granted, and (2) regardless, wrong-forum tolling cannot save the claims of absent class members who did not themselves join in the rejected filing. This case is an ideal vehicle, as a ruling in favor of Petitioner on either question would be dispositive of all of Respondent's remaining claims. Absent this Court's intervention, the circuits will remain divided, and class-action defendants will face

uncertainty and potentially massive liability on untimely claims.

STATEMENT OF THE CASE

1. Petitioner is an information-technology company incorporated in New Jersey, with employees and offices across the United States. App., *infra*, 29a. It is a wholly owned subsidiary of an Indian corporation. *Id.* In May 2014, Petitioner hired Respondent, who describes himself as a Caucasian American, to work in its Columbus, Ohio office. *Id.* at 30a. In June 2015, Respondent was placed on a 60-day performance improvement plan, and on August 19, 2015, his employment was terminated. *Id.*

On August 10, 2018, another of Petitioner's former employees, Roderick Grant, filed a putative class action in the District of North Dakota alleging that Petitioner had discriminated against non-South Asians in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act. *Id.* at 30a–31a. Petitioner moved to compel Grant to arbitrate his claims, and on June 5, 2019, Grant moved for leave to amend his complaint to add Respondent as a named plaintiff. *Id.* at 31a. On February 6, 2020, the district court granted Petitioner's motion to compel arbitration and denied Grant's motion for leave to amend. *Id.*

2. Neither Grant nor Respondent sought review of that decision. Instead, two and a half months later (on April 21, 2020), Respondent filed a new putative class action—the suit at issue here—in the District of New Jersey. *Id.* In the new suit, Respondent asserted claims under Section 1981 on behalf of himself and

"[a]ll persons who are not of South Asian race who: (1) sought a position with or within TMA and were not selected, (2) who were employed by TMA but not promoted, and/or (3) were employed by TMA and involuntarily terminated." Complaint & Demand for Jury Trial, *Williams v. Tech Mahindra (Americas) Inc.*, No. 3:20-cv-04684 (D.N.J. Apr. 21, 2020), ECF No. 1. In support, Respondent alleged that Petitioner had engaged in a pattern or practice of racial discrimination against non-South Asian employees and applicants. *Id.*

Petitioner moved to dismiss on several grounds, including that the action—filed four years and eight months after the termination of Respondent's employment—was untimely, and that Respondent had failed to state a claim. *Id.* at 31a–32a.

The district court granted Petitioner's motion. App., *infra*, 39a–59a. The court noted that Section 1981 does not itself contain a statute of limitations, instead borrowing its limitations period from other sources. *Id.* at 50a–51a. Here, the court determined that the longest potentially applicable limitations period is the four-year period applied under 28 U.S.C. § 1658. App., *infra*, 50a–51a. Because Respondent's employment ended on August 19, 2015, the statute of limitations expired, at the latest, on August 19, 2019.

Respondent argued that his claims were timely, even though they were filed in April 2020, because they were tolled during the pendency of the *Grant* action pursuant to this Court's decision in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974),

which held that a timely filed class action tolls the individual claims of putative class members. App., *infra*, 51a. The district court agreed in part, holding that Respondent was a member of the putative class in *Grant* and that his individual claim was therefore timely because it was tolled for the year and a half that *Grant* was pending. *Id.* at 53a–54a. But the court found that under this Court's decision in *China Agritech*, that tolling did not entitle Respondent to assert claims on behalf of other members of a class. *Id.* at 54a. Because Respondent's class claims were filed eight months after his statute of limitations expired, the district court held that they were time barred. *Id.*

Finally, addressing Respondent's individual claim on the merits, the district court held that the claim failed because Respondent had not plausibly alleged that race was a but-for cause of his loss of employment. *Id.* at 57a–58a.

3. Respondent appealed, and the Third Circuit vacated the district court's decision. *Id.* at 28a–38a. As relevant here, the panel held that the district court erred by failing to consider whether Respondent's class claims should be treated as timely under the doctrine of wrong-forum tolling—a form of equitable tolling that can apply when "a prior timely action is dismissed for improper venue after the applicable statute of limitations has run," *Burnett*, 380 U.S. at 430. *See* App., *infra*, 35a. Petitioner argued that *China Agritech* barred the application of wrong-forum tolling to class claims, just as it barred the application of *American Pipe* tolling. *Id.* at 33a. But the panel

disagreed, concluding that "allowing traditional equitable tolling in the class action context does not undermine the force of *China Agritech*'s limitation on *American Pipe*" because a plaintiff seeking equitable tolling "must make individualized showings that he pursued his claim with diligence and that extraordinary circumstances beyond his control prevented a timely and proper assertion of his rights." *Id.* at 34a. The panel then remanded for the district court to consider in the first instance whether Respondent had satisfied the requirements of the wrong-forum tolling doctrine. *Id.* at 38a.[1]

4. On remand, the district court held that wrong-forum tolling did not apply. *Id.* at 12a–27a. The court explained that although Respondent's class claims were still timely when Grant moved for leave to amend his complaint in June 2019 to add Respondent as a named plaintiff, that motion was ultimately denied. *Id.* at 23a. The court found that the denial was significant, observing that "where an underlying motion to amend is denied or withdrawn, the amended complaint is not deemed 'filed' and lacks any legal effect to toll the statute of limitations." *Id.* (citing, *inter alia*, *Angles v. Dollar Tree Stores, Inc.*, 494 F. App'x 326, 329 (4th Cir. 2012); and *U.S. ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293, 296 (5th Cir. 2003)). Because the amended complaint in the

[1] The panel also remanded for the district court to consider whether Respondent had plausibly alleged an individual claim. App., *infra*, 37a–38a. On remand, however, Respondent indicated that he "never intended to pursue his individual claim," *id.* at 26a (internal quotation marks omitted), and the district court dismissed that claim accordingly, *id.* at 27a.

Grant action was never filed, and because Respondent "fail[ed] to otherwise demonstrate that he timely brought his claims in a wrong forum," the court held that "the wrong-forum tolling doctrine is plainly inapplicable." *Id.* at 24a.

5. Respondent again appealed, and the Third Circuit again vacated the district court's decision. *Id.* at 1a–11a. The panel acknowledged that "[c]ases applying wrong-forum tolling typically involve a scenario where a plaintiff initially files his complaint in the wrong forum and then, after re-filing in the proper forum, argues that the initial complaint tolled the applicable statute of limitations." *Id.* at 5a. But the panel saw "little reason . . . to believe the doctrine is available only to the original plaintiff who initiated the first suit, as opposed to a party who was unsuccessfully added in the first suit and subsequently brought his own action." *Id.* at 5a–6a. The panel tried to distinguish cases that had reached a contrary conclusion—that amended complaints lack legal effect unless a motion for leave is granted—on the ground that those decisions "involve[d] situations in which the original party seeks to add claims, not parties, to the complaint." *Id.* at 6a n.2. And the panel suggested that its position was supported by cases involving motions to proceed *in forma pauperis*, as well as cases holding that the filing of a motion for leave can toll a statute of limitations when leave is ultimately granted. *Id.* at 6a–7a.

The panel also reiterated the view expressed by the panel in Respondent's first appeal that applying wrong-forum tolling to his class claims would not run

afoul of *China Agritech*. *Id.* at 9a–10a. Because the motion for leave to amend in *Grant* was filed while Respondent's claims were still timely, the panel reasoned that Respondent had not unduly delayed in announcing his intention to be a class representative. *Id.* at 9a. For similar reasons, the panel concluded that the application of wrong-forum tolling would not lead to the "endless tolling of a statute of limitations" that *China Agritech* had warned against. *Id.* (internal quotation marks and alterations omitted). The panel stated, accordingly, that "wrong-forum tolling is available" to Respondent, though it remanded again for the district court to decide in the first instance "whether the equitable tolling principles support tolling in this case." *Id.* at 10a.

REASONS FOR GRANTING THE PETITION

This case squarely presents two questions that independently warrant this Court's review. First, the Third Circuit deepened a split among the courts of appeals over whether the submission of a proposed amended complaint is sufficient to toll a statute of limitations in circumstances where leave to amend is not granted. The Second, Fourth, Fifth, and Seventh Circuits have all held that such a proposed amendment is insufficient to justify equitable tolling, but in the decision below, the Third Circuit joined the Sixth Circuit in holding that the mere submission of a proposed amended complaint can trigger tolling. And second, the panel compounded its first error—and defied this Court's decision in *China Agritech*—by holding that Respondent's attempt to join the *Grant* action in North Dakota could potentially toll not only

Respondent's own claims, but also the claims of every other member of the class whom Respondent sought to represent. Each of those questions is critically important. If left uncorrected, the Third Circuit's decision will threaten class-action defendants with uncertainty and potentially massive liability long after the applicable statute of limitations has expired.

I. THE CIRCUITS ARE DIVIDED OVER WHETHER THE MERE SUBMISSION OF A PROPOSED AMENDED COMPLAINT CAN TOLL A STATUTE OF LIMITATIONS

A. The Third Circuit Deepened an Existing Split Among Five Other Circuits.

Four circuits have held that where a plaintiff is required to obtain leave of court to amend a complaint, the mere submission of a proposed amended complaint is insufficient to justify tolling if leave is not granted. That position makes sense; without the court's leave (or the opposing party's consent), a proposed amended complaint is never filed and thus has no legal effect. Prior to the decision below, only the Sixth Circuit had taken the contrary view. The Third Circuit has now joined the Sixth, thereby deepening the split and demanding this Court's intervention.

1. The Second, Fourth, Fifth, and Seventh Circuits have all held that an amended complaint does not toll a statute of limitations if leave to file is not granted.

In *U.S. ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293 (5th Cir. 2003), a *qui tam* relator sought to amend his complaint to add an age discrimination claim. *Id.* at 294. Although the relator delivered a copy of his amended complaint to the district court two days before the statute of limitations on his age discrimination claim expired, he failed to request leave to file it, and he did not correct the deficiency until after the limitations period had lapsed. *Id.* The relator argued that his amended complaint had been filed for limitations purposes when it was initially delivered to the court, but the Fifth Circuit disagreed. *See id.* at 296. The court observed that "[t]he failure to obtain leave results in an amended complaint having no legal effect," and it explained that "[w]ithout legal effect, it cannot toll the statute of limitations period." *Id.*

The Fourth Circuit reached the same conclusion in *Angles v. Dollar Tree Stores, Inc.*, 494 F. App'x 326 (4th Cir. 2012). There, a proposed class of employees brought sex discrimination claims outside of Title VII's 90-day limitation period. *See* 42 U.S.C. § 2000e–5(f)(1). The plaintiffs had moved on the ninetieth day for leave to amend their complaint in an earlier-filed lawsuit to add the discrimination claims, but that motion was denied. *See* 494 F. App'x at 327–28. The Fourth Circuit held that Title VII's limitation period was not tolled while the plaintiffs' motion for leave to amend was pending because "an amended complaint is not actually 'filed' until the court grants 'leave' for the amendment." *Id* at 329. As the court explained, a proposed amended complaint that was "never filed . . . lacks the ability to toll the limitations period." *Id.*

The Second Circuit's decision in *Goldblatt v. National Credit Union Administration*, 502 F. App'x 53 (2d Cir. 2012), is of a piece. In that case, investors in a failed credit union sued several private entities allegedly involved in the credit union's collapse. *See Goldblatt v. Nat'l Credit Union Admin.*, No. 3:11-cv-334, 2011 WL 4101470, at *1–2 (D. Conn. Sept. 14, 2011). The investors also separately filed administrative claims with the National Credit Union Administration (NCUA) alleging that the NCUA had been negligent in overseeing the failed credit union. *Id.* at *1. After the NCUA denied their claims, the investors had six months to sue the agency under the Federal Tort Claims Act. *See id.* at *2–3; 28 U.S.C. § 2401(b). The investors waited nearly seven months to sue, however, then argued that the FTCA's limitation period had been tolled by their unsuccessful effort to amend their lawsuit against the private entities to add the NCUA as a defendant. *See Goldblatt*, 2011 WL 4101470, at *3. The Second Circuit rejected that argument, holding that "[t]he unsuccessful effort to add the NCUA as a party in the other case did not toll the limitations period." *Goldblatt*, 502 F. App'x at 55.[2]

Finally, the Seventh Circuit has likewise held that statutes of limitations are not tolled by unsuccessful motions for leave to amend. In *Warren v. Vazquez*, No. 21-2017, 2023 WL 2388354 (7th Cir. Mar. 7, 2023), the

[2] The Third Circuit mistakenly believed that its decision was consistent with the Second Circuit's opinion in *Rothman v. Gregor*, 220 F.3d 81 (2d Cir. 2000). *See* App., *infra*, 6a. As discussed below, however, *Rothman* dealt with a motion for leave that was ultimately granted. *See* pp. 20–21, *infra*.

plaintiff moved to amend a complaint in an earlier-filed suit to add a claim against a new defendant. The motion was filed the day before the applicable limitations period expired, and it was denied six days later. *See id.* at *1. The day after the motion for leave was denied—six days after the limitations period expired—the plaintiff filed a new suit against the defendant, and the district court dismissed it as untimely. *Id.* The Seventh Circuit affirmed, holding that any "tolling effect" of the motion for leave to amend "was wiped away when [the district court] denied the motion." *Id.* "Thus, by the time [the plaintiff] had filed the separate suit that led to this appeal, it was untimely by six days." *Id.*[3]

2. Until the decision below, only the Sixth Circuit had taken the position that the bare submission of an amended complaint can toll a statute of limitations even where leave is not granted. In *Hughes v. Region VII Area Agency on Aging*, 542 F.3d 169 (6th Cir. 2008), the plaintiff moved to amend an earlier-filed complaint to add a claim against the defendants under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.* The plaintiff filed the motion for leave to amend before the limitations period on the FLSA claim had expired, but the district court subsequently denied the motion because the plaintiff had failed to comply with a local rule. *Hughes*, 542 F.3d at 175–76. After the statute of limitations had passed, the

[3] The Third Circuit was also incorrect to rely on the Seventh Circuit's decision in *Moore v. Indiana*, 999 F.2d 1125 (7th Cir. 1993). *See* App., *infra*, 7a. Like *Rothman*, *Moore* contemplated a circumstance in which the plaintiff's motion for leave was ultimately granted. *See* p. 20–21, *infra*.

plaintiff complied with the local rule and filed a new motion for leave to amend, which was granted, but the court later found that the FLSA claim was untimely because it had not been filed before the end of the limitations period. *Id.* at 176. The Sixth Circuit reversed, holding that, for equitable tolling purposes, the plaintiff had commenced her FLSA claim when she initially moved for leave to amend within the limitations period, even though that motion was denied. *See id.* at 188–89.

B. The Third Circuit's Decision Is Wrong.

In holding that Grant's unsuccessful motion to add Respondent to the North Dakota litigation provides a potential basis for tolling the statute of limitations on Respondent's class claims, the Third Circuit confused the filing of a complaint with the submission of a proposed amended complaint, and it mistakenly relied on cases discussing the legal effect of motions for leave to amend that are granted.

The distinction between the filing of a complaint and the submission of a proposed amended complaint is critical to this case. The filing of a complaint is governed by Rule 5 of the Federal Rules of Civil Procedure, which provides that a paper "is filed by delivering it" to the court and that "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice." Fed. R. Civ. P. 5(d)(2), (4). Under Rule 5, complaints "are considered filed when they are placed in the possession of the clerk of the district court,

which simply means delivery to the appropriate office at the courthouse." 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1153 (4th ed. 2024); *see Angles*, 494 F. App'x at 329. That is true even if the complaint is defective. *See Mathews*, 332 F.3d at 296 ("[A] technically deficient pleading is still considered 'filed' when it is placed in the possession of the court.").

Amended complaints, by contrast, are governed by Rule 15, which provides that, after the time to amend as a matter of course has passed, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Whereas a complaint may be filed notwithstanding a technical deficiency, "[t]he failure to obtain leave results in an amended complaint having no legal effect." *Mathews*, 332 F.3d at 296; *see Murray v. Archambo*, 132 F.3d 609, 612 (10th Cir. 1998) ("Generally speaking, an amendment that has been filed or served without leave of court or consent of the defendants is without legal effect."); *Hoover v. Blue Cross & Blue Shield of Ala.*, 855 F.2d 1538, 1544 (11th Cir. 1988) ("In general, if an amendment that cannot be made as of right is served without obtaining the court's leave or the opposing party's consent, it is without legal effect . . . ." (quoting 6 *Federal Practice & Procedure* § 1485 (1971)). Crucially here, if an amended complaint does not have "legal effect, it cannot toll the statute of limitations period." *Mathews*, 332 F.3d at 296.

The distinction between complaints and proposed amendments is not an empty formalism. By requiring

that plaintiffs obtain consent or leave to amend their complaints, Rule 15(a)(2) guards against "bad faith, undue delay, prejudice to the opposing party, and futility of amendment." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). The rule adopted by the Second, Fourth, Fifth, and Seventh Circuits advances those purposes by incentivizing strict compliance with Rule 15(a)(2)'s requirements.

The majority rule also promotes the efficient management of litigation by eliminating any ambiguity as to which complaint is operative. *See* Fed. R. Civ. P. 1 (one purpose of the Rules of Civil Procedure is "to secure the just, speedy, and inexpensive determination of every action and proceeding"). The Tenth Circuit's decision in *Murray v. Archambo* illustrates the point. There the panel held that the district court had erred in dismissing an entire action based on a motion to dismiss an amended complaint for which neither leave nor consent had ever been granted. *See* 132 F.3d at 611–12. Had the district court followed the clear rule that "an amendment that has been filed or served without leave of court or consent of the defendants is without legal effect," *id.* at 612, the erroneous dismissal and subsequent appeal could have been avoided.

In this case, the Third Circuit erred by analyzing the proposed amendment in the *Grant* action as if it were a complaint. The panel rested its decision on cases like *Burnett v. New York Central Railroad Co.*, 380 U.S. 424 (1965), in which this Court held that a statute of limitations could be tolled by an action that was timely filed in the wrong forum. *See* App., *infra*,

5a. And the panel thought that there was "little reason . . . to believe the doctrine" of wrong-forum tolling "is available only to the original plaintiff who initiated the first suit, as opposed to a party who was unsuccessfully added in the first suit and subsequently brought his own action." *Id.* at 5a–6a. The Third Circuit failed, however, to grapple with the basic distinction just described: a complaint is filed when it is delivered to the court, whereas a proposed amendment is a "nullity" unless leave to file has been granted. *See Hoover*, 855 F.2d at 1544.

In a footnote, the panel attempted to distinguish contrary decisions on the ground that "they involve situations in which the original party seeks to add claims, not parties, to the complaint." App., *infra*, 6a. n.2. That description of the case law cannot account for *Goldblatt* or *Warren*, which both involved attempts to amend to add a party. *See* pp. 13–14, *supra*. And in any event, the difference that the panel identified has no legal relevance. The panel viewed the distinction as "important because when a new party first asserts his claim, he is showing a desire to begin his case and thereby toll whatever statutes of limitation would otherwise apply to the claim." App., *infra*, 6a. n.2. (internal quotation marks and alterations omitted). The same can be said, however, of an existing plaintiff who attempts to assert a new claim against an existing defendant. If anything, existing plaintiffs often show more diligence than new plaintiffs, particularly where the information that they seek to include in their amended complaints comes from further investigation and discovery after filing suit. Nevertheless, courts that have adopted the

majority rule have correctly recognized that the policies underlying Rule 15 preclude treating such plaintiffs' unapproved proposed amendments as sufficient to toll a statute of limitations. *See, e.g.*, *Mathews*, 332 F.3d at 296; *Angles*, 494 F. App'x at 327–29. The Third Circuit should have done the same here.

The panel also erred in equating motions for leave to amend with motions to proceed *in forma pauperis*. *See* App., *infra*, 7a (citing *Rodgers ex rel. Jones v. Bowen*, 790 F.2d 1550, 1551–53 (11th Cir. 1986), and *Jarrett v. US Sprint Commc'ns Co.*, 22 F.3d 256, 259 (10th Cir. 1994)). Contrary to the decision below, a motion to proceed *in forma pauperis* is not "a prerequisite to filing a complaint." App., *infra*, 7a. It is instead a prerequisite to the waiver of filing fees. *See* 28 U.S.C. § 1915(a)(1). If an *in forma pauperis* motion is denied, the result is not that the complaint becomes a "nullity," s*ee Hoover*, 855 F.2d at 1544, but that the plaintiff must pay the fee. The failure to pay a fee, moreover, does not prevent a complaint from being filed. As explained in *Rodgers*, on which the Third Circuit relied, "a complaint is filed for statute of limitations purposes when it is in the actual or constructive possession of the clerk, regardless of the untimely payment of the required filing fee." 790 F.2d at 1552 (internal quotation marks and citation omitted). A proposed amendment, by contrast, is not filed until leave is granted or the opposing party consents. *See* pp. 16–17, *supra*.

Finally, the Third Circuit mistakenly relied on cases that discussed circumstances in which a motion

for leave to amend is granted. The panel quoted *Rothman v. Gregor*, 220 F.3d 81, 96 (2d Cir. 2000), for the proposition that, "[w]hen a plaintiff seeks to add a new defendant in an existing action, the date of the filing of the motion to amend constitutes the date the action was commenced for statute of limitations purposes." App., *infra*, 6a. And it quoted *Moore v. Indiana*, 999 F.2d 1125, 1131 (7th Cir. 1993), for the proposition that "the submission of a motion for leave to amend, properly accompanied by the proposed amended complaint that provides notice of the substance of those amendments, tolls the statute of limitations, even though technically the amended complaint will not be filed until the court rules on the motion." App., *infra*, 7a. Both *Rothman* and *Moore*, however, were discussing circumstances in which leave is ultimately granted. In *Rothman*, the question was whether the plaintiffs' motion for leave to amend—which the district court granted, *see Herzog v. GT Interactive Software Corp.*, No. 98-cv-0085, 1999 WL 1072500, at *4 (S.D.N.Y. Nov. 29, 1999)—was filed after the relevant limitations period had lapsed, *see* 220 F.3d at 96. And in *Moore*, the question was whether the plaintiff's proposed amended complaint—even if granted—related back to an earlier filing. *See* 999 F.2d at 1131. Neither case contemplated a scenario like the one here, in which a motion for leave is filed within the limitations period but is later denied. And as discussed above, *see* p. 13–14, *supra*, both the Second and Seventh Circuits have held that such unsuccessful motions provide no basis for tolling the relevant limitations period. *See Goldblatt*, 502 F. App'x at 55; *Warren*, 2023 WL 2388354, at *1.

II. THE THIRD CIRCUIT'S APPLICATION OF WRONG-FORUM TOLLING TO CLASS CLAIMS DEFIES THIS COURT'S DECISION IN *CHINA AGRITECH*

Even if the mere submission of a proposed amended complaint could sometimes justify equitable tolling, Respondent's claims here would not be eligible for such tolling for the additional reason that they seek relief on behalf of an entire *class*, not merely the individual plaintiff named in the proposed amended complaint. This Court's decision in *China Agritech v. Resh*, 584 U.S. 732 (2018), makes clear that equitable tolling of class claims in such circumstances is inconsistent with the policies behind both statutes of limitations generally and Rule 23 specifically. The Third Circuit's contrary determination flouts this Court's decision and threatens to subject defendants to massive liability on stale claims without any countervailing equitable justification.

A. *China Agritech* Makes Clear That Equitable Tolling Ordinarily Cannot Be Used to Assert Untimely Claims on a Classwide Basis.

In *China Agritech*, the Court considered the application of another form of equitable tolling—*American Pipe* tolling—to class claims. Under *American Pipe*, "the timely filing of a class action tolls the applicable statute of limitations for all persons encompassed by the class complaint," *China Agritech*, 584 U.S. at 735, and unnamed members of a failed class may file otherwise-untimely claims after class

certification has been denied or the failed class action has been dismissed, *see Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538 (1974); *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983). Following *American Pipe*, some courts of appeals—including the Third Circuit—had applied the decision's tolling rule not only to subsequent individual claims brought by members of a failed class, but also to subsequent class claims. *See China Agritech*, 584 U.S. at 738–39. In *China Agritech,* this Court rejected that practice, holding that *American Pipe* does not "permit plaintiffs to exhume failed class actions by filing new, untimely class claims." *Id.* at 748.

In reaching that conclusion, the Court explained that "[o]rdinarily, to benefit from equitable tolling, plaintiffs must demonstrate that they have been diligent in pursuit of their claims." *Id.* at 743; *see Menominee Indian Tribe of Wisconsin v. United States*, 577 U.S. 250, 255 (2016) ("[A] litigant is entitled to equitable tolling of a statute of limitations only if the litigant establishes two elements: '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.'" (quoting *Holland v. Florida*, 560 U.S. 631, 649 (2010))). The Court found that diligence requirement satisfied with respect to the individual claims of unnamed class members, because they had "reasonably relied on the class representative, who sued timely, to protect their interests in th[ose] individual claims." *China Agritech*, 584 U.S. at 743. The same was not true, however, with respect to a plaintiff who sought to file untimely *class-wide* claims based on the earlier-filed

suit. As the Court explained, "[a] would-be class representative who commences suit after expiration of the limitation period . . . can hardly qualify as diligent in asserting claims and pursuing relief." *Id.*

The Court situated its equitable analysis within the context of class actions and the purposes that Rule 23 seeks to promote. *Cf. Holland*, 560 U.S. at 649–50 (noting the context-dependent nature of "the exercise of a court's equity powers" (internal quotation marks and alteration omitted)). The Court explained that the class-action device was intended to promote "the efficiency and economy of litigation," *China Agritech*, 584 U.S. at 739 (quoting *American Pipe*, 414 U.S. at 553), and it reasoned that the "economy of litigation favors delaying [individual] claims until after a class-certification denial." *Id.* at 740. "If certification is granted," the Court observed, "the claims will proceed as a class and there would be no need for the assertion of any claim individually." *Id.* "If certification is denied, only then would it be necessary to pursue claims individually." *Id.*

"With class claims," by contrast, the Court determined that equitable considerations demanded a different result, because "efficiency favors early assertion of competing class representative claims." *Id.* "If class treatment is appropriate, and all would-be representatives have come forward, the district court can select the best plaintiff with knowledge of the full array of potential class representatives and class counsel." *Id.* If, however, "the class mechanism is not a viable option for the claims, the decision denying certification will be made at the outset of the

case, litigated once for all would-be class representatives." *Id.*

The Court also emphasized the practical problems that would arise if equitable tolling were permitted to apply to class claims. Statutes of limitations could "be extended time and again; as each class is denied certification, a new named plaintiff could file a class complaint that resuscitates the litigation." *Id.* at 743. That would permit "lawyers seeking to represent a plaintiff class [to] extend the statute of limitations almost indefinitely until they find a district court judge who is willing to certify the class." *Id.* (quoting *Yang v. Odom*, 392 F.3d 97, 113 (3d Cir. 2004) (Alito, J., concurring in part and dissenting in part)). Such "[e]ndless tolling of a statute of limitations," the Court held, "is not a result envisioned by *American Pipe*," *id.* at 744, and is not consistent with the principles motivating that decision.

The upshot of *China Agritech* is that, for equitable tolling purposes, a plaintiff's diligence in relying on a timely filed action may justify the tolling of that plaintiff's individual claims. When it comes to class claims, however, such diligence—even when attributable to every member of a class—is insufficient to overcome the need to encourage early class filings and minimize the risk of class-action stacking. It is of course possible that class claims could be equitably tolled if a defendant engaged in misconduct or deceived class members regarding the applicable limitations period. *See Fedance v. Harris*, 1 F.4th 1278, 1285 (11th Cir. 2021) (equitable tolling may be available "when a defendant makes

affirmative acts or misrepresentations which are calculated to, and in fact do, prevent the discovery of the cause of action" (internal quotation marks omitted)). But Respondent does not (and could not) make any allegation that Petitioner engaged in such misconduct here.[4] And where the only justification for equitable tolling is a plaintiff's diligence, *China Agritech* makes clear that the statute of limitations for class claims cannot be extended.

B. The Third Circuit Identified No Sound Basis for Disregarding *China Agritech*.

The concerns that *China Agritech* raised with respect to *American Pipe*'s equitable tolling rule apply with equal or greater force to the so-called doctrine of "wrong-forum tolling," and they compel the conclusion that the latter, like the former, cannot extend the statute of limitations on class claims.

1. This Court has recognized that the statute of limitations on a plaintiff's individual claims can sometimes be tolled if the plaintiff mistakenly files a timely action in the wrong venue. In *Burnett v. New*

[4] Petitioner also did not induce Respondent to attempt to join the *Grant* action instead of filing his class claims in a proper forum. To the contrary, Petitioner moved to compel the named plaintiff in *Grant* to arbitrate in February 2019, thereby putting Respondent on notice that he should file his class claims elsewhere. *See* Defendant Tech Mahindra (Americas) Inc.'s Motion to Compel Individual Arbitration, *Grant v. Tech Mahindra (Americas), Inc.*, No. 3:18-cv-00171 (D.N.D. Feb. 26, 2019), ECF No. 40. Respondent nevertheless attempted to join the *Grant* action.

York Central Railroad Co., 380 U.S. 424 (1965), the Court considered a Federal Employers' Liability Act (FELA) claim brought by a railroad worker in federal court after the statute of limitations on his claim had expired, *id.* at 424–25. The plaintiff had previously filed a timely FELA action in state court, but that action was dismissed for improper venue. *Id.* at 425. In his federal action, the plaintiff argued that the statute of limitations on his FELA claim was tolled while his state-court action was pending. The district court and the court of appeals disagreed. *Id.*

This Court reversed, holding that "the FELA limitation period is not totally inflexible, but, under appropriate circumstances, it may be extended." *Id.* at 427. The Court acknowledged that "[s]tatutes of limitations are primarily designed to assure fairness to defendants," but it reasoned that this policy could give way "where the interests of justice require vindication of the plaintiff's rights." *Id.* at 428. Noting that the defendant railroad had previously "waived objections to venue so that suits by nonresidents . . . could proceed in state courts," *id.* at 429, thereby leading the plaintiff to believe that the state-court action would be sufficient, the Court reasoned that the plaintiff could not be said to have "sle[pt] on his rights," *id.* Accordingly, the Court held that tolling was warranted in the circumstances before it. *Id.* at 434–35.

2. In this case, the Third Circuit purported to follow *Burnett* by holding that wrong-forum tolling can apply not only to individual claims, but also to class claims. The logic of *Burnett*, however, has no

application in the class-action context. *Burnett* was grounded in concerns over "the unfairness of barring a plaintiff's action solely because a prior timely action is dismissed for improper venue after the applicable statute of limitations has run." *Id.* at 430. Where a plaintiff has shown diligence by pursuing his individual claim, the defendant was put on notice of that claim within the limitations period, and the defendant bears some responsibility for the plaintiff's mistaken choice of venue, *Burnett* held that equity favors giving the plaintiff an opportunity to vindicate his substantive rights notwithstanding the defendant's interest in repose. *See id.* at 434 ("Congress would not wish a plaintiff deprived of his rights when no policy underlying a statute of limitations is served in doing so."). Where, by contrast, a plaintiff seeks to vindicate the rights of absent class members—who did not exercise similar diligence by filing their claims or serving the defendant within the limitations period—*Burnett* offers no support.

China Agritech, meanwhile, makes clear that such untimely class claims are barred. Indeed, *China Agritech* held that even where every member of a putative class could be presumed to have exercised diligence by relying on an earlier, timely filed class action, such cumulative diligence is insufficient to outweigh the defendant's interest in repose or the goals of "efficiency and economy of litigation" underlying Rule 23. 584 U.S. at 748. While the diligence of individual plaintiffs may justify the equitable tolling of those plaintiffs' individual claims, it cannot justify the tolling of class claims. *See id.* It

follows *a fortiori* that class claims as a whole cannot be tolled based on the diligence of a single plaintiff who files in the wrong forum.

3. If left uncorrected, the Third Circuit's rule will carve out an exception from *China Agritech* that privileges wrong-forum filings over class complaints that fail for other reasons. Where class certification is denied or a class complaint is dismissed on grounds unrelated to forum, *China Agritech* will continue to dictate that only individual claims may be tolled. Where a class complaint is dismissed on forum grounds, however, courts in the Third Circuit will hold that class claims can be tolled as well. No sound justification exists for such preferential treatment.[5]

On the contrary, tolling class claims under the wrong-forum doctrine poses just as much of a threat to the principles of judicial administration that the Court relied on in *China Agritech* as tolling class claims under *American Pipe* would have. Most obviously, wrong-forum tolling discourages the "early assertion of competing class representative claims," 584 U.S. at 740, by enabling plaintiffs like Respondent

[5] There is nothing inequitable about declining to toll class claims based on a defect (such as filing in the wrong forum) that is specific to the named plaintiff. *China Agritech* considered a similar argument and rejected it, explaining that *American Pipe* tolling does not apply to future class claims regardless of whether the timely class action was dismissed "for a reason that bears on the suitability of the claims for class treatment" or "because of the deficiencies of the lead plaintiff as class representative." *China Agritech*, 584 U.S. at 744 n.5 (internal quotation marks omitted).

to seek lead-plaintiff status long after the relevant statute of limitations has expired.

Consider the delay that the Third Circuit's position may allow here if this Court does not intervene. Respondent's employment ended on August 19, 2015, so the statute of limitations on his claims expired on August 19, 2019 (at the latest). *See* App., *infra*, 21a. The named plaintiff in *Grant*, whose employment was allegedly terminated around the same time as Respondent's, filed his putative class action in August 2018, three years after Respondent's claims accrued. *See* Complaint & Demand for Jury Trial, *Grant v. Tech Mahindra (Americas), Inc.*, No. 3:18-cv-00171 (D.N.D. Aug. 10, 2018), ECF No. 1. Respondent then waited ten months to announce his intention to be a class representative through Grant's motion for leave to amend, which was filed in June 2019, two months before the statute of limitations expired on Respondent's claims. *See* App., *infra*, 3a. That motion was denied in February 2020, and Respondent then waited until April 2020 to file the underlying action, on the last possible day that the Third Circuit's rule would permit. *Id.*

Under *China Agritech*, Respondent should have sought lead-plaintiff status as soon as possible after his employment was terminated in August 2015. And even if Respondent had sought to join as a named plaintiff at the beginning of the *Grant* action—which, while filed late in the limitations period, was still filed a year before the limitations period on Respondent's claims expired—he likely would have received a ruling on the motion for leave to amend with ample

time to refile in a different forum. *Cf. China Agritech*, 584 U.S. at 740 n.2 ("Encouraging early class filings will help ensure sufficient time remains under the statute of limitations, in the event that certification is denied for one of the actions or a portion of the class."). Instead, Respondent filed the underlying action nearly five years after his employment was allegedly terminated, and Petitioner now faces the prospect of defending against claims for an entire class based on events that allegedly took place nearly a decade ago.

The Third Circuit's decision will also open the door to the "[e]ndless tolling of a statute of limitations" that *China Agritech* warned against. *Id.* at 744. If Respondent is permitted to bring his class claims in the underlying action, then an unnamed class member could request to join as a lead plaintiff, just as Respondent did in *Grant*. If the district court denies the class member's request, then that class member could seek to refile his class claims in a different forum. At that point, another unnamed class member could request to join as a lead plaintiff, and the cycle could repeat. This Court should intervene, as it did in *China Agritech*, to ensure that plaintiffs do not "stack one class action on top of another and continue to toll the statute of limitations indefinitely." *Id.* at 738 (internal quotation marks omitted).

III. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE THESE IMPORTANT QUESTIONS

This case is an ideal vehicle for resolving the questions presented, as a ruling in favor of Petitioner

on either one would dispose of all of Respondent's remaining claims.

Both questions are also critically important. Statutes of limitations serve several purposes, but chief among them is to "embody a policy of repose, designed to protect defendants." *Lozano v. Montoya Alvarez*, 572 U.S. 1, 14 (2014) (internal quotation marks omitted). If the plaintiffs' bar can obtain tolling of the statute of limitations by merely submitting an unapproved motion for leave to amend in an existing suit in an improper forum, that protection will mean little. Rather than being permitted "to rest assured that the claim is no longer subject to court action" once the limitations period has run, *Witt v. Metro. Life Ins. Co.*, 772 F.3d 1269, 1280 (11th Cir. 2014), a defendant will be left perpetually in suspense about the potential imposition of liability for claims based on events that occurred (or not) in the distant past.

Those concerns are heightened in the class-action context, where defendants "run the risk of potentially ruinous liability." *Microsoft Corp. v. Baker*, 582 U.S. 23, 42 (2017) (internal quotation marks omitted). If an individual plaintiff's bare attempt to amend a complaint in the wrong forum can toll the statute of limitations for an entire class, defendants will be unable to accurately assess their outstanding litigation risk because of the difficulty of evaluating hundreds or even thousands of stale claims pressed on behalf of unnamed (and potentially unknown) class members. Statutes of limitation exist to prevent just this kind of "intolerable uncertainty" because "[d]efendants cannot calculate their contingent

liabilities, not knowing with confidence when their delicts lie in repose." *Agency Holding Corp. v. Malley-Duff & Assocs.*, 483 U.S. 143, 150 (1987) (internal quotation marks omitted).

This Court's decision in *China Agritech* properly recognized those principles, but the decision below provides an easy roadmap for circumventing it—and does so, moreover, based on a proposed amended complaint that would have been given no legal effect at all in four other circuits. This Court should grant review and reverse to restore predictability and fairness to class-action practice in the Third Circuit, and to ensure uniformity among the courts of appeals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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March 10, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED DECEMBER 10, 2024

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1434

LEE WILLIAMS, INDIVIDUALLY AND
IN HIS REPRESENTATIVE CAPACITY,

Appellant,

v.

TECH MAHINDRA (AMERICAS) INC.

On Appeal from the United States District Court
for the District of New Jersey
(No. 3-20-cv-04684)
U.S. District Judge: Hon. Michael A. Shipp

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 2, 2024

Before: SHWARTZ, MATEY, and McKEE, Circuit Judges.

Filed December 10, 2024

Appendix A

OPINION*

SHWARTZ, *Circuit Judge.*

Lee Williams appeals the District Court's order granting Tech Mahindra (Americas) Inc.'s ("TMA") motion to dismiss on the grounds that he filed class claims outside the statute of limitations. Because the doctrine of wrong-forum tolling is available to Williams, we will vacate the order and remand for the District Court to consider whether equitable principles toll the statute of limitations in this case.

I

A

We have previously recounted the facts of this case and recite only those relevant to this appeal. *See Williams v. Tech Mahindra (Ams.) Inc.*, 70 F.4th 646 (3d Cir. 2023). Williams, a former TMA employee, contends that TMA engaged in discriminatory employment practices against non-South Asians that resulted in his August 19, 2015, termination. *Id.* at 649-50. In August 2018, before Williams took any legal action, another former TMA employee, Roderick Grant, filed a putative class action making similar discrimination allegations against TMA in the United States District Court for the District of North Dakota. *Id.* at 649. In that action, TMA

* This disposition is not an opinion of the full court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

> moved to dismiss Grant's claims, but it withdrew that motion to seek to compel Grant to arbitrate. Grant opposed that motion and, on June 5, 2019, sought leave to amend his complaint to add Williams as a named plaintiff. On February 6, 2020, the district court in North Dakota granted [TMA]'s motion to compel individual arbitration, denied Grant's motion for leave to amend, and stayed the case.

Id. (citing *Grant v. Tech Mahindra (Ams.), Inc.*, No. 3:18-cv-171, 2020 U.S. Dist. LEXIS 19957, 2020 WL 589529, at *1 (D.N.D. Feb. 6, 2020)). Thereafter,

> Williams [] filed this putative class action [in the District of New Jersey] on April 21, 2020 - approximately four years and eight months after his employment with [TMA] ended . . . . [H]e brought a single claim for disparate treatment on the basis of race under 42 U.S.C. § 1981, seeking class-wide relief.

Id. at 649. TMA moved to dismiss Williams's New Jersey complaint, arguing that he filed it after the four-year statute of limitations expired. *Id.* at 650. In response, Williams asserted that two types of tolling applied: wrong-forum tolling and tolling principles set forth in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 94 S. Ct. 756, 38 L. Ed. 2d 713 (1974). *Id.* The District Court held that *American Pipe* tolling was unavailable under *China Agritech, Inc. v. Resh*, 584 U.S. 732, 138 S. Ct. 1800, 201 L. Ed. 2d 123 (2018), and dismissed the case

without considering whether wrong-forum tolling applied to Williams's class action claims. *Id.* We affirmed the District Court's conclusion that *American Pipe* tolling was unavailable but vacated and remanded for the District Court to consider "whether wrong-forum tolling applies." *Id.* at 649, 653.

On remand, the District Court held that because Grant's motion for leave to amend was denied in the District of North Dakota, the amended complaint was never deemed filed, and therefore wrong-forum tolling was unavailable for the purpose of tolling the limitations period for Williams's New Jersey complaint. *Williams v. Tech Mahindra (Ams.) Inc.*, No. 3:20-cv-4684, 2024 U.S. Dist. LEXIS 19781, 2024 WL 415689, at *5-6 (D.N.J. Feb. 5, 2024).

Williams appeals.

II[1]

This appeal requires us to answer a single question: does a motion for leave to file an amended complaint to add a plaintiff, accompanied by a proposed amended complaint, constitute a "filing" by the proposed plaintiff sufficient to permit that plaintiff to rely on wrong-forum tolling, even if that motion is denied? We hold it does.

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1. The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1332(d). We have jurisdiction under 28 U.S.C. § 1291.

We review de novo the dismissal of a complaint, including the decision that tolling is inapplicable as a matter of law. *Blake v. JP Morgan Chase Bank NA*, 927 F.3d 701, 705, 708 (3d Cir. 2019).

Appendix A

Wrong-forum tolling is available where a "plaintiff has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum." *Doherty v. Teamsters Pension Tr. Fund of Phila. & Vicinity*, 16 F.3d 1386, 1393 (3d Cir. 1994), *as amended* (Mar. 17, 1994) (internal quotation marks omitted). It therefore benefits a plaintiff who "did not sleep on his rights" but nevertheless opted not to file a concurrent, duplicative action in a second court "solely because he felt that [the other] action was sufficient." *Burnett v. New York C. R. Co.*, 380 U.S. 424, 429, 85 S. Ct. 1050, 13 L. Ed. 2d 941 (1965); *cf. Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990) ("We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period[.]").

Cases applying wrong-forum tolling typically involve a scenario where a plaintiff initially files his complaint in the wrong forum and then, after re-filing in the proper forum, argues that the initial complaint tolled the applicable statute of limitations. *See, e.g., Island Insteel Sys., Inc. v. Waters*, 296 F.3d 200, 218, 44 V.I. 389 (3d Cir. 2002) ("[T]he statute of limitations for a second action may be equitably tolled by the filing of a first action dismissed for lack of personal jurisdiction[.]"). The purpose of wrong-forum tolling, among other things, is to protect plaintiffs who filed complaints and do not want to file duplicative actions elsewhere. There is little reason, then, to believe the doctrine is available only to the original plaintiff who initiated the first suit, as opposed to a party who was unsuccessfully added in the first suit and subsequently

brought his own action.[2] *See Burnett*, 380 U.S. at 433-35 (applying wrong-forum tolling to avoid punishing plaintiffs for "procedural anomal[ies]"); *Island Insteel*, 296 F.3d at 217 (discussing wrong-forum tolling as designed to "avoid[] the unfairness that would occur if a plaintiff who diligently and mistakenly prosecuted his claim in a court that lacked personal jurisdiction were barred under the statute of limitations from promptly refiling in a proper jurisdiction"); *cf. Rothman v. Gregor*, 220 F.3d 81, 96 (2d Cir. 2000) ("When a plaintiff seeks to add a new defendant in an existing action, the date of the filing of the motion to amend constitutes the date the action was commenced for statute of limitations purposes." (internal quotation marks omitted)). Further, in other contexts, where the

2. Cases that deem a denied motion for leave to file an amended complaint as having no legal effect to toll a statute of limitations are distinguishable because they involve situations in which the original party seeks to add claims, not parties, to the complaint. *See, e.g., United States ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293, 296 (5th Cir. 2003). This distinction between whether a proposed amended complaint seeks to add a new party or claim is important because when a new party first asserts his claim, he is "show[ing] a desire . . . to begin his case and thereby toll whatever statutes of limitation would otherwise apply" to the claim, which "itself shows the proper diligence on the part of the plaintiff which such statutes of limitation were intended to [e]nsure." *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467, 82 S. Ct. 913, 8 L. Ed. 2d 39 (1962). Here, Williams's submission of the proposed amended complaint put TMA on notice of his claim, consistent with both statute of limitations and equitable tolling principles. *See Island Insteel*, 296 F.3d at 218 (explaining that the application of equitable tolling often turns on a defendant's notice of plaintiff's claim).

filing of a motion is a prerequisite to filing a complaint, such motion filing may toll the statute of limitations, even where the motion is ultimately denied.[3] *See Rodgers ex rel. Jones v. Bowen*, 790 F.2d 1550, 1551-53 (11th Cir. 1986) (holding that an application to proceed in forma pauperis ("IFP") tolled the statute of limitations, even where that application was subsequently denied); *Jarrett v. US Sprint Commc'ns Co.*, 22 F.3d 256, 259 (10th Cir. 1994) (holding that a denied IFP petition tolls a statute of limitations to allow a plaintiff a reasonable amount of time to pay the filing fee after the petition's denial); *see also Moore v. Indiana*, 999 F.2d 1125, 1131 (7th Cir. 1993) (observing that because a party does not control when a court will rule on a motion for leave to file an amended complaint, "the submission of a motion for leave to amend, properly accompanied by the proposed amended complaint that provides notice of the substance of those amendments, tolls the statute of limitations, even though technically the amended complaint will not be filed until the court rules on the motion.").

Assuming a plaintiff needs to have "filed" his claims to be eligible for wrong-forum tolling, *see Island Insteel*,

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3. The cases TMA cites, that stand for the proposition that complaints dismissed without prejudice do not toll the statute of limitations, are inapposite. *See, e.g., Brennan v. Kulick*, 407 F.3d 603, 606 (3d Cir. 2005). It is the precise nature of equitable tolling that provides an exception, in limited circumstances, to ordinary tolling rules, and if a dismissed complaint could never toll a statute of limitations, then wrong-forum tolling would be a nullity. *See Island Insteel*, 296 F.3d at 217 (premising wrong-forum tolling on "a procedurally defective first action," i.e., an action not dismissed on the merits).

296 F.3d at 203 (discussing a plaintiff's "filing" of a complaint), construing Williams's proposed amended complaint as a "filing" for wrong-forum tolling purposes accords with that term's definitions because the document was delivered to the court and entered on the docket. *See Allen v. Atlas Box & Crating Co.*, 59 F.4th 145, 151 (4th Cir. 2023) (holding that under Fed. R. Civ. P. 3 and 5, "an action under federal law is commenced for limitations purposes when a plaintiff delivers a complaint to the district court clerk—regardless of whether the plaintiff pays the filing fee, neglects to do so, or asks to be excused from the fee requirement"); *Escobedo v. Applebees*, 787 F.3d 1226, 1233 (9th Cir. 2015) (holding that, under Fed. R. Civ. P. 3, "a complaint is filed 'by delivering it . . . to the clerk.' No justification exists to alter the definition of 'filing' simply because a complaint is submitted to the clerk's office along with an IFP application." (quoting Fed. R. Civ. P. 5(d)(2)) (alteration in original)); *United States ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293, 296 (5th Cir. 2003) ("A pleading, including a complaint, is considered filed when placed in the possession of the clerk of court."); Casalduc *v. Diaz*, 117 F.2d 915, 916 (1st Cir. 1941) (per curiam) ("'Filing' means delivery of the paper into the actual custody of the proper officer."); *File*, Black's Law Dictionary (12th ed. 2024) ("To deliver a legal document to the court clerk or record custodian for placement into the official record.").[4]

4. The District Court and the parties discuss what they label as "Rule 15 legal tolling." *See generally Williams*, 2024 U.S. Dist. LEXIS 19781, 2024 WL 415689, at *5; Appellant Br. at 39-49; Appellee Br. 16-19; Reply Br. 6-7. Our previous remand, however, was limited to determining whether wrong-forum tolling applied.

Additionally, by asserting his claim as part of Grant's case, Williams complied with our first-filed rule, which prohibited him from filing a duplicative federal lawsuit in New Jersey where one already existed in North Dakota. *See E.E.O.C. v. Univ. of Pa.*, 850 F.2d 969, 971 (3d Cir. 1988) (stating that "[i]n all cases of federal concurrent jurisdiction, the court which first has possession of the subject must decide it" (internal quotation marks omitted)); *see also China Agritech*, 584 U.S. at 740 (encouraging "all would-be [class] representatives [to] come forward" in the same action); *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 350-51, 103 S. Ct. 2392, 76 L. Ed. 2d 628 (1983) (holding that both precedent and the federal rules disfavor incentivizing "putative class member[s] who fear[]" a class action may be unsuccessful from "fil[ing] a separate action prior to the expiration of his own period of limitations" because doing so "would be a needless multiplicity of actions").

Moreover, because Williams pursued his claim through the *Grant* litigation within the statute of limitations period, he is not a "would-be class representative who commence[d] suit after expiration of the limitations period" who may not receive equitable tolling under *China Agritech*, 584 U.S. at 743. Nor would making wrong-forum tolling available to Williams lead to "[e]ndless tolling of a statute of limitations[,]" *id.* at 744, because Williams's assertion of his claim through the proposed

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Williams, 70 F.4th at 653. Accordingly, we need not explore all legal tolling doctrines, especially because equitable tolling is an exception to the ordinary tolling rules. *See Island Insteel*, 296 F.3d at 217.

amended complaint, unlike the plaintiff's claim in *China Agritech, id.* at 737-38, was within the applicable statute of limitations, and the remaining time on the limitations clock for Williams to file his complaint restarted when the motion for leave to file the amended complaint was denied. *See United States v. Ibarra*, 502 U.S. 1, 4 n.2, 112 S. Ct. 4, 116 L. Ed. 2d 1 (1991) (articulating that under equitable tolling principles, after a time bar stops and then restarts, "the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped").

Thus, under these circumstances, we conclude that wrong-forum tolling is available given that (1) Williams sought to assert his claim within the statute of limitations applicable to his claim by seeking to join as a named plaintiff an existing putative class action, (2) the first-filed rule barred him from filing a duplicative lawsuit in another forum, and (3) the court overseeing the existing putative class action denied the motion to add Williams solely because the existing plaintiff was compelled to arbitrate his claim.

Having concluded that wrong-forum tolling is available to Williams, we leave to the District Court to determine whether the equitable tolling principles support tolling in this case.[5] *See Williams*, 70 F.4th at 651 ("[T]he application

5. In evaluating equitable tolling, the District Court may consider whether:

> (1) the first action gave defendant timely notice of plaintiff's claim; (2) the lapse of time between the first

of equitable tolling is normally a matter reserved to the sound discretion of the district court[.]").

III

For the foregoing reasons, we will vacate the District Court's order and remand for the Court to consider, in light of the availability of wrong-forum tolling, whether equitable tolling is appropriate.

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and second actions will not prejudice the defendant; and (3) the plaintiffs acted reasonably and in good faith in prosecuting the first action, and exercised diligence in filing the second action.

Island Insteel, 296 F.3d at 218.

APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY, FILED FEBRUARY 5, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 20-4684 (MAS) (JBD)

LEE WILLIAMS,

Plaintiff,

v.

TECH MAHINDRA (AMERICAS) INC.,

Defendant.

February 5, 2024, Filed

MEMORANDUM OPINION

SHIPP, District Judge

This matter comes before the Court upon Defendant Tech Mahindra (Americas) Inc.'s ("TMA") Renewed Motion to Dismiss (ECF No. 30) Plaintiff Lee Williams's ("Plaintiff") Complaint (ECF No. 1) pursuant to Federal Rule of Civil Procedure[1] 12(b)(6). Plaintiff opposed the Motion (ECF No. 32) and TMA replied (ECF No. 36). The

1. Unless otherwise noted, all references to "Rule" or "Rules" hereinafter refer to the Federal Rules of Civil Procedure.

Court has carefully considered the parties' submissions and decides the matter without oral argument under Local Civil Rule 78.1. For the reasons below, TMA's Motion to Dismiss is granted.

I. BACKGROUND[2]

In this putative class action, Plaintiff brings claims under 42 U.S.C. § 1981 ("Section 1981") against his former employer, TMA, an information technology ("IT") company located in India. (*See* Compl. ¶ 2, ECF No. 1.) According to the Complaint, TMA employs approximately 5,100 employees across 25 offices in the United States. (*Id.* ¶¶ 2, 10.) Approximately 90% of TMA's employees in the United States are of South Asian and Indian descent, notwithstanding that these groups compromise "1-2% of the United States population, and roughly 12% of the relevant labor market." (*Id.* ¶ 2.) Plaintiff alleges that this is not a mere coincidence, and that TMA purposefully hires a "grossly disproportionate" number of South Asian and Indian employees due to "TMA's intentional pattern or practice of employment discrimination against individuals who are not South Asian[.]" (*Id.*)

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2. The Court previously detailed the factual background underlying this matter in its first Memorandum Opinion on January 29, 2021. (*See* Mem. Op. 1-4, ECF No. 14.) The Court only summarizes those facts necessary to resolve Defendant's Renewed Motion to Dismiss. To the extent additional background is required, the Court refers the parties to the January 29, 2021, Memorandum Opinion, or the Third Circuit's subsequent opinion on June 14, 2023. *See Williams v. Tech. Mahindra (Ams.) Inc.*, 70 F.4th 646, 648 (3d Cir. 2023).

Appendix B

In May 2014, Plaintiff was hired by TMA as a "Regional Manager/Senior Director of Business Development" (*Id.* ¶ 21.) The following month, Plaintiff began working in TMA's Columbus, Ohio office where he was "responsible for generating business and sales from new banking clients[.]" (*Id.*) Among the eight employees in his sales group, Plaintiff was one of two non-South Asians. (*Id.*) His supervisor, Manish Shwarma, "[l]ike the vast majority of TMA's managerial and supervisory staff," was "of South Asian race." (*Id.* ¶ 22.) Plaintiff alleges that, despite being told initially that TMA had a good working relationship with its various banking clients, he soon realized that these clients "in fact had a poor relationship with TMA[,]" and as a result, it took Plaintiff "many months to set up meetings with these accounts and deals were lost to competitors due to TMA's poor history with the accounts." (*Id.* ¶ 24.) Plaintiff also attended several company regional meetings where most attendees were South Asian and where Hindi was "often spoken . . . to the exclusion of [Plaintiff], a native English speaker." (*Id.* ¶ 25.)

Plaintiff's employment with TMA was short-lived. In June 2015, Plaintiff's manager informed him that he was not meeting his sales goals, and that he would be placed on a Performance Improvement Plan ("PIP"). (*Id.* ¶ 27.) Plaintiff alleges, however, that the PIP set "unreasonable revenue goals" that were "unattainable given the company's poor working relationship with the accounts in [Plaintiff's] territory." (*Id.*) Not long thereafter, TMA terminated Plaintiff's employment on August 19, 2015. (*Id.* ¶ 28.)

Appendix B

As a non-South Asian who was terminated by TMA, Plaintiff was a member of a putative class action filed in the United States District Court for the District of North Dakota (the "Grant Action") against TMA claiming racial discrimination. *See Grant v. Tech Mahindra (Ams.), Inc.*, No. 18-171, 2019 U.S. Dist. LEXIS 226675, 2019 WL 7865165, at *1 (D.N.D. Dec. 5, 2019). The plaintiff in that matter, Roderick Grant ("Grant"), sought relief under Section 1981 to represent a class of non-South Asians who worked for TMA and allegedly experienced discrimination in hiring, staffing, promotion, and termination. *Id.* TMA responded to Grant's complaint and moved to dismiss Grant's claims, but later withdrew its motion to dismiss and instead filed a motion to compel arbitration. *Id.*

Relevant here, on June 5, 2019, Grant sought leave to amend his complaint to add Plaintiff as a named plaintiff. *See Williams*, 70 F.4th at 649. On February 6, 2020, the North Dakota District Court: (1) granted TMA's motion to compel individual arbitration; (2) denied Grant's motion for leave to amend; (3) dismissed Grant's claims for class-wide arbitration; and (4) stayed the case pending the individual arbitration proceedings. *Grant*, 2020 U.S. Dist. LEXIS 19957, 2020 WL 589529, at *1-3. As such, despite Grant's efforts to add Plaintiff as a named plaintiff to the *Grant* Action, those attempts were unsuccessful.

Two months later, on April 21, 2020, Plaintiff filed his instant putative class action Complaint in this Court alleging that TMA engaged in a pattern or practice of race discrimination against non-South Asians in violation

of 42 U.S.C. § 1981.[3] (*See* Compl., ECF No. 1.) The parties do not dispute that the longest applicable statute of limitations is four years, and that Plaintiff's putative class action complaint was filed approximately four years and eight months after his employment with TMA ended. Accordingly, as in the *Grant* Action, TMA filed a Motion to Dismiss ("First Motion to Dismiss") the Complaint on several grounds, asserting that: (1) Plaintiff lacked Article III standing; (2) Plaintiff failed to state a claim of race discrimination; and (3) the claims were barred by the applicable statute of limitations for Section 1981 claims. (*See generally* Def's Mot. Dismiss, ECF No. 5.)

The Court granted TMA's First Motion to Dismiss on January 19, 2021, dismissing the action without prejudice. (*See* Mem. Op.; *see also* Order, ECF No. 15.) The dismissal was made on several grounds. First, the Court rejected TMA's standing-based argument and found that Plaintiff suffered an injury-in-fact that was fairly traceable to TMA's conduct. (Mem. Op. 9.) Second, in connection to TMA's statute of limitations defense, the Court found that *American Pipe* tolling only applied to Plaintiff's individual claims based on the Supreme Court's decision in *China Agritech*, 584 U.S. 732, 138 S. Ct. 1800, 1806, 201 L. Ed. 2d 123 (2018), which held that *American Pipe* tolling could not revive a successive class action.[4] (*Id.* at 9-13.) The Court,

3. This matter was initially assigned to the Honorable Brian Martinotti, U.S.D.J.

4. Specifically, the Supreme Court determined that *American Pipe* does not toll the claims of "a putative class representative . . . who brings his claims as a new class action after the statute of

therefore, deemed that Plaintiff's claims on behalf of the putative class were time-barred. Third, for Plaintiff's remaining individual claims, the Court concluded that Plaintiff failed to state a claim for relief under Section 1981 because he did not allege that, but for his race, TMA would not have terminated his employment. (*Id.* at 14-15.) While the Court granted Plaintiff an opportunity to amend his Complaint, Plaintiff filed subsequent correspondence stating his intent to "stand on his Complaint" and that he would not seek to amend it. (*See* ECF No. 16.)

Instead, Plaintiff filed an appeal to the Third Circuit, primarily asserting that the Court did not consider prior to dismissing the class action whether "wrong-forum tolling," as opposed to *American Pipe* tolling, would allow him to proceed with a successive class action. *See Williams*, 70 F.4th at 650. Plaintiff also argued that he adequately pled a class claim that TMA engaged in a "pattern or practice" of intentional discrimination. *Id.* at 650-52. Before addressing the merits of Plaintiff's arguments, the Third Circuit vacated and remanded the case to this Court[5] "to consider whether wrong-forum tolling applies and/or whether [Plaintiff] has plausibly pleaded a *primafacie* pattern-or-practice claim." *Id.* at 653.

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limitations has expired," because "the 'efficiency and economy of litigation' [rationales] that support tolling of individual claims . . . do not support maintenance of untimely successive class actions." *China Agritech*, 138 S. Ct. at 1806.

5. Upon remand, the matter was reassigned to the undersigned. (*See* ECF No. 29.)

On remand, TMA filed its renewed Motion to Dismiss asserting that Plaintiff's Complaint must be dismissed because: (1) Plaintiff is not entitled to the benefit of wrong-forum tolling; and (2) Plaintiff does not plead a plausible pattern or practice claim of discrimination under Section 1981. (Def.'s Moving Br. 12-33, ECF No. 31.) Plaintiff opposed the Motion (Pl.'s Opp'n Br., ECF No. 32) and TMA replied (Def.'s Reply, ECF No. 36). For the reasons that follow, TMA's renewed Motion to Dismiss is granted.

II. LEGAL STANDARD

A district court conducts a three-part analysis to determine whether a motion to dismiss should be granted under Rule 12(b)(6). *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). First, the court must be able to identify "the elements a plaintiff must plead to state a claim." *Ashcroft v. Iqbal*, 556 U.S. 662, 675, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Second, the court must identify and accept as true all of the plaintiff's well-pleaded factual allegations and "construe the complaint in the light most favorable to the plaintiff." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). In doing so, the court will discard bare legal conclusions or factually unsupported accusations. *Iqbal*, 556 U.S. at 678 (citing *Twombly v. Bell Atl. Corp.*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). Third, the court determines whether "the [well-pleaded] facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'" *Fowler*, 578 F.3d at 210-11 (quoting *Iqbal*, 556 U.S. at 679). If the claim is facially plausible and "allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged," a motion to dismiss will be denied. *Id.* at 210 (quoting *Iqbal*, 556 U.S. at 678). If, however, the claim does not "allow[] the court to draw a reasonable inference that the defendant is liable for the misconduct alleged," a motion to dismiss will be granted. *Id.* On a Rule 12(b)(6) motion, the "defendant bears the burden of showing that no claim has been presented." *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005) (citing *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991)).

III. DISCUSSION

A. Equitable Tolling

This Court must consider, at the outset, whether the doctrine of wrong-forum tolling applies to relieve Plaintiff's claims from the otherwise applicable statute of limitations. TMA argues that Plaintiff's Complaint was filed after the statute of limitations expired and that wrong-forum tolling is "patently inapplicable" to the facts presented here. (Def.'s Moving Br. 9-22.) Plaintiff counters that wrong-forum tolling "is appropriate under the circumstances of this case." (Pl.'s Opp'n Br. 21.) Alternatively, Plaintiff requests that the Court defer ruling on the issue of wrong-forum tolling pending additional discovery on this issue. (*Id.*)

Equitable tolling may "rescue a claim otherwise barred as untimely by a statute of limitations when a plaintiff [shows she] has 'been prevented from filing in a timely manner due to sufficiently inequitable circumstances.'"

D.J.S.-W. v. United States, 962 F.3d 745, 749-50 (3d Cir. 2020) (quoting *Santos ex rel. Beato v. United States*, 559 F.3d 189, 197 (3d Cir. 2009)). The Third Circuit has described equitable tolling as an "extraordinary [remedy]" to be applied only where "principles of equity would make [the] rigid application [of the statute of limitations] unfair." *Miller v. N.J. State Dep't of Corr.*, 145 F.3d 616, 618 (3d Cir. 1998). The term "equitable tolling" is meant to encompass three principal situations:

> (1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting . . . [his] rights; or (3) where the plaintiff has timely asserted . . . [his] rights mistakenly in the wrong forum.

D.J.S.-W., 962 F.3d at 750 (quotation omitted). The third category, at issue here, is commonly referred to as "wrong-forum tolling." *Id.* "To fall into the third category, a party's claim, though filed in the wrong forum, *must nevertheless be timely." Doherty v. Teamsters Pension Trust Fund*, 16 F.3d 1386, 1394 (3d Cir. 1994) (emphasis added). The Court therefore considers, as a threshold inquiry, whether Plaintiff's claims were "timely asserted . . . in the wrong forum." *D.J.S.-W.*, 962 F.3d at 750.

To begin, the Court notes that Plaintiff does not dispute that the Complaint was filed outside the relevant statute of limitations period. Section 1981 claims may be subject to a four-year statute of limitations under 28

U.S.C. § 1658, or it can be borrowed from the statute of limitations for personal injury claims of the forum state.[6] *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 371, 124 S. Ct. 1836, 158 L. Ed. 2d 645 (2004). TMA terminated Plaintiff's employment on August 19, 2015. (Compl. ¶ 28.) Plaintiff, therefore, was required to bring his claims on or before August 19, 2019; yet the Complaint in this matter was not filed until April 21, 2020. Moreover, throughout these proceedings, Plaintiff has never denied that the longest term of the applicable statute of limitations—which is four years—expired when he filed his instant Complaint in this Court. *See Williams*, 70 F.4th at 650 (citing 28 U.S.C. § 1658(a)). (*See also* Mem. Op. 10 (noting that "Plaintiff does not dispute his claim was not brought within the applicable statute of limitations.").)

Despite the untimeliness of this action, Plaintiff asserts that the filing of a motion for leave to amend the complaint in the *Grant* Action tolled the statute of limitations in this case. (*See* Pl.'s Opp'n Br. 23.) The motion for leave to amend the complaint in the *Grant* Action was filed on June 5, 2019, 75 days before the four-year statute of limitations expired. (*See Grant v. Tech Mahindra (Americas), Inc.*, No. 18-171 (D.N.D.), Docket Entry No. 52.) Plaintiff contends that when the motion for leave to amend was filed, it tolled the statute of limitations as to

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6. New Jersey's statute of limitations for personal injury actions is two years. *See Pintor v. Port Auth.*, No. 08-2138, 2009 U.S. Dist. LEXIS 74126, 2009 WL 2595664, at *2 (D.N.J. Aug. 20, 2009) (citing N.J. Stat. Ann. § 2A:14-2). Therefore, there are two possible statutes of limitations: two years or four years. (*See* Mem. Op. 10.)

his claims, and the statute of limitations resumed once the North Dakota District Court denied Grant's leave to amend. (Pl.'s Opp'n Br. 9.) The North Dakota District Court denied the motion to amend on February 6, 2020. (*Grant v. Tech Mahindra (Americas), Inc.*, No. 18-171 (D.N.D.), Docket Entry No. 59.) Plaintiff initiated this action exactly 75 days later on April 21, 2020. (*See* Compl.)

Rule 15 governs the amendment of pleadings, and, in relevant part, it provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Under Rule 15, however, "an amended complaint is not [considered] 'filed' until the court grants 'leave' for the amendment." *Angles v. Dollar Tree Stores, Inc.*, 494 F. App'x 326, 329 (4th Cir. 2012) (citation omitted); *Shane v. Fauver*, 213 F.3d 113, 116-17 (3d Cir. 2000) (stating that a court must grant leave to amend a complaint absent evidence that amendment would be futile or inequitable).

This Court has found that when a motion for leave to amend is *granted*, the amended complaint is deemed timely even if the court's permission is granted after the statute of limitations period ends. *Fallen v. City of Newark*, No. 15-2286, 2017 U.S. Dist. LEXIS 10433, 2017 WL 368500, at *7 (D.N. J. Jan. 24, 2017) (citing *Ramirez v. City of Wichita Kan.*, No. 92-1437, 1994 U.S. Dist. LEXIS 4171, 1994 WL 114295, at *3 (D. Kan. Mar. 23, 1994) ("[I]f the motion to amend is *granted*, the suit is deemed filed on the date the motion was filed, not on the date the amended complaint is

filed.") (emphasis added))[7]; *but see Bell v. Lockheed Martin Corp.*, No. 08-6292, 2010 U.S. Dist. LEXIS 62957, 2010 WL 2666950, at *10 (D.N.J. June 23, 2010) (noting that "[t]he filing of a motion for leave to amend a complaint has been held to be sufficient to commence an action within a statute of limitations period.").

Though Plaintiff's Section 1981 claims may have been timely when the motion for leave to amend was filed in the *Grant* Action, the motion for leave to amend was *denied*. This distinction is significant. Courts have concluded that where an underlying motion to amend is denied or withdrawn, the amended complaint is not deemed "filed" and lacks any legal effect to toll the statute of limitations. *See Angles*, 494 F. App'x at 329 ("[T]he motion for leave was never granted. The amended complaint was thus never filed and lacks the ability to toll the limitations period."); *U.S. ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293, 296 (5th Cir. 2003) ("The failure to obtain leave results in an amended complaint having no legal effect. Without legal effect, it cannot toll the statute of limitations period."); *Goldblatt v. Nat'l Credit Union Admin.*, No. 11-334, 2011 U.S. Dist. LEXIS 103880, 2011 WL 4101470, at *3 (D. Conn. Sept. 14, 2011) ("In this instance, the motion to amend was denied and therefore filing such motion does not toll the [statute of] limitation period."), *aff'd*, 502 F. App'x 53 (2d Cir. 2012); *Oetting v. Heffler*, No. 11-4757,

7. *Fallen* similarly explained that, in the context of where leave to amend was granted, that our "courts have held that claims in an amended complaint are deemed filed, for purposes of the statute of limitations, when the motion to amend is filed." 2017 U.S. Dist. LEXIS 10433, 2017 WL368500, at *7.

2017 U.S. Dist. LEXIS 128089, 2017 WL 3453342, at *25 (E.D. Pa. Aug. 11, 2017) (distinguishing cases that the plaintiff cited where the "court ultimately *granted* the motion for leave to amend" from a case where the court ultimately "*denied* the [plaintiff's] [m]otion." (emphases in original)). The Court finds that these cases are persuasive and consistent with the Federal Rules.

In response, Plaintiff exclusively relies on one case from this district—*Bell, supra*—to support his position that the mere filing of a motion for leave to amend tolls the statute of limitations. 2010 U.S. Dist. LEXIS 62957, 2010 WL 2666950, at *10. (*See* Pl.'s Opp'n Br. 23-24.) The *Bell* decision, however, is inapposite because the court in *Bell* ultimately granted plaintiff's motion to amend, which thereby tolled the statute of limitations. *Id at* 11. Not so here. As stated, the motion for leave to amend in the *Grant* action was denied. Plaintiff has not provided any case law to support his contention that a motion for leave to amend—which is later denied—has the legal effect of tolling the limitations period.

Accordingly, the Court finds that Plaintiffs' amended complaint was not filed in a timely fashion because it was never accepted by the North Dakota District Court. *See Angles*, 494 F. App'x at 330. Because Plaintiff fails to otherwise demonstrate that he timely brought his claims in a wrong forum, the Court finds that the wrong-forum tolling doctrine is plainly inapplicable.[8] *See Doherty*, 16

8. Because the Court finds that this matter was not timely filed in the *Grant* Action, Plaintiff 's wrong-forum tolling argument is denied on this basis alone. The Court need not assess the

F.3d at 1394. Neither *American Pipe* or the doctrine of equitable tolling[9] apply to Plaintiff's class claims, and thus it follows that the putative class claims are time barred. TMA's Motion to Dismiss on this basis is granted. Plaintiff's class claims are hereby dismissed with prejudice.

B. Plaintiff's Remaining Claim

Having determined that the statute of limitations bars the class claims, all that remains is Plaintiff's individual claim under Section 1981.[10] Plaintiff's individual disparate treatment claim would be assessed under the *McDonnell-Douglas* burden-shifting framework. *See Williams*, 70

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remaining inquiry of whether Plaintiff "exercised due diligence in pursuing and preserving [his] claim." *D.J.S.-W.*, 962 F.3d at 750 (quoting *Santos ex rel. Beato v. United States*, 559 F.3d 189, 197 (3d Cir. 2009)).

9. Plaintiff does not argue that the other equitable tolling scenarios are relevant here; he does not assert that TMA has "actively misled [him] respecting [his] cause of action" or that he was in some "extraordinary way . . . prevented from asserting . . . [his] rights." *D.J.S.-W.*, 962 F.3d at 750; (*see also* Pl.'s Opp'n Br. 21 (noting that the issue in this case is only "whether wrong-forum equitable tolling 'stop[ped] the statute of limitations from running'") (citing *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1387 (3d Cir. 1994)).)

10. The parties do not dispute Judge Martinotti's findings that Plaintiff 's individual claim was timely filed because the *Grant* class action tolled Plaintiff 's individual claim under *American Pipe* and its progeny. (*See*, *e.g.*, Mem. Op. 13 (denying TMA's Motion to Dismiss Plaintiff 's [Section] 1981 claim as time-barred with respect to Plaintiff 's individual claim).)

F.4th at 651. Plaintiff, however, does not brief whether his Complaint and the allegations therein satisfy the *McDonnell-Douglas* test. (*See* Pl.'s Opp'n Br. 10-20.) Indeed, the parties have only briefed whether Plaintiff has asserted a "pattern or practice claim" to demonstrate whether a proper class action claim exists, which is governed by the framework set forth in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977). (*See generally* Def.'s Moving Br.; *see also* Pl.'s Opp'n Br.) The *Teamsters* pattern-or-practice approach generally applies to class claims.[11] *Williams*, 70 F.4th at 652 (citing *Teamsters*, 431 U.S. at 362).

Plaintiff, however, has not indicated whether he intends to proceed on his individual claim. (*See generally* Pl.'s Opp'n Br.) In fact, Plaintiff's opposition brief suggests to the contrary and states that he "never intended" to pursue his individual claim in this matter. (*Id.* 20.)

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11. The cases in which the Supreme Court has approved use of the pattern-or-practice method have been limited to class claims. *See*, *e.g.*, *Cooper v. Fed. Reserve Bank of Richmond*, 467 U.S. 867, 876 n.9, 104 S. Ct. 2794, 81 L. Ed. 2d 718 (1984) (citing *Teamsters*, 431 U.S. at 358-60 (noting that the *Teamsters* pattern-or-practice framework applies in private, class action suits); *Lowery v. Circuit City Stores, Inc.*, 158 F.3d 742, 760 (4th Cir. 1998), *vacated on other grounds*, 527 U.S. 1031, 119 S. Ct. 2388, 144 L. Ed. 2d 790 (1999) (citing *Teamsters*, 431 U.S. at 357-60 (discussing the Supreme Court's implicit endorsement of the application of pattern or practice principles to private, class action suits in *Teamsters*). Indeed, it appears the Supreme Court has not expressly addressed whether an individual plaintiff may maintain a Section 1981 claim on a pattern or practice basis.

Accordingly, the Court dismisses the action without prejudice. Plaintiff must e-file correspondence within thirty days as to whether he intends to proceed with his individual claim. If Plaintiff responds in the affirmative, the Court will grant Plaintiff an opportunity to amend his Complaint accordingly. In the event Plaintiff seeks to forego his individual claim, the matter will be dismissed with prejudice.

IV. CONCLUSION

For the foregoing reasons, TMA's Motion to Dismiss is granted. An appropriate order will follow this Memorandum Opinion.

/s/ Michael A. Shipp
Michael A. Shipp
United States District Judge

APPENDIX C — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED JUNE 14, 2023

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 21-1365 & 21-1394

LEE WILLIAMS, INDIVIDUALLY AND
IN HIS REPRESENTATIVE CAPACITY,

Appellant,

v.

TECH MAHINDRA (AMERICAS) INC.

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 3-20-cv-04684)
District Judge: Honorable Brian R. Martinotti

Argued: December 14, 2021

Before: GREENAWAY, JR., KRAUSE, and PHIPPS,
Circuit Judges.

Filed June 14, 2023

OPINION OF THE COURT

PHIPPS, *Circuit Judge.*

In this putative class action, a fired employee sues his former employer alleging a pattern or practice of race

discrimination against non-South Asians in violation of 42 U.S.C. § 1981. The employee had previously attempted to join another class action against the company but after that case was stayed, he filed this suit - years after his termination.

The employer moved to dismiss the complaint under Rule 12(b)(6) as untimely. In response, the employee conceded that the relevant statutes of limitations had expired, and instead he resorted to two forms of tolling: wrong-forum and *American Pipe*.

The District Court concluded that *American Pipe* tolling did not allow the employee to commence a successive class action, and the employee does not contest that ruling. But the District Court dismissed the complaint without considering the applicability of wrong-forum tolling. On *de novo* review, that was error: the unavailability of *American Pipe* tolling does not inherently preclude wrong-forum tolling. And because tolling is appropriately addressed by district courts in the first instance, we will vacate the dismissal order and remand the case to the District Court.

I. Factual Allegations and Procedural History

Tech Mahindra (Americas), Inc. is an information technology company incorporated in New Jersey and wholly owned by a like-named major Indian corporation. Tech Mahindra has over 5,000 employees across approximately 25 offices in the United States, including

several offices in New Jersey. The company's workforce consists of about 90% South Asians although that group comprises only 1-2% of the United States population and around 12% of the relevant labor market. In addition, Tech Mahindra annually applies for and receives approvals for thousands of H-1B visas. It uses those visas, which permit hiring foreign workers for specialty occupations, to staff a significant percentage of its labor force with South Asians.

In May 2014, Tech Mahindra hired Lee Williams, a Caucasian American. The following month, Williams began working in the company's Columbus, Ohio office as a Regional Manager and Senior Director of Business Development. He was one of only two non-South Asians in his sales group, and he reported to a South Asian supervisor. During his time with Tech Mahindra, Williams also attended three of the company's regional conferences, where the majority of attendees were South Asian and where Hindi was often spoken to his exclusion.

Williams's tenure with the company was short-lived. In June 2015, his manager informed him that because he was not meeting his sales goals, he would be placed on a sixty-day performance improvement plan. Then, on August 19, 2015, Tech Mahindra terminated his employment.

As a non-South Asian fired by Tech Mahindra, Williams was a member of a putative class action against the company for claims of racial discrimination. *See Grant v. Tech Mahindra (Americas), Inc.*, 2019 U.S. Dist. LEXIS 226675, 2019 WL 7865165, at *1 (D.N.D. Dec. 5, 2019)

(identifying the claims brought by the putative class). That suit was filed by another former Tech Mahindra employee, Roderick Grant, on August 10, 2018, in federal court in North Dakota. Tech Mahindra originally moved to dismiss Grant's claims, but it withdrew that motion to seek to compel Grant to arbitrate. Grant opposed that motion and, on June 5, 2019, sought leave to amend his complaint to add Williams as a named plaintiff. On February 6, 2020, the district court in North Dakota granted Tech Mahindra's motion to compel individual arbitration, denied Grant's motion for leave to amend, and stayed the case. *See Grant v. Tech Mahindra (Americas), Inc.*, 2020 U.S. Dist. LEXIS 19957, 2020 WL 589529, at *1 (D.N.D. Feb. 6, 2020).

Williams then filed this putative class action on April 21, 2020 – approximately four years and eight months after his employment with Tech Mahindra ended. Invoking the jurisdiction of the United States District Court for the District of New Jersey, *see* 28 U.S.C. § 1331, he brought a single claim for disparate treatment on the basis of race under 42 U.S.C. § 1981, seeking class-wide relief. Williams's claim alleged that Tech Mahindra engaged in a pattern or practice of racial discrimination against its non-South Asian employees and applicants that extended to the company's hiring, staffing, promotion, and termination practices.

As it did in Grant's case, Tech Mahindra moved to dismiss Williams's complaint. It did so on three grounds: lack of Article III standing; failure to allege a plausible claim of race discrimination; and untimeliness under the statute of limitations. Williams defended his standing and

the plausibility of his allegations, but he did not deny that the longest applicable statute of limitations, four years, had already expired. *See* 28 U.S.C. § 1658(a). Instead, he argued that the statute of limitations should be tolled on two distinct theories: wrong-forum tolling and *American Pipe* tolling, *see Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 94 S. Ct. 756, 38 L. Ed. 2d 713 (1974).

The District Court rejected several of Tech Mahindra's arguments, but it ultimately granted the motion and dismissed Williams's complaint without prejudice. It concluded that Williams had standing and that he was likely a member of the putative class in the *Grant* action. Next, in evaluating the timeliness of Williams's claim, the District Court considered *American Pipe* tolling, under which the filing of a putative class action suspends the statute of limitations for absent class members' individual claims. *See Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 353–54, 103 S. Ct. 2392, 76 L. Ed. 2d 628 (1983); 3 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 9:53 (6th ed. 2022). But in recognizing that the Supreme Court in *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800, 201 L. Ed. 2d 123 (2018), had declined to extend *American Pipe* tolling to successive class actions, the District Court determined that Williams could not maintain a class action. As for his remaining individual action, Williams had to plead that but for his race he would not have suffered the loss of any legal interests protected by § 1981. *See Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1019, 206 L. Ed. 2d 356 (2020); *Carvalho-Grevious v. Del. State Univ.*, 851 F.3d 249, 256–58 (3d Cir. 2017). And, upon considering

Williams's complaint, the District Court determined that it did not plausibly allege but-for causation on an individual basis. Accordingly, it dismissed Williams's claim without prejudice. Instead of amending his pleading, Williams elected to stand on his complaint and appeal, which triggered this Court's appellate jurisdiction. *See* 28 U.S.C. § 1291; *Weber v. McGrogan*, 939 F.3d 232, 240 (3d Cir. 2019).

II. Discussion

Williams's principal contention on appeal is that the District Court erred by dismissing his class action as untimely without addressing his wrong-forum tolling argument. In response, Tech Mahindra asserts that the ground on which the District Court rejected *American Pipe* tolling – the Supreme Court's decision in *China Agritech* – also bars wrong-forum tolling. But Tech Mahindra overreads *China Agritech*, which was a "clarification of *American Pipe*'s reach," not a broad holding announcing a limit on other traditional forms of equitable tolling. *China Agritech*, 138 S. Ct. at 1810; *see also Blake v. JP Morgan Chase Bank NA*, 927 F.3d 701, 709 (3d Cir. 2019) ("*China Agritech* is clear and unequivocal: courts may not toll new class actions under *American Pipe*, period."). *See generally D.J.S.-W. ex rel. Stewart v. United States*, 962 F.3d 745, 750 (3d Cir. 2020) (identifying three traditional forms of equitable tolling: deception tolling, extraordinary-circumstances tolling, and wrong-forum tolling).

Nor do the rationales in *China Agritech* for precluding the application of *American Pipe* tolling to successive

class actions extend to wrong-forum tolling. The rule of *China Agritech* serves several salutary purposes: it discourages duplicative lawsuits, promotes fairness to both sides, and avoids the perpetual stacking of repetitive claims. *See Blake*, 927 F.3d at 709. But allowing traditional equitable tolling in the class action context does not undermine the force of *China Agritech*'s limitation on *American Pipe*. That is so because to benefit from one of the traditional forms of equitable tolling, a plaintiff must make individualized showings that he pursued his claim with diligence and that extraordinary circumstances beyond his control prevented a timely and proper assertion of his rights. *See Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 255–57, 136 S. Ct. 750, 193 L. Ed. 2d 652 (2016); *Doherty v. Teamsters Pension Tr. Fund of Phila. & Vicinity*, 16 F.3d 1386, 1394 (3d Cir. 1994) (holding that while not every "poor choice by a lawyer or law firm that lands a party in the wrong forum merits equitable tolling[,] . . . some mistakes in extraordinary circumstances merit forbearance").

Equitable tolling of a class action therefore would not be permitted when a plaintiff "could have sought lead-plaintiff status or brought his own claim" but made no effort to do so until after the limitations period had expired. *Blake*, 927 F.3d at 709. For the same reason, traditional equitable tolling will not permit "class claimants [to] stack their claims forever" or "breed duplicative lawsuits . . . after class certification was denied," *id.*, because outside the *American Pipe* context, a lack of diligence in timely asserting one's rights (or the absence of extraordinary circumstances beyond the litigant's control) is fatal to a

request for equitable tolling, *see China Agritech*, 138 S. Ct. at 1808; *Menominee*, 577 U.S. at 255–57. Accordingly, the reasons for not extending *American Pipe* tolling to class claims do not negate the application of traditional forms of equitable tolling in that context.

Thus, it was error for the District Court to dismiss Williams's class action allegations as untimely without considering wrong-forum tolling. And because the application of equitable tolling is normally a matter reserved to the sound discretion of the district court, we will vacate the District Court's judgment and remand the case without retaining jurisdiction. *See Doherty*, 16 F.3d at 1394; *Island Insteel Sys., Inc. v. Waters*, 296 F.3d 200, 218, 44 V.I. 389 (3d Cir. 2002).

Tech Mahindra argues against this outcome. It contends that the Supreme Court's decision in *Comcast*, which underscores the need for § 1981 plaintiffs to establish but-for causation, demonstrates that Williams was required to plead but-for causation on an individual basis to overcome a motion to dismiss. 140 S. Ct. at 1019 ("To prevail, a plaintiff must initially plead and ultimately prove that, but for race, it would not have suffered the loss of a legally protected right."). It is certainly true that, as the Supreme Court held in *Comcast*, for a plaintiff to prevail on a § 1981 claim he must prove that but for his race, he would not have been discriminated against in the making or enforcing of contracts. *Id.* at 1019. But *Comcast* was neither an employment discrimination case nor a class action, *see id.* at 1013, and therefore it does not impinge in the least on the indirect methods of

proof formulated by the Supreme Court for employment discrimination claims under Title VII of the Civil Rights Act of 1964. And those methods of proof, such as the *McDonnell Douglas* burden-shifting framework for individual actions or the *Teamsters* pattern-or-practice approach for class actions, may be applied to claims under § 1981 for employment discrimination when the methods of proof were formulated "in a context where but-for causation was the undisputed test." *Comcast*, 140 S. Ct. at 1019; *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 362, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977) ("The proof of the pattern or practice supports an inference that any particular employment decision, during the period in which the discriminatory policy was in force, *was made in pursuit of that policy*." (emphasis added)); *see, e.g.*, *Patterson v. McLean Credit Union*, 491 U.S. 164, 186–88, 109 S. Ct. 2363, 105 L. Ed. 2d 132 (1989) (applying *McDonnell Douglas* to an individual § 1981 claim);[1] *cf. Carvalho-Grevious*, 851 F.3d at 257 (explaining that the but-for causation standard for retaliation claims under Title VII "does not conflict with [the] continued application of the *McDonnell Douglas* paradigm" (internal quotation marks omitted)). Consequently, at the motion-to-dismiss stage, plausible allegations of the essential components of an indirect method of proof will suffice for stating the elements, including but-for causation, of a disparate

1. *See also Burgis v. N.Y.C. Dep't of Sanitation*, 798 F.3d 63, 69 (2d Cir. 2015) (holding that the pattern-or-practice method is available under § 1981); *Rutstein v. Avis Rent-A-Car Sys., Inc.*, 211 F.3d 1228, 1237 (11th Cir. 2000) ("*Teamsters* applies in employment discrimination cases brought under section 1981 to the same degree that it applies in cases brought under Title VII.").

treatment claim based on race under § 1981. *See Martinez v. UPMC Susquehanna*, 986 F.3d 261, 266 (3d Cir. 2021) ("To defeat a motion to dismiss, it is sufficient to allege a prima facie case.").

Tech Mahindra counters that Williams conceded his ability to obtain class-wide relief by not disputing the District Court's holding that he failed to plead but-for causation on an individual basis. *See Zimmerman v. HBO Affiliate Grp.*, 834 F.2d 1163, 1169 (3d Cir. 1987) ("It is well settled that to be a class representative on a particular claim, the plaintiff must himself have a cause of action on that claim."). But the allegations required of a plaintiff at the pleading stage of a case depend on what that plaintiff "must prove in the trial at its end." *Comcast*, 140 S. Ct. at 1014. So, to determine the allegations needed for a complaint to survive a motion to dismiss, it is necessary to "work backwards from the endgame." *Martinez*, 986 F.3d at 265. And unlike individual claims, the liability phase in a pattern-or-practice case does not focus on "the reason for a particular employment decision, . . . but on a pattern of discriminatory decisionmaking." *Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 876, 104 S. Ct. 2794, 81 L. Ed. 2d 718 (1984) (quoting *Teamsters*, 431 U.S. at 360 n.46); *see also Hohider v. United Parcel Serv., Inc.*, 574 F.3d 169, 178–79 (3d Cir. 2009).

Accordingly, a class plaintiff's burden in making out a *prima facie* case of discrimination is different from that of an individual plaintiff "in that the [former] need not initially show discrimination against any particular present or prospective employee," including himself.

United States v. City of New York, 717 F.3d 72, 84 (2d Cir. 2013). As a result, Williams was not required to plead but-for causation on an individual basis to avoid dismissal given the availability of the pattern-or-practice method of proof at later stages of the case. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511–12, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002) (refusing to require a disparate-treatment plaintiff "to plead more facts than he may ultimately need to prove to succeed on the merits" of his claim); *see also In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 324 n.24 (3d Cir. 2010) (cautioning that a plaintiff cannot be forced to "commit to a single method of proof at the pleading stage"); *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 788 (3d Cir. 2016) (same). Under these principles, as long as Williams's complaint plausibly alleges a *prima facie* case under the pattern-or-practice method, his § 1981 claim cannot be dismissed on the ground that he failed to plead that race was the but-for cause of any individual class member's injury, including his own.

III. Conclusion

For these reasons, we will vacate the District Court's order and remand the case for the District Court to consider whether wrong-forum tolling applies and/or whether Williams has plausibly pleaded a *prima facie* pattern-or-practice claim.

APPENDIX D — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, FILED JANUARY 29, 2021

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Case No. 3:20-cv-04684 (BRM) (LHG)

LEE WILLIAMS, INDIVIDUALLY AND
IN HIS REPRESENTATIVE CAPACITY,

Plaintiff,

v.

TECH MAHINDRA (AMERICAS), INC.,

Defendant.

Filed January 29, 2021

OPINION

Martinotti, District Judge

Before this Court is a Motion to Dismiss (ECF No. 6)[1] filed by Defendant Tech Mahindra (Americas), Inc. ("TMA") seeking to dismiss Plaintiff Lee Williams ("Plaintiff") Complaint brought on behalf of Plaintiff and

1. The Court notes ECF No. 6 is TMA's memorandum in support of its motion to dismiss. (*See* ECF No. 6.) ECF No. 5 provides notice of TMA's motion to dismiss. (*See* ECF No. 5.)

on behalf of all others similarly situated (the "Complaint") (ECF No. 1) pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff opposes the motion. (ECF No. 9.) Pursuant to Federal Rule of Civil Procedure 78(b), this Court did not hear oral argument. For the reasons set forth herein and for good cause shown, TMA's Motion to Dismiss (ECF No. 6) is **GRANTED**.

I. Background

For the purposes of this Motion to Dismiss, the Court accepts the factual allegations in the Complaint as true and draws all inferences in the light most favorable to Plaintiff. *See Phillips v. Cty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008). The Court also considers any "document *integral to or explicitly relied upon* in the complaint." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (quoting *Shaw v. Dig. Equip. Corp.*, 82 F.3d 1194, 1220 (1st Cir. 1996)).

This matter stems from Plaintiff's employment at TMA, a wholly-owned subsidiary of Tech Mahindra, Ltd., an information technology ("IT") company located in India. (ECF No. 1 ¶ 2.) TMA, a company incorporated in New Jersey with its principal place of business in Freehold, New Jersey, provides IT outsourcing and consulting services to clients within the United States and has approximately 5,100 employees. (*Id.* ¶¶ 2, 4.) According to the Complaint, TMA hires a "grossly disproportionate" number of South Asian and Indian employees due to "TMA's intentional pattern and practice of employment discrimination against individuals who

are not South Asian, including discrimination in hiring, staffing, promotion, and termination decisions." (*Id.*)[2] Plaintiff, "is of Caucasian Race and American national origin," resides in Florida, and was employed by TMA in Columbus, Ohio at all relevant times. (*Id.* ¶ 4.) TMA operates under a "general policy of discrimination in favor of South Asians and against individuals who are not South Asian." (*Id.* ¶ 12.) This "general policy of discrimination" is "manifested" through TMA's practice of securing H-1B visas (and other visas) for South Asian workers located overseas (*id.* ¶¶ 13-15), preferential treatment to South Asian applicants located in the United States over non-South Asian applicants (*id.* ¶ 16), preferential treatment to South Asians over non-South Asians in making promotion decisions (*id.* ¶ 17), and finally, due to TMA's "discriminatory preference for South Asians, TMA terminates non-South Asians at disproportionately high rates, compared to South Asians." (*Id.* ¶ 18.)[3]

Plaintiff is a "highly skilled senior technology sales executive with over twenty years of professional

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2. The Complaint further alleges "[w]hile roughly 1-2% of the United States population, and roughly 12% of the relevant labor market, is South Asian and Indian, approximately 90% (or more) of TMA's United States-based workforce is South Asian and Indian." (*Id.* ¶ 2.)

3. The Complaint also alleges due to "TMA's preference for filling positions with South Asians, non-South Asians are disproportionately relegated to the bench and [are] disproportionately unable to locate new assignments. On information and belief, individuals who remain on the bench for too long are terminated." (*Id.* ¶ 18.)

experience," who holds a B.S. in Business Management from Indiana Wesleyan University. (*Id.* ¶ 20.) He specializes in new logo acquisition, account management, and team leadership, and sells both technology and services to clients. (*Id.*) He has held a variety of director and vice-president level sales roles throughout his career. (*Id.*) Plaintiff was hired by TMA for a Regional Manager/ Senior Director of Business Development sales role based out of Columbus, Ohio in May 2014. (*Id.*) He began his employment on June 2, 2014. (*Id.*) In this position, Plaintiff was a "hunter" responsible for generating business and sales from new banking clients in the Midwest and developing relationships with these new accounts. (*Id.* ¶ 21.) Plaintiff was one of only two non-South Asian employees out of approximately eight employees in the new "hunter fields sales group." (*Id.* ¶ 22.) He reported to a Manish Sharma ("Sharma"), who "[l]ike the vast majority of TMA's managerial and supervisory staff," was "of South Asian race." (*Id.*)[4] Shortly after joining TMA, Plaintiff was asked to enter his professional banking contacts into "TMA's Salesforce CRM system," to which Plaintiff complied and continued to update his contacts in the Salesforce CRM system throughout his tenure with TMA. (*Id.* ¶ 23.) Due to TMA's poor business relationship with various banking clients, "it often took [] months" to coordinate "meetings with these accounts and deals

4. Plaintiff attended three regional meetings for TMA in New Jersey and Georgia. (*Id.* ¶ 25.) Of the approximately "90 to 100 attendees" at the regional meetings, "the vast majority of individuals (over 90%) were of South Asian. Hindi was often spoken socially at these meetings to the exclusion of [Plaintiff], a native English speaker." (*Id.*)

were lost to competitors due to TMA's poor history with the accounts." (*Id.* ¶ 24.) When Plaintiff asked for help in overcoming these problems, his requests for help went unanswered. (*Id.*) Despite these challenges, Plaintiff "performed well" and successfully identified opportunities for future sales which included "four opportunities with PNC totaling over $3 million in potential sales revenue." (*Id.* ¶ 26.) In February 2015, Plaintiff was provided with a small raise by TMA for his efforts, however, because of TMA's "pattern or practice of discrimination it never promoted" Plaintiff. (*Id.*) In June 2015, Sharma informed Plaintiff he was not meeting his sales goals and would be placed on a "Performance Improvement Plan" ("PIP") effective June 15, 2015. (*Id.* ¶ 27.) Under the PIP, TMA set "unreasonable revenue goals" for Plaintiff that were "unattainable" due to TMA's poor working relationship with the accounts in Plaintiff's territory. (*Id.*) TMA terminated Plaintiff on August 19, 2015. (*Id.* ¶ 28.) On September 7, 2015, Plaintiff "curiously" received a letter from TMA's Group Manager of Human Resources noting his "resignation ha[d] been accepted" and that he was "relieved from the services of [TMA] effective . . . 19 August 2015." (*Id.*) Plaintiff did not resign, but rather he was terminated "because of TMA's pattern or practice of discrimination." (*Id.*) On April 21, 2020, Plaintiff filed a one-count putative class action Complaint alleging disparate treatment on the basis of race under 42 U.S.C. § 1981. (ECF No. 1.) On June 9, 2020, TMA filed a motion to dismiss. (ECF No. 5.) On July 13, 2020, Plaintiff filed an opposition. (ECF No. 9.) On July 27, 2020, TMA filed a reply. (ECF No. 10.)

II. Legal Standard

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a district court is "required to accept as true all factual allegations in the complaint and draw all inferences in the facts alleged in the light most favorable to the [plaintiff]." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008). "[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (citations omitted). However, the plaintiff's "obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Id.* (citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)). A court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan*, 478 U.S. at 286. Instead, assuming the factual allegations in the complaint are true, those "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (citing *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for misconduct alleged." *Id.* This "plausibility

standard" requires the complaint allege "more than a sheer possibility that a defendant has acted unlawfully," but it "is not akin to a probability requirement." *Id.* "Detailed factual allegations" are not required, but "more than an unadorned, the defendant-harmed-me accusation" must be pled; it must include "factual enhancements" and not just conclusory statements or a recitation of the elements of a cause of action. *Id.* (citing *Twombly*, 550 U.S. at 555, 557).

"Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)). However, courts are "not compelled to accept 'unsupported conclusions and unwarranted inferences,'" *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007) (quoting *Schuylkill Energy Res. Inc. v. Pa. Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997)), nor "a legal conclusion couched as a factual allegation." *Papasan*, 478 U.S. at 286.

While, as a general rule, the court may not consider anything beyond the four corners of the complaint on a motion to dismiss pursuant to Rule 12(b)(6), the Third Circuit has held that "a court may consider certain narrowly defined types of material without converting the motion to dismiss [to one for summary judgment pursuant to Rule 56]." *In re Rockefeller Ctr. Props. Sec. Litig.*,

184 F.3d 280, 287 (3d Cir. 1999). Specifically, courts may consider any "document *integral to or explicitly relied upon* in the complaint." *In re Burlington Coat Factory*, 114 F.3d at 1426 (quoting *Shaw v. Dig. Equip. Corp.*, 82 F.3d 1194, 1220 (1st Cir. 1996)).

III. Decision

TMA argues Plaintiff's § 1981 claim fails for three main reasons. First, Plaintiff lacks standing to pursue a claim for hiring or staffing discrimination, and his putative class claim should be dismissed for the same reason. Second, the Complaint must be dismissed as it is time-barred. Third, the Complaint lacks sufficient factual allegations to plausibly support a § 1981 claim. Plaintiff opposes arguing he has standing to assert hiring and staffing claims and TMA's argument is a premature challenge to class certification, Plaintiff's claims are not time-barred, and Plaintiff has adequately stated a claim for disparate treatment. The Court will address each argument in turn.

A. Standing

TMA argues Plaintiff lacks Article III standing to pursue a claim of hiring or staffing discrimination because he was, in fact, hired by TMA. (ECF No. 6 at 15.) Specifically, TMA argues:

> Plaintiff admits that he *was* hired and worked for TMA for more than one year, from June 2, 2014 to August 19, 2015. Moreover, Williams

> was in a sales role where he was not subject to the staffing procedures that he alleges left non-South Asian customer service employees "on the bench" between engagements for longer periods than South Asian employees spent on the bench. Because Williams has not experienced an injury in fact with respect to his initial hiring or his staffing with TMA, his hiring and staffing claims must be dismissed for lack of standing.

(*Id.* at 15.)

Plaintiff argues he has standing to pursue a claim of hiring or staffing discrimination because "TMA operates under a comprehensive, nationwide discriminatory scheme to achieve its discriminatory goal—the grossly disproportionate employment and advancement of South Asians in U.S. positions." (ECF No. 9 at 19.) Indeed, "[b]ecause this scheme infects all of TMA's employment practices, both non-South Asian applicants and employees—including Plaintiff—are harmed." (*Id.*)[5] The Court finds Plaintiff has standing.

"Article III of the Constitution limits the jurisdiction of federal courts to 'Cases' and 'Controversies.'" *Lance v.*

5. Plaintiff argues "TMA does not dispute that Plaintiff has standing to pursue failure to promote and termination claims, nor could it," because Plaintiff has properly alleged "TMA failed to promote him and terminated his employment because of its pattern and practice of discrimination against non-South Asians[.]"(*Id.* at 12.)

Coffman, 549 U.S. 437, 439, 127 S. Ct. 1194, 167 L. Ed. 2d 29 (2007). "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016). "The standing inquiry focuses on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed." *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 360 (3d Cir. 2014) (citing *Davis v. FEC*, 554 U.S. 724, 734, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008)). A motion to dismiss for lack of standing is properly brought pursuant to Federal Rule of Civil Procedure 12(b)(1), because standing is a matter of jurisdiction. *Ballentine v. United States*, 486 F.3d 806, 810 (3d Cir. 2007) (citing *St. Thomas—St. John Hotel & Tourism Ass'n v. Gov't of the U.S. Virgin Islands*, 218 F.3d 232, 240 (3d Cir. 2000) providing that the "issue of standing is jurisdictional"); *Kauffman v. Dreyfus Fund, Inc.*, 434 F.2d 727, 733 (3d Cir. 1970) (noting that we "must not confuse requirements necessary to state a cause of action . . . with the prerequisites of standing"). "Pursuant to Rule 12(b)(1), the Court must accept as true all material allegations set forth in the complaint, and must construe those facts in favor of the nonmoving party." *Ballentine*, 486 F.3d at 810 (citing *Warth v. Seldin*, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)); *Storino v. Borough of Point Pleasant Beach*, 322 F.3d 293, 296 (3d Cir. 2003). Nevertheless, on a motion to dismiss for lack of standing, the plaintiff "'bears the burden of establishing' the elements of standing, and 'each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive

stages of the litigation.'" *FOCUS v. Allegheny Cty. Court of Common Pleas*, 75 F.3d 834, 838 (3d Cir. 1996) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). However, "*general factual* allegations of injury resulting from the defendant's conduct *may suffice*." *Lujan*, 504 U.S. at 561 (emphasis added).

Article III "standing consists of three elements." *Spokeo*, 136 S. Ct. at 1547 (quoting *Lujan*, 504 U.S. at 560). To establish standing, "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.* "The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Id.* (citing *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990)).

Contrary to TMA's argument, Plaintiff has established he has standing to pursue claims against TMA. The Complaint asserts he suffered an injury in fact that is fairly traceable to the challenged conduct of TMA. Specifically, the Complaint alleges after Plaintiff was hired he was placed on a PIP despite "performing well," and was required to meet "unreasonable revenue goals," and was, among other things, never promoted because of "TMA's pattern or practice of discrimination," by favoring members of the South Asian Race or Indian national origin. (ECF No. 1 ¶¶ 26-27.) In other words, Plaintiff alleges he was the victim of TMA's discriminatory conduct. Therefore, the Court finds Plaintiff sufficiently

pled he suffered an injury in fact. *Patel v. Crist*, Civ. A. No. 19-9232, 2020 U.S. Dist. LEXIS 2110, 2020 WL 64618, at *4 (D.N.J. Jan. 7, 2020); *Morgan v. Martinez*, Civ. A. No. 3:14-02468, 2015 U.S. Dist. LEXIS 61877, 2015 WL 2233214, at *3 (D.N.J. May 12, 2015) (providing that "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim") (citation omitted). Furthermore, Plaintiff's injuries are likely to be redressed by a favorable judicial decision of this Court. Therefore, Plaintiff has established Article III standing: that he suffered an injury in fact, that is fairly traceable to the challenged conduct of TMA, and that is likely to be redressed by a favorable judicial decision. *Spokeo*, 136 S. Ct. at 1547. Accordingly, TMA's Motion to Dismiss based on lack of standing is **DENIED**.

B. Whether Plaintiff's Individual and Class Claims are Time-Barred under *American Pipe*

Both parties agree § 1981 does not contain a statute of limitations. (*See* ECF No. 6 at 17; ECF No. 9 at 20.) Depending on the character of the § 1981 claim asserted, however, the statute of limitations here is either four years under 28 U.S.C. § 1658 or it is borrowed from the personal injury statute of limitations of the forum state. *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 371, 124 S. Ct. 1836, 158 L. Ed. 2d 645 (2004). Therefore, there are two possible statutes of limitations: two years or four years. The Court will assume the statute of limitations is four years as the four-year statute of limitations pursuant to 28

U.S.C. § 1658 applies to claims for wrongful termination and failure to promote. *Donnelley*, 541 U.S. at 383.

Plaintiff's employment was terminated on August 19, 2015. Therefore, the time for him to bring a claim for hiring discrimination must have been brought on or before August 19, 2019. TMA argues, in anticipation of Plaintiff's opposition, that tolling derived from *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 94 S. Ct. 756, 38 L. Ed. 2d 713 (1974) will not save Plaintiff's claim. (ECF No. 6 at 19.) Plaintiff does not dispute his claim was not brought within the applicable statute of limitations but argues the statute of limitations was tolled during the pendency of a motion to amend the class action complaint in *Grant v. Tech Mahindra (Americas), Inc.*, Civ. A. No. 3:18-171 (D.N.D. 2019) ("*Grant*") to add Plaintiff as a class representative and to join his claims. (ECF No. 9 at 21.)[6] TMA argues Plaintiff is not entitled to the benefit of tolling because, among other things, Plaintiff's claims are different than those brought by the plaintiff in *Grant*, and Plaintiff was not a member of the putative class in *Grant*. (ECF No. 6 at 19.) Further, even if Plaintiff's claims are tolled, he can at most only pursue an individual claim. (*Id.* at 20.) In order to address the parties' arguments, the Court must first discuss *American Pipe* tolling.

6. Absent any tolling, Plaintiff's claim would indisputably be time-barred. In fact, Plaintiff concedes this putative class action was filed at least 246 days after the statute of limitations ran. (*See* ECF No. 9 at 21.)

Appendix D

i. *American Pipe* tolling

The Supreme Court has long held a timely class action tolls the claims of all putative class members. *American Pipe*, 414 U.S. at 552-53; *see Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 350, 103 S. Ct. 2392, 76 L. Ed. 2d 628 (1983). The Supreme Court has given two main reasons for its holding. First, tolling is needed to avoid duplicative lawsuits. *American Pipe*, 414 U.S. at 551, 553-54. Putative class members should be able to wait on the sidelines pending class certification, hoping for a victory in the class action. Without tolling, they might try to protect their claims by flooding courts with individual lawsuits—"precisely the multiplicity of activity which Rule 23 was designed to avoid." *Id.* at 551. Second, tolling is fair to both sides. *Id.* at 554. Statutes of limitations encourage plaintiffs to not sit on their claims and to sue promptly thus preventing surprises to defendants. "But putative class members reasonably expect the class action to protect their claims. And the class action gives defendants ample notice." *Blake v. JP Morgan Chase Bank NA*, 927 F.3d 701, 709 (3d Cir. 2019). The Supreme Court has since clarified that

> *American Pipe* tolls the statute of limitations during the pendency of a putative class action, allowing unnamed class members to join the action individually or file individual claims if the class fails. But *American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.

China Agritech, Inc. v. Resh, __ U.S. __, 138 S. Ct. 1800, 1804, 201 L. Ed. 2d 123 (2018). Indeed, in *China Agritech*,

the Supreme Court held *American Pipe* does not toll the claims of "a putative class representative . . . who brings his claims as a new class action after the statute of limitations has expired," reasoning that "the 'efficiency and economy of litigation' [rationales] that support tolling of individual claims . . . do not support maintenance of untimely successive class actions." *Id.* at 1806 (quoting *Am. Pipe*, 414 U.S. at 553); *Schultz v. Midland Credit Mgmt., Inc.*, Civ. A. No. 16-4415, 2019 U.S. Dist. LEXIS 79889, 2019 WL 2083302, at *9 (D.N.J. May 13, 2019). The question now is whether Plaintiff would have been a member of the *Grant* class, such that this Court should toll the limitations period under *American Pipe*.

ii. *Grant* Class Membership

As discussed, *American Pipe* "tolls the applicable statute of limitations for putative class members," *Weitzner v. Sanofi Pasteur Inc.*, 909 F.3d 604, 609 (3d Cir. 2018), and does not extend to plaintiffs who were not part of the class, or who "cease[d] to be part of the class." *Berkery v. Verizon Commc'ns Inc.*, 658 F. App'x 172, 174-75 (3d Cir. 2016). In *Grant*, plaintiff Rodrick Grant, an "American [of] national origin and African American race," filed a complaint in the District of North Dakota ("*Grant* Complaint") on behalf of himself and "a class of similarly situated individuals to remedy pervasive, ongoing race and national origin discrimination by Defendant Tech Mahindra (Americas), Inc." (ECF No. 9-4 at 2.) The *Grant* Complaint contained the following class definition: "All persons who are not of South Asian race or Indian national origin who sought a position with (or

within) TMA and were not hired, who sought a promotion within TMA and were not promoted, and/or who TMA involuntarily terminated." (*Id.* at 17.) TMA argues "[g]iven the differences in his and Grant's roles at TMA, [Plaintiff] would not have been a member of the class in *Grant* even if that case had been certified as a class action," because "Grant and [Plaintiff] had very different roles and experiences at TMA, a fact that is clear from the face of both complaints." (ECF No. 6 at 20.) The Court finds, at this juncture, that Plaintiff would have been a member of the class in *Grant*. Indeed, looking to the Complaint, Plaintiff alleges, he a member of the "Caucasian Race and American national origin," was, among other things, never promoted because of "TMA's pattern or practice of discrimination," by favoring members of the South Asian Race or Indian national origin. (*See* ECF No. 1 ¶¶ 11-12, 26.) Plaintiff, therefore, is entitled to *American Pipe* tolling.

The Court now turns briefly to whether *American Pipe* tolling applies to successive class actions and finds it does not. *American Pipe* created a generous tolling rule that applies broadly to protect putative class members in pending class actions. Yet the rule is not without limits. As the Supreme Court clarified in *China Agritech*, tolling does not apply to successive class actions under any circumstances. *Weitzner*, 909 F.3d at 614 (providing that "*China Agritech* precludes the application of *American Pipe* tolling to such successive class claims," and therefore "plaintiffs' class claims are not subject to tolling").

Accordingly, TMA's Motion to Dismiss Plaintiff's § 1981 claim as time-barred is **DENIED** with respect to Plaintiff's individual claim and **GRANTED** with respect to Plaintiff's class action claim.

C. Merits of Plaintiff's § 1981 Claim

TMA contends Plaintiff's claim under § 1981 should be dismissed because Plaintiff has not made any plausible allegations of race discrimination. (ECF No. 6 at 12.) In essence, TMA argues Plaintiff has crafted conclusory accusations that are unsupported by any specific factual allegations and have failed to "nudge[] his claims of invidious discrimination across the line from conceivable to plausible." (*Id.* at 14-15.) Plaintiff argues he has sufficiently alleged TMA engaged in a pattern and practice of racial discrimination against non-South Asians. (ECF No. 9 at 14.)

Section 1981 provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other.

42 U.S.C. § 1981(a). In order to state a claim under § 1981, a plaintiff must allege facts in support of the following elements: "(1) [that plaintiff] is a member of a racial minority; (2) intent to discriminate on the basis of race by the defendant; and (3) discrimination concerning one or more of the activities enumerated in the statute[,] which includes the right to make and enforce contracts . . . ." *Brown v. Philip Morris Inc.*, 250 F.3d 789, 797 (3d Cir. 2001) (citations omitted). Of note, "[a]ll races can seek relief under the statute." *Shine v. TD Bank Fin. Grp.*, Civ. A. No. 09-4377, 2010 U.S. Dist. LEXIS 69529, 2010 WL 2771773, at *1 (D.N.J. July 12, 2010) (permitting plaintiff who identified as "a Caucasian male of Irish and Polish descent" to proceed with certain § 1981 claims).

Critically, and both parties are correct to note, the Supreme Court recently clarified, "[t]o prevail, a [§ 1981] plaintiff must initially plead and ultimately prove that, but for race, [he] would not have suffered loss of his legally protected rights." *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 1019, 206 L. Ed. 2d 356 (Mar. 23, 2020); *see* ECF No. 6 at 12.[7] In other words, a successful § 1981 plaintiff must plausibly allege the defendant's discriminatory intent was a "but-for" cause

7. The Court notes the causation standards for Title VII and § 1981 are different. In *Comcast*, the Supreme Court held that to prevail on a § 1981 claim, "a plaintiff must initially plead and ultimately prove that, but for race, it would not have suffered the loss of a legally protected right." 140 S. Ct. at 1019. For Title VII, however, a plaintiff may prove discrimination by showing that race was a "motivating factor" in the employer's adverse employment action. *Id.* at 1017.

of an actionable adverse employment action or hostile environment. *Id.*; *see Rubert v. King*, Civ. A. No. 19-2781, 2020 U.S. Dist. LEXIS 177648, 2020 WL 5751513, at *6 (S.D.N.Y. Sept. 25, 2020). Moreover, the Supreme Court has also clarified *McDonnell Douglas* has no bearing on the "causation standards" for discrimination claims. *Comcast*, 140 S. Ct. at 1019. Rather, the *McDonnell Douglas* framework is "a tool for assessing claims, typically at summary judgment, when the plaintiff relies on indirect proof of discrimination." *Id.* (citations omitted). Indeed, irrespective of the *McDonnell Douglas* framework, a plaintiff alleging a § 1981 discrimination claim must "initially plead and ultimately prove that, but for [his] race, [he] would not have suffered the loss of legally protected right." *Id.*; *see Simmons v. Triton Elevator, LLC*, Civ. A. No. 3:19-1206, 2020 U.S. Dist. LEXIS 244133, 2020 WL 7770245, at *3 (N.D. Tex. Dec. 30, 2020). Stated differently, "*McDonnell Douglas* can provide no basis for allowing a complaint to survive a motion to dismiss when it fails to allege essential elements of a plaintiff's claim." *Comcast*, 140 S. Ct. at 1019.

Against this backdrop, the Court does not find the Complaint contains sufficient factual matter to state a claim that is plausible on its face under the but-for causation standard. *Id.* True, Plaintiff has alleged, among other things, that his termination was an actionable adverse employment action and termination does qualify as an adverse employment action. *See Dudhi v. Temple Health Oaks Lung Ctr.*, Civ. A. No. 20-1720, 834 Fed. Appx. 727, 2020 U.S. App. LEXIS 37460, 2020 WL 7040970, at *2 (3d Cir. Dec. 1, 2020); *Long v. Leggett & Platt, Inc.*,

Civ. A. No. 11604907, 2020 U.S. Dist. LEXIS 133027, 2020 WL 4333776, at *5 (D.N.J. July 28, 2020). However, Plaintiff fails to provide non-conclusory allegations that plausibly suggest his race, national origin, or a relevant protected activity, was a "but-for" cause of his termination or lack of promotion.[8] Plaintiff can point to no racially discriminatory statements or conduct by TMA, his supervisors, or anyone conceivably involved in the decision to fire him or refuse to promote him. Rather, Plaintiff simply (and conclusory) alleges because of "TMA's pattern or practice of discrimination, it never promoted [him]" and TMA "terminated [Plaintiff] because of TMA's pattern or practice of discrimination." (ECF No. 1 ¶¶ 26, 28.) These are boilerplate assertions unsupported by specific facts. *See Holmes v. Fed Ex*, 556 F. App'x 150, 151 (3d Cir. 2014); *Rodriguez v. Stanley*, Civ. A. No. 19-9104, 2020 U.S. Dist. LEXIS 234231, 2020 WL 7338221, at *6 (D.N.J. Dec. 14, 2020). Plaintiff has failed to show racial discrimination was a but-for cause of TMA's decision to terminate or refuse to promote Plaintiff. Therefore, Plaintiff has failed to state a plausible claim of intentional discrimination based on Plaintiff's race.

Accordingly, TMA's Motion to Dismiss Plaintiff's § 1981 claim is **GRANTED**.

8. Nowhere in the Complaint does Plaintiff allege he sought or was refused a promotion. He simply alleges TMA "never promoted" him. (ECF No. 1 ¶ 26.)

IV. Conclusion

For the reasons set forth above, TMA's Motion to Dismiss is **GRANTED** and Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE**. An appropriate order follows.

Dated: January 29, 2021

/s/ Brian R. Martinotti
BRIAN R. MARTINOTTI
United States District Judge