

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY**

ASHLEY PAGE,

individually and on behalf of all others similarly
situated,

Plaintiff,

vs.

PAPA JOHN’S INTERNATIONAL, INC., and
PAPA JOHN’S USA, INC.

Defendants.

CIVIL ACTION NO. 3:18-cv-835-CHB

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

COMPLAINT

Adam Smith, in the *Wealth of Nations*, wrote: “We rarely hear, it has been said, of the combinations of masters, though frequently of those of workmen. But whoever imagines, upon this account, that masters rarely combine, is as ignorant of the world as of the subject. Masters are always and everywhere in a sort of tacit, but constant and uniform, combination, not to raise the wages of labour above their actual rate.”¹ One form of employer combination that is particularly harmful to workers is the “no-poach” agreement, in which a group of employers agree that they will not hire or solicit one another’s workers. These are often contained in a company’s franchise agreements, requiring the individual franchises to agree not to hire or solicit workers from other franchises of the same company. Princeton University economists Alan Krueger and Orley Ashenfelter have studied franchise agreements extensively, and they conclude that “[a]greements to refrain from recruiting and hiring away employees from other units in a franchise chain are

¹ ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (1776), <https://www.gutenberg.org/files/3300/3300-h/3300-h.htm>.

common in franchise contracts,” that those no-poaching agreements can limit turnover, reduce labor market competition, and reduce workers’ job opportunities, and that the prevalence of no-poaching agreements may help to explain why wage growth has been sluggish despite low unemployment.²

Plaintiff Ashley Page is a former Papa John’s employee who brings this class action on behalf of herself and the proposed class (defined below) of all other similarly-situated current and former Papa John’s employees against Defendants Papa John’s International, Inc. and Papa John’s USA, Inc. (collectively, “Papa John’s” or “Defendants”) for Papa John’s anticompetitive policy enforced on both its franchised and company-owned restaurants, including its “non-traditional restaurants,” that prevented any Papa John’s franchise from hiring or soliciting current employees of any other Papa John’s franchise or company-owned restaurant, and prevented Papa John’s company-owned restaurants from hiring or soliciting current employees of Papa John’s franchises (the “No-Poach Clause”). Plaintiff alleges that this no-hiring and no-solicitation agreement was an illegal conspiracy between Papa John’s and its franchises in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 and seeks treble damages and injunctive relief, demanding a trial of jury of all issues so triable. The allegations contained in this Complaint are based on Plaintiff’s personal knowledge as to Plaintiff’s own conduct and upon information and belief or based on the investigation of counsel as to all other matters:

I. INTRODUCTION

1. Papa John’s required all of its franchisees to sign a franchise agreement that included a clause stating that they would not employ or solicit for employment (1) any Papa John’s employee, including employees of Papa John’s company-owned restaurants or affiliates, or (2)

² Alan B. Krueger and Orley Ashenfelter, *Theory and Evidence on Employer Collusion in the Franchise Sector*, NATIONAL BUREAU OF ECONOMIC RESEARCH (July 2018), at 20-1.

any employee of another Papa John's franchise. Papa John's company-owned restaurants were also subject to this clause, and they could not solicit employees of Papa John's franchises. This no-solicitation agreement is *per se* illegal under the federal antitrust laws.

2. Papa John's is one of the largest pizza delivery and carryout restaurant chains in the United States, providing services at approximately 3,400 restaurants in the United States. Approximately 700 of these restaurants, or roughly one-fifth of Defendant's restaurants, are corporate-owned; the rest are franchises.³

3. Papa John's defines most of its restaurants as "traditional" restaurants, which provide pizza delivery and carryout services in a "defined trade area." Some of Papa John's restaurants are "non-traditional" in that they do not provide delivery services but rather walk-up or carryout services in a designated facility, such as a food court or other venue.⁴

4. Papa John's receives profits from its franchises primarily through charging royalties on the franchises' gross revenue and requiring franchises to purchase many supplies and business services from Papa John's. Opening a new traditional Papa John's franchise costs from approximately \$130,000 to \$850,000, and a new non-traditional franchise costs approximately \$26,000 to \$390,000,⁵ with the variation primarily depending on the cost of the real estate and what construction is necessary.

5. Until November 2017, Papa John's franchise agreement, which both traditional and non-traditional franchisees are required to sign, included a clause prohibiting any Papa John's franchise from hiring any employees of Papa John's or its affiliates, including its corporate-owned restaurants, or employees of other Papa John's franchises. This clause (the "No-Poach Clause")

³ Papa John's International, Inc., Annual Report (Form 10-K) (February 27, 2018) ("2018 Annual Report"). *See also* Papa John's International, Inc., Franchise Disclosure Document (March 9, 2018) ("2018 FDD").

⁴ 2018 Annual Report.

⁵ 2018 FDD.

provides as follows:⁶

“You covenant that you will not, during the Term and for a period of one year after expiration or termination of the Franchise, employ or seek to employ any person who is employed by us, our Affiliates or by any of our franchisees, or otherwise directly or indirectly solicit, entice or induce any such person to leave their employment.”

6. After the Attorney General of the State of Washington initiated an investigation into Papa John’s regarding this No-Poach Clause in January 2018, Papa John’s removed the clause from its Standard Restaurant Franchise Agreement.⁷ The No Poach Clause remains, however, in the 2018 Non-Traditional Restaurant Franchise Agreement.⁸

7. Since Papa John’s franchise agreements were standardized, and franchisees knew that the franchise agreements were standardized, each franchisee knew that other franchisees were subject to the same franchise agreement and subject to the same No-Poach Clause. Employees, however, did not know about the No-Poach Clause.

8. While the No-Poach Clause prohibits franchisees from soliciting one another’s employees, the No-Poach Clause also explicitly prohibits them from hiring employees of the Papa John’s corporation itself, including employees of the 700 Papa John’s restaurants that are owned by the Papa John’s corporation. Additionally, Papa John’s corporate-owned locations cannot hire or solicit employees of Papa John’s franchises. This means that all of Papa John’s locations are subject to the No-Poach Clause.

9. Since the No-Poach Clause was contained in the franchise agreement with Papa John’s that was mandatory for franchisees to sign, and since company-owned locations also followed it, it

⁶ Papa John’s International, Inc., Franchise Disclosure Document (February 29, 2016) (“2016 FDD”), Franchise Agreement, Standard Restaurant, Section 16(e); Franchise Agreement, Non-Traditional Restaurant, Section 16(e).

⁷ Papa John’s International, Inc. Assurance of Discontinuance, *In re Franchise No Poaching Provisions*, 18-2-22880-8SEA (King Cty. Sup. Ct., WA Sept. 13, 2018).

⁸ 2018 FDD, Franchise Agreement, Non-Traditional Restaurant, Section 16C.

was a collusive policy between Papa John's and its franchises that allowed all Papa John's locations, whether corporate-owned or franchised, to reduce turnover and suppress wages, making them more profitable, and increasing Papa John's profits from its company-owned restaurants as well as the franchise royalties that it received.

10. The franchise agreement also gave Papa John's the right to terminate franchisees' right to operate their franchises in the event that they violated certain provisions of the agreement,⁹ including any violation of the No-Poach Clause.¹⁰ This meant that franchisees were compelled to follow the No-Poach Clause or risk immediate termination.

11. The No-Poach Clause is an unreasonable horizontal restraint of trade between competitors in employment marketplace. Such an obvious form of collusion is a *per se* violation of the Sherman Act, Section 1, 15 U.S.C. § 1. The Department of Justice's Antitrust Division and the Federal Trade Commission cooperated on the publication *Antitrust Guidance for Human Resource Professionals*, which states: "[n]aked wage-fixing or no-poaching agreements among employers, whether entered into directly or through a third-party intermediary, are *per se* illegal under the antitrust laws."¹¹ This document also states that "firms that compete to hire or retain employees are competitors in the employment marketplace...[i]t is unlawful for competitors to expressly or implicitly agree not to compete with one another, even if they are motivated by a desire to reduce costs."¹² This definition of an illegal no-poach agreement covers the No-Poach Clause.

12. The No-Poach Clause and similar agreements reduce competition for employees, which has the resulting effect of reducing turnover, employee choice, mobility, and wages. This reduces

⁹ 2016 FDD, Standard Franchise Agreement, Section 19; Non-Traditional Franchise Agreement, Section 19.

¹⁰ 2016 FDD, Standard Franchise Agreement, Section 19(b)(viii); Non-Traditional Franchise Agreement, Section 19(b)(viii).

¹¹ U.S. DEPT. OF JUSTICE, *Antitrust Guidance for Human Resource Professionals* (Oct. 2016), <https://www.justice.gov/atr/file/903511/download>, at 3.

¹² *Id.*, at 2.

employees' bargaining power both with their current employer and with other potential employers subject to the same No-Poach Clause.

13. The purposes of the No-Poach Clause are to reduce turnover and suppress Papa John's employees' wages by eliminating competition between Papa John's locations for workers, at both franchises and corporate-owned locations. Without a No-Poach Clause, locations would raise wages to attract each other's workers, locations would often have to raise wages and improve conditions to keep their own workers from seeking to work for other locations, and a worker at one location could seek higher-paid or higher-level positions that opened up at other locations. The No-Poach Clause greatly reduced or eliminated all of those possibilities and resulted in reducing turnover, employees' wages, benefits, working conditions, job mobility, and job choice versus what they would have been in an open market, benefitting Papa John's and its franchises at the expense of Papa John's employees.

14. Plaintiff and members of the Class are current and former employees of Papa John's and/or its franchises, who allege that Papa John's imposition of the No-Poach Clause, and collusion with its franchisees to implement and enforce it, proximately and foreseeably caused Plaintiff and other Class members to experience suppressed wages, fewer benefits, worse working conditions, and reduced choice and mobility as to work location.

15. Since (1) the No-Poach Clause is part of Papa John's franchise agreement, which is not disclosed to restaurant-level employees, (2) for Papa John's corporate-owned locations, the No-Poach Clause is part of Papa John's internal policies, which are not disclosed to restaurant-level employees, and (3) the No-Poach Clause is not mentioned in Papa John's or its franchises' employee agreements or other employee materials, Papa John's employees are not made aware of the No-Poach Clause. For Papa John's to deny Papa John's employees the knowledge that the

No-Poach Clause was operational was fraudulent concealment, and also withheld information that would have been material to their decision on whether to accept a position with a Papa John's restaurant at the time of hiring, had they known that the No-Poach Clause would have a significant negative effect on their wages, benefits, working conditions, upward mobility, and choice of locations at which to work.

16. Defendants' anticompetitive actions in imposing the No-Poach Clause on Papa John's franchises and corporate-owned locations and colluding with Papa John's franchises to enforce it has damaged Plaintiff and members of the Class. Plaintiff seeks treble damages, injunctive relief, and reasonable attorneys' fees and litigation costs on behalf of herself and the Class under the Sherman Antitrust Act, Section 1, 15 U.S.C. § 1.

II. JURISDICTION AND VENUE

17. Plaintiff brings her claim under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, seeking treble damages pursuant to Section 4 of the Clayton Antitrust Act, 15 U.S.C. § 15 and injunctive relief pursuant to Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1337(a). Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 15 U.S.C. §§ 15 and 22, as Defendants reside, transact business, committed an illegal or tortious act, have agents, and/or can be found in this District. Papa John's has 113 locations in Kentucky alone¹³ in addition to others in this District.¹⁴

18. This Court has personal jurisdiction over Defendants pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22. This Court has specific jurisdiction over Defendants because they transact

¹³ 2018 Annual Report.

¹⁴ *Id.*

business in this District and committed overt acts in furtherance of their conspiracy in this District, and Plaintiff's claims arose out of that conduct.

19. Further, Defendants' anticompetitive actions were directed at the United States, including in the Western District of Kentucky, and were intended to cause and did cause injury to persons in the United States, including in the Western District of Kentucky, and Plaintiff's claims arose from Defendants' anticompetitive actions.

III. INTERSTATE COMMERCE.

20. Papa John's restaurants are in all 50 states, and those restaurants hire workers in all 50 states.¹⁵

21. Papa John's employment policies are directed at and have national effect as a result of the national reach of its locations and the national scope of the terms of the No-Poach Clause.

22. The No-Poach Clause greatly reduced the ability of Papa John's employees to obtain higher paying or otherwise more desirable positions with Papa John's locations in other states. For example, without the No-Poach Clause, a pizza cook wanting to be promoted to shift manager would be able to apply for and be considered for open shift manager positions around the country, but the No-Poach Clause made this impossible, because that individual would not be considered for those positions.

23. As a result of the above, Papa John's anticompetitive actions had a substantial effect on interstate trade and commerce in the employment market for Papa John's employees.

¹⁵ 2017 Annual Report.

IV. PARTIES

A. Plaintiff.

24. Plaintiff Ashley Page is a resident of York, Pennsylvania. Ms. Page was employed at a Papa John's location during the Class Period (as defined below). Defendants' anticompetitive conduct through imposing the No-Poach Clause on their franchises and corporate-owned locations and enforcing it in collusion with their franchises caused Plaintiff and other Class members to experience suppressed wages and benefits and reduced choice of locations and work options within them.

B. Defendants.

25. Defendant Papa John's International, Inc. is a Delaware corporation that operates and franchises pizza delivery and carryout restaurants in the United States and certain other countries, including 3,400 restaurants in the United States. Its headquarters are at 2002 Papa John's Boulevard, Louisville, Kentucky.

26. Defendant Papa John's USA, Inc. is a wholly-owned subsidiary of Papa John's, Inc. that operates the Papa John's restaurants that are owned by Papa John's rather than a franchisee. Papa John's USA, Inc. also has its principal place of business at 2002 Papa John's Boulevard, Louisville, Kentucky.

C. Unnamed Co-Conspirators.

27. Papa John's franchises and their owners are participants as co-conspirators in Papa John's anticompetitive actions through their cooperation in the enforcement of the No-Poach Clause, and the franchise owners agreed to participate in those anticompetitive actions when they signed the franchise agreement containing the No-Poach Clause. The franchises and their owners have taken actions in furtherance of the No-Poach Clause and thereby conspired with Papa John's to suppress

the wages of Papa John's employees and raise the profitability of Papa John's franchises as well as Papa John's and its corporate-owned locations. Defendants are jointly and severally liable for anticompetitive actions taken by their non-Defendant co-conspirators.

V. STATEMENT OF FACTS

28. Papa John's is one of the largest pizza delivery and carryout restaurant chains in the United States, providing services at approximately 3,400 restaurants in the United States; roughly one-fifth of Defendants' restaurants are corporate-owned while the rest are franchises; Papa John's itself employs over 22,000 people, while an additional approximately 50,000 are employed by the franchisees; and Papa John's has annual U.S. revenues of \$1.8 billion, of which \$817 million comes from sales at company-owned restaurants, \$107 million comes from royalties paid by franchises, and \$734 million comes from sales of supplies and services to franchises.¹⁶

29. Papa John's receives profits from its franchises primarily through a royalty on gross revenues and sales of supplies and services. Opening a new traditional Papa John's franchise costs from approximately \$130,000 to \$850,000, and a new non-traditional franchise costs approximately \$26,000 to \$390,000,¹⁷ with the variation primarily depending on the cost of the real estate and what construction is necessary.

30. Papa John's franchises compete with one another and also compete with the locations owned directly by Papa John's. Papa John's tells its franchisees that: "Although we will not locate another standard Papa John's restaurant within your Territory, as described above, you will not receive an exclusive Territory. You may face competition from other Papa John's franchisees, from restaurants that we own, or from other channels of distribution or competitive brands that we

¹⁶ 2018 Annual Report.

¹⁷ 2018 FDD.

control.”¹⁸

31. Papa John’s franchise agreement set forth that the franchisee has “full responsibility for the conduct and terms of employment for your employees and the day-to-day operation of your business, including hiring, termination, pay practices and any other employment practices.”¹⁹

32. The franchise agreement sets forth that the franchisees are solely responsible for the hiring, firing, management, and discipline of their employees, and establish their own wages, hours, benefit policies, and other employment rules – but with the exception of the No-Poach Clause.

33. According to one site, average hourly wages at Papa John’s locations are \$13.93 for a delivery driver, \$10.63 for a shift leader, and \$8.99 for a pizza cook.²⁰ By contrast, the Bureau of Labor Statistics reports the national mean hourly wage for a food preparation worker as \$10.93 and a supervisor of food preparation as \$17.89.²¹

34. While Papa John’s does not set the pay scale for its franchises, and it allows franchises to set their own wages and employment policies, these low wages are the norm for almost all Papa John’s employees in the United States, whether at franchises or company-owned locations.

35. The No-Poach Clause to which Papa John’s followed for its company-owned locations and required all of its franchises to agree and abide is a major reason why Papa John’s wages were and are so low for Papa John’s employees nationwide, in addition to causing restricted job choice and job mobility.

36. The No-Poach Clause prevented franchises and company-owned locations from competing for employees, greatly reduced employees’ ability to seek better jobs at other locations, reduced

¹⁸ 2018 FDD, Item 12 – Territory.

¹⁹ 2018 FDD, Franchise Agreement, Section 11(c).

²⁰ *Papa John’s Salaries in the United States*, INDEED.COM, <https://www.indeed.com/cmp/Papa-John's/salaries> (last visited December 11, 2018).

²¹ *Occupational Employment Statistics*, BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/current/oes_nat.htm (last visited December 11, 2018).

turnover, and increased locations' bargaining power relative to their employees, who could not use offers or solicitations from other locations to negotiate wage, benefit, or other improvements from their current employers.

37. This resulted in lower wages for employees, reduced turnover, and higher profits for Papa John's, its company-owned locations, and its franchises. Additionally, as franchises became more profitable, Papa John's royalties from those franchises increased.

38. Pizza restaurant employees' skills, training, and work experience that they obtained at one pizza restaurant chain is typically chain-specific and is not valued by other pizza restaurant chains and food services companies. Papa John's and other restaurant chains normally require their franchises to use company-mandated computer systems and working procedures, so that experience with one company is not given credit by other companies with their own computer systems and working procedures. This means that an employee of one restaurant company who leaves for a different chain would often be required to start at entry-level regardless of how much experience she had at the first company.

39. If the labor market for Papa John's employees were competitive, Papa John's locations would compete with each other for employees by recruiting and giving offers to employees of other Papa John's locations. Greater competition between employers, and greater transparency with respect to the pay, benefits, and working conditions of alternative jobs would lead to increased compensation for employees.

40. Papa John's prevented this situation from becoming the reality for Papa John's employees. From at least 2009 through at least January 2018, the No-Poach Clause was part of Papa John's standard franchise agreement and all franchises were subject to it, in addition to being followed by company-owned locations. It remains a part of the non-traditional franchise agreement. As

mentioned above, the No-Poach Clause read as follows:²²

You covenant that you will not, during the Term and for a period of one year after expiration or termination of the Franchise, employ or seek to employ any person who is employed by us, our Affiliates or by any of our franchisees, or otherwise directly or indirectly solicit, entice or induce any such person to leave their employment.

41. The No-Poach Clause effectively prevents individual Papa John's locations from competing for employees, including the most experienced employees, the best performing employees, or employees who would be offered a promotion at a different location, or a new or expanding location from seeking employees from worse performing locations. Any of those scenarios would often lead to rising wages as one location would be seeking to recruit the employees in those categories, and their current employer location would raise their wages in an attempt to keep them.

42. Individual Papa John's franchises are required to abide by the franchise agreement, and they can be terminated if they violate certain provisions of it, including the No-Poach Clause.

43. The Papa John's employment application includes a question "Have you ever worked for our company?" This question helps Papa John's and its franchises identify Papa John's restaurant employees that are applying for positions at other Papa John's restaurants and enables them to enforce the No-Poach Clause.

44. Papa John's website contains an extensive section on career opportunities.²³ However, it never mentions the No-Poach Clause, or the negative effect that the No-Poach Clause has on Papa John's employees' wages, benefits, and opportunities.

45. The No-Poach Clause and similar agreements reduce competition for employees, which has the resulting effect of reducing those employees' wages, benefits, and job mobility, and

²² 2017 FDD, Franchise Agreement, Section 12.2(A)(3)

²³ See <https://jobs.papajohns.com/> (last visited December 11, 2018).

reducing turnover for the benefit of the companies and their franchise owners. This reduces employees' bargaining power both with their current employer and with other potential employers subject to the same No-Poach Clause. In the pizza restaurant industry, an employee's skills are usually employer-specific, and do not easily transfer to other pizza restaurant chains or other food preparation companies, making the No-Poach Clause and similar agreements especially harmful to employees in that industry.

46. The purposes of the No-Poach Clause are to reduce turnover and suppress Papa John's employees' wages by eliminating competition between Papa John's locations for workers. Without a No-Poach Clause, franchises would raise wages to attract each other's workers, a franchise would have to raise wages and improve conditions to keep its own workers from seeking to work for other franchises, and a worker at one franchise could seek higher-paid or higher-level positions that opened up at other franchises. The No-Poach Clause greatly reduced or eliminated all of those possibilities and resulted in reducing turnover, employees' wages, benefits, working conditions, job mobility, and job choice versus what they would have been in an open market – to the benefit of Papa John's and its franchises and to the detriment of Papa John's employees.

47. The No-Poach Clause prevents Papa John's locations from competing for employees and eliminates this wage competition and other competition between locations. Since Papa John's franchises cannot hire employees of other franchises or company-owned restaurants, and company-owned restaurants can't hire employees of franchises, and since Papa John's employees cannot easily use their skills, training, and experience to receive comparable value with another pizza restaurant chain or other food preparation company, Papa John's and its franchisees can suppress employee wages, benefits, and working conditions without increasing turnover, and Papa John's employees are denied the better wages, benefits, and working conditions that open

competition would create.

48. Economists Alan Krueger and Orley Ashenfelter describe the impact of the No-Poach Clause and similar clauses as “equivalent to a reduction in the elasticity of labor supply faced by individual franchisees and, in the usual models of monopsony (or oligopsony), reduces the wage relative to the marginal product of labor.”²⁴ Effectively, the No-Poach Clause and similar agreements result in reduced turnover, lower wages and worse conditions for employees, and greater profits for employers – in this case Papa John’s and its franchises.

49. Even Papa John’s direct or franchise employees who did not seek employment at other Papa John’s locations were harmed by the No-Poach Clause, because greater competition leads to better wages and benefits for workers in a given labor market generally (here, the market for Papa John’s employees), and Papa John’s locations would raise wages for their existing workers if they risked losing them to other locations.

50. A New York Times article stated that no-poach clauses “keep employees tied to one spot, unable to switch jobs or negotiate higher pay.”²⁵ The article also stated that “[a] lack of worker mobility has long been viewed as contributing to wage stagnation because switching jobs is one of the most reliable ways to get a raise.”²⁶

51. Krueger was quoted in the article. He studied agreements for 40 fast-food chains, and then concluded that no-poach clauses exist mainly to limit both competition and turnover, which can keep labor costs low and that they “have the potential to restrict competition and significantly influence pay.”²⁷

²⁴ Alan B. Krueger and Orley Ashenfelter, *Theory and Evidence on Employer Collusion in the Franchise Sector*, NATIONAL BUREAU OF ECONOMIC RESEARCH (July 2018), at 9.

²⁵ Rachel Abrams, *Why Aren’t Paychecks Growing? A Burger-Joint Clause Offers a Clue*, NEW YORK TIMES (Sept. 27, 2017), <https://www.nytimes.com/2017/09/27/business/pay-growth-fast-food-hiring.html>.

²⁶ *Id.*

²⁷ *Id.*

52. *Antitrust Guidance for Human Resource Professionals* states that “[n]aked wage-fixing or no-poaching agreements among employers, whether entered into directly or through a third-party intermediary, are *per se* illegal under the antitrust laws”²⁸ and “firms that compete to hire or retain employees are competitors in the employment marketplace...[i]t is unlawful for competitors to expressly or implicitly agree not to compete with one another, even if they are motivated by a desire to reduce costs.”²⁹

53. The Department of Justice recently issued a statement about no-poaching agreements, stating that its “Antitrust Division continues to investigate and prosecute ‘no-poach’ and wage-fixing agreements” and “[w]hen companies agree not to hire or recruit one another’s employees, they are agreeing not to compete for those employees’ labor. The same rules apply when employers compete for talent in labor markets as when they compete to sell goods and services. After all, workers, like consumers, are entitled to the benefits of a competitive market.”³⁰

54. The Department of Justice also stated that “[r]obbing employees of labor market competition deprives them of job opportunities, information, and the ability to use competing offers to negotiate better terms of employment.”³¹

55. The Department of Justice made clear that “naked” no-poach agreements are illegal, defining a naked agreement as one “not reasonably necessary to any separate, legitimate business collaboration between the employers” and “[n]aked no-poach and wage-fixing agreements are *per se* unlawful because they eliminate competition in the same irredeemable way as agreements to fix

²⁸ U.S. DEPT. OF JUSTICE, *Antitrust Guidance for Human Resource Professionals* (Oct. 2016), <https://www.justice.gov/atr/file/903511/download>, at 3.

²⁹ *Id.*, at 2.

³⁰ U.S. DEPT. OF JUSTICE, *See No More No-Poach: The Antitrust Division Continues to Investigate and Prosecute ‘No-Poach’ and Wage-Fixing Agreements* (April 10, 2018), <https://www.justice.gov/atr/division-operations/division-update-spring-2018/antitrust-division-continues-investigate-and-prosecute-no-poach-and-wage-fixing-agreements>.

³¹ *Id.*

product prices or allocate customers.”³²

56. The Department of Justice reached a settlement with rail industry companies who had entered into no-poach agreements.³³

57. In January 2018, the Washington attorney general’s office began investigating fast-food no-poach agreements, and then began to investigate no-poach agreements in other industries. Other state attorneys general later joined the investigation. Papa John’s was one of the chains investigated and to end the investigation, they agreed to remove the No Poach clause from their standard franchise agreement.³⁴

58. In July 2018, Reuters reported the investigation by the state attorneys general, and that the allegation was that fast-food companies were “using ‘no-poach’ rules in franchise agreements to hold down wages and limit employee advancement.”³⁵ and “[b]y limiting potential job opportunities, [no-poach] agreements may restrict employees ability to improve their earning potential and the economic security of their families[.]”³⁶

59. Multiple state attorneys general wrote official letters to the corporate offices of many fast-food chains wanting to know more about the no-poach provisions and stating that no-poach agreements “limit[] potential job opportunities,” “restrict employees’ ability to improve their earning potential and the economic security of their families[.]” and “deprive other franchisees of the opportunity to benefit from the skills of workers” covered by such agreements.³⁷

³² *Id.*

³³ U.S. DEPT. OF JUSTICE, *Justice Department Requires Knorr and Wabtec to Terminate Unlawful Agreements Not to Compete for Employees* (Apr. 3, 2018), <https://www.justice.gov/opa/pr/justice-department-requires-knorr-and-wabtec-terminate-unlawful-agreements-not-compete>.

³⁴ Papa John’s International, Inc. Assurance of Discontinuance, *In re Franchise No Poaching Provisions*, 18-2-22880-8SEA (King Cty. Sup. Ct., WA Sept. 13, 2018).

³⁵ Diane Bartz & Alana Wise, *U.S. states probe fast-food franchise deals not to poach workers*, REUTERS (July 9, 2018), <https://www.reuters.com/article/us-usa-restaurants-probe/u-s-states-probe-fast-food-franchise-deals-not-to-poach-workers-idUSKBN1JZ2NX>.

³⁶ *Id.*

³⁷ Letter from Cynthia Mark, Chief, Fair Labor Div. Mass. Office of the Attorney General, *et al.*,

60. In addition to Papa John's agreement in September 2018, fast-food chains Arby's, Auntie Anne's, Buffalo Wild Wings, Carl's Jr., Cinnabon, Jimmy John's, and McDonalds in July 2018 entered into an agreement with the Washington attorney general in which they agreed to cease using no-poach clauses in their franchise agreements. Massachusetts attorney general Maura Healy issued a statement that no-poach agreements "unfairly limit the freedom of fast-food and other low-wage workers to seek promotions and earn a better living."³⁸

61. The Washington attorney general's office considered the No-Poach Clause and similar clauses imposed by corporate chains on their own workers and their franchises' workers to be illegal and a violation of Washington's antitrust laws, stating: "[n]o-poach provisions create a rigged system where businesses no longer have to compete for workers, putting downward pressure on wages nationwide. That's wrong – and illegal."³⁹

62. The Washington attorney general's office press release described how no-poach clauses hurt workers: "[b]ecause employees cannot move to another location within their corporate brand, their current location has less incentive to give them raises" and "economists believe that 'no-poach' clauses reduce opportunities for low-wage workers and stagnate wages."⁴⁰

VI. RELEVANT MARKET.

63. Plaintiff maintains that Papa John's anticompetitive conduct is a *per se* violation of the Sherman Act, 15 U.S.C. § 1, and therefore Plaintiff is not required to define a relevant market.

64. In the alternative, Plaintiff maintains that an observer with even a rudimentary

https://www.attorneygeneral.gov/wp-content/uploads/2018/07/2018-07-09-NPNH_Letter_Redacted.pdf (last visited Oct. 1, 2018).

³⁸ Jackie Wattles, *7 fast-food chains agree to end 'no-poach' rules*, CNN MONEY (July 12, 2018),

<https://money.cnn.com/2018/07/12/news/companies/no-poach-fast-food-industry-wages-attorneys-general/index.html>.

³⁹ WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, *AG Ferguson Secures End to No-Poach Provisions at Eight More Restaurant Chains Nationwide*, Sept. 13, 2018, <https://www.atg.wa.gov/news/news-releases/ag-ferguson-secures-end-no-poach-provisions-eight-more-restaurant-chains>.

⁴⁰ *Id.*

understanding of economics could conclude that the No-Poach Clause would have an anticompetitive effect on the labor market for Papa John's restaurant employees, because if the Papa John's locations who are the competitors in that labor market agree not to hire each other's employees, the wages for those employees will be suppressed versus what they would have been in an open market. Therefore, if Papa John's conduct is deemed not to be a *per se* violation of the Sherman Act, a "quick look" analysis would apply, and Plaintiff would not be required to define a relevant market.

65. To the extent Plaintiff's claims require the definition of a relevant economic market, the relevant market is the employment market for employees of Papa John's restaurants in the United States.

66. To the extent Plaintiff's claims require the definition of a relevant geographic market, the relevant market is the United States.

67. Papa John's and its franchises, all of whom were subject to the No-Poach Clause until at least July 2018, have a market share of 100% for the employment of Papa John's restaurant employees in the United States. There were no opportunities for a Papa John's restaurant employee in the United States to work for a Papa John's restaurant that was not subject to the No-Poach Clause.

68. Pizza restaurant employees' skills, training, and work experience obtained at one pizza restaurant chain is typically not valued by other pizza restaurant chains and other food preparation companies. Since Papa John's and other restaurant chains normally require their franchisees to use company-specific training methods, computer systems, and working procedures, experience with one pizza restaurant chain is not given credit by other chains with their own training methods, computer systems, and work procedures, and an employee of one pizza restaurant chain who leaves

for another chain would often be required to start at entry-level regardless of how much experience she had at the first chain. Therefore, employment at other restaurant chains and other food preparation companies is not an acceptable substitute for employment at Papa John's.

VII. ANTITRUST INJURY.

69. Plaintiff and members of the Class are current or former Papa John's employees.

70. Papa John's directly-owned locations and its franchises are engaged in competition with other Papa John's franchises and Papa John's directly-owned locations for Papa John's restaurant employees.

71. Papa John's and its franchisees were co-conspirators in enforcing the No-Poach Clause, and they acted to support that conspiracy when Papa John's imposed the No-Poach Clause on its franchises and took steps to enforce it against franchises that violated it, when franchises agreed not to solicit the employees of other franchises or of Papa John's company-owned locations, and when Papa John's agreed that its company-owned locations would not solicit the employees of its franchises.

72. Papa John's and its franchises intended to restrain and did in fact restrain competition in the employment market for Papa John's restaurant employees by entering into the No-Poach Clause, for the intended purposes of reducing turnover and wage and non-wage competition between Papa John's locations, thereby suppressing employee wages, benefits, and job choice, making Papa John's and its franchises more profitable at their employees' expense.

73. Papa John's anticompetitive actions had a significant impact on interstate commerce in the employment market for Papa John's restaurant employees. Papa John's actions had national impact on that market.

74. The No-Poach Clause deprived Papa John's employees of access to the higher wages, better

benefits and working conditions, and greater job choice and mobility that free and open competition would have created for them. This affected not only employees who sought positions at other Papa John's locations, but also affected employees who did not seek other positions, because a franchise faced with competition for its own workers would often raise their wages and improve their benefits and working conditions to encourage them to stay.

75. Therefore, Papa John's anticompetitive actions had the proximate and foreseeable result of injuring the wages of Plaintiff and other members of the Class.

76. If not for Papa John's anticompetitive actions through its use of and enforcement of the No-Poach Clause, Plaintiff and other members of the Class would have received higher wages, better benefits and working conditions, and greater job choice and mobility.

77. The suppression of wages and other non-wage benefits and job mobility that Plaintiff and other Class members sustained is the type of injury that the antitrust laws were intended to prevent and make illegal, and it was the direct result of Papa John's anticompetitive actions through imposing and enforcing the No-Poach Clause on its franchises and company-owned locations.

78. Papa John's anticompetitive actions had no legitimate business justification and did not have any pro-competitive benefits.

79. Papa John's is jointly and severally liable for the acts of non-Defendant co-conspirator franchises and their owners.

80. Papa John's therefore caused antitrust injury to Plaintiff and other members of the Class.

VIII. FRAUDULENT CONCEALMENT AND STATUTE OF LIMITATIONS.

81. Papa John's concealed the conspiracy from Plaintiff and other members of the Class. The No-Poach Clause was not disclosed to Plaintiff or other Papa John's employees, and they could not have reasonably discovered it.

82. Plaintiff and other members of the Class did not have access to information that would have alerted them to the possibility of the conspiracy between Papa John's and its franchises.

83. Papa John's company-owned locations and franchises both represented to their employees that they were in compliance with the law and that the wages being offered were determined fairly through competition in a free and open market. Plaintiff and other members of the Class could not have reasonably determined that this was false based on information available to them, especially in light of Papa John's and its franchises' efforts to conceal their anticompetitive actions from franchise employees and members of the public.

84. When a Papa John's franchise employee applied for a job at another Papa John's franchise or a company-owned location, that employee would simply not receive a job offer. The employee was never informed that the No-Poach Clause was preventing her from getting that other position.

85. Papa John's and its franchises intended to, and did in fact, conceal evidence of the No-Poach Clause and its effects in suppressing wage and non-wage competition from Papa John's restaurant employees.

86. Plaintiff and other members of the Class relied, reasonably, on statements by Papa John's and its franchises that they were in compliance with the law, and that the wages being offered were determined in a free and open market.

87. In light of the above, Papa John's knowing and active efforts to conceal the conspiracy and the conduct behind it should be deemed to toll any statute of limitations herein, and to estop Defendants from using any statute of limitations defense in this action.

IX. CLASS ACTION ALLEGATIONS.

88. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Fed. R. Civ. P. 23 as representative of a Class defined as follows:

All persons in the United States who worked for a Papa John's restaurant in the United States, whether company-owned or franchised, at any time from January 1, 2009 onwards until such time as the anticompetitive conduct alleged herein has ceased (the "Class Period.")

Excluded from the Class are Defendants' officers and directors, Papa John's franchise owners, any employees of any Defendant who worked for that Defendant in a capacity other than as a restaurant employee of a Papa John's location directly-owned by a Defendant or its subsidiary, Defendants' counsel, and employees of the U.S. District Court for the Western District of Kentucky, and all immediate family members of any of those excluded individuals.

89. Plaintiff reserves the right to amend the Class definition and to add subclasses.

90. The number of members of the Class is so large and numerous as to make joinder of all potential Class members impracticable. There are over four thousand Papa John's restaurants in the United States, and each one would likely have at least ten employees at a time and many more employees from years, meaning that there are at least tens of thousands of proposed members of the Class throughout the United States.

91. There are numerous questions of law and fact that are common to the Class and that predominate over any issues affecting individual members of the Class, including, *inter alia*:

- A. Whether Papa John's imposed the No-Poach Clause on its franchises;
- B. Whether Papa John's imposed the No-Poach Clause on its company-owned locations;
- C. Whether Papa John's enforced the No-Poach Clause on its franchises who sought to hire or solicit employees of other franchises or of company-owned locations;
- D. Whether Papa John's enforced the No-Poach Clause on its company-owned locations who sought to hire or solicit employees of its franchisees;
- E. When Papa John's first included the No-Poach Clause in its franchise agreements;
- F. How the No-Poach Clause was enforced;

G. Whether, and by how much, the conduct alleged herein suppressed the wages, benefits, working conditions, and job mobility of Papa John's and its franchises' employees;

H. Whether Papa John's and its franchises intended to suppress the wages, benefits, working conditions, and job mobility of Papa John's employees through the No-Poach Clause;

I. What effect the No-Poach Clause had on Defendants' and their franchises' profits;

J. Whether the conduct alleged herein was a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

K. Whether the conduct alleged herein was an unreasonable restraint of trade;

L. Whether the conduct alleged herein was a *per se* violation of the federal antitrust laws;

M. The operative time period and extent of Defendants' violations;

N. Whether Papa John's and its franchises fraudulently concealed their conduct;

O. Whether Plaintiff and the Class could reasonably have known about the no-poach conspiracy prior to its public announcement;

P. The proper measure of damages for the Class; and

Q. The appropriate injunctive and equitable relief for the Class.

92. Plaintiff's interests are typical of, and not antagonistic to, those of other or absent members of the Class, such that she can fairly and adequately represent their interests.

93. Plaintiff has retained counsel with substantial experience litigating complex antitrust class actions, including substantial experience litigating such cases within this District.

94. Class treatment of Plaintiff's federal antitrust claims is a superior method for the fair and efficient adjudication of this controversy in that, among other things, such treatment will permit a large number of similarly-situated persons to prosecute common claims in a single forum

simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender.

95. Plaintiff knows of no difficulty likely to be encountered in the maintenance of this action as a class action under Fed. R. Civ. P. 23.

COUNT ONE
Violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1)

96. Plaintiff repeats and reiterates each of the allegations set forth in paragraphs 1-95 as if fully set forth herein.

97. Since the conduct alleged herein is *per se* illegal or evaluated under the “quick look” analysis, Plaintiff is not required to define a relevant market.

98. In the alternative, if Plaintiffs are required to define a relevant market, the relevant economic market is the employment market for employees of Papa John’s restaurants in the United States, whether company-owned or franchised, and the relevant geographic market is the United States.

99. Papa John’s imposed the No-Poach Clause on its company-owned restaurants and its franchises, and then enforced the No-Poach Clause on them, in collusion with them, thereby restricting competition in the labor market for Papa John’s restaurant employees to their detriment, suppressing their wages, benefits, working conditions, and job mobility.

100. This collusion between Papa John’s and its franchises was an unreasonable restraint of trade and violated federal antitrust law.

101. Papa John’s imposition and enforcement of the No-Poach Clause was intended to, and did in fact, suppress wage and non-wage competition, turnover, and job mobility for Papa John’s restaurant employees, resulting in Papa John’s restaurant employees having artificially low wages,

fewer benefits, worse working conditions, and reduced choice and mobility as to job and work location.

102. Papa John's and its franchises engaged in this collusion in order to increase the profits of Papa John's and its franchises, and they did in fact increase their profits through reducing turnover, suppressing wages and wage growth, providing fewer benefits and worse working conditions, and being able to exploit workers whose mobility within the company was greatly reduced or eliminated.

103. The direct, foreseeable, intended, and proximate result of Papa John's actions was the suppression of wages, benefits, working conditions, and job mobility for Papa John's restaurant employees.

104. There is no legitimate pro-competitive justification for Papa John's actions, and even if there was, there would be a less restrictive alternative way to achieve it.

105. As a direct, material, and proximate result of Defendants' violation of § 1 of the Sherman Act, Plaintiff and the Class have suffered injury to their business and property within the meaning of § 4 of the Clayton Act throughout the Class Period.

106. Plaintiff and the Class seek treble damages for Defendants' violations of § 1 of the Sherman Act under § 4 of the Clayton Act.

107. Plaintiff and the Class also seek an injunction against Defendants, preventing and restraining the violations alleged above, under § 16 of the Clayton Act.

WHEREFORE, Plaintiff hereby respectfully requests:

- A. That the Court determine that Plaintiff's claim alleged herein is suitable for class treatment, and certify the proposed Class pursuant to Fed. R. Civ. P. 23;
- B. That the Court appoint Plaintiff as the representative of the Class;

- C. That Plaintiff's counsel be appointed as counsel for the Class;
- D. That the Court award, pursuant to 15 U.S.C. § 15, compensatory and trebled damages to the Class resulting from Defendants' violations of the Sherman Act;
- E. That the Court order, pursuant to 15 U.S.C. § 26, permanent injunctive relief preventing Defendants from continuing their unlawful acts in violation of the Sherman Act;
- F. That Plaintiff and the Class be awarded their costs, expenses, and reasonable attorneys' fees in bringing this action;
- G. That Plaintiff and the Class be awarded pre-judgment and post-judgment interest on all sums awarded; and
- H. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury on all issues triable to a jury in this action.

Dated: December 18, 2018

Respectfully submitted:

/s/ Kenneth A. Bohnert

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Bradley R. Palmer
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*Attorneys for Plaintiff Ashley Page and the
proposed Class*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Page, Ashley, individually and on behalf of others similarly situated.

(b) County of Residence of First Listed Plaintiff York (PA)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (*Firm Name, Address, and Telephone Number*)

Conliffe, Sandmann & Sullivan, 2000 Waterfront Plaza, 325 West Main Street, Louisville, KY 40202, (502) 587-7711

DEFENDANTS

Papa John's International, Inc., and Papa John's USA, Inc.

County of Residence of First Listed Defendant Jefferson
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- | | | | |
|----------------------------|------------------------------|---------------------------------------|---|
| <input type="checkbox"/> 1 | U.S. Government
Plaintiff | <input checked="" type="checkbox"/> 3 | Federal Question
<i>(U.S. Government Not a Party)</i> |
| <input type="checkbox"/> 2 | U.S. Government
Defendant | <input type="checkbox"/> 4 | Diversity
<i>(Indicate Citizenship of Parties in Item III)</i> |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*):

15 U.S.C. § 1

Brief description of cause:

No-poach clauses in franchise agreement are a conspiracy in restraint of trade.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S)
IF ANY**

(See instructions):

JUDGE Joseph H. McKinley, Jr.

DOCKET NUMBER 3:18-cv-825

DATE _____

SIGNATURE OF ATTORNEY OF RECORD

12/18/2018

/s/ Kenneth A. Bohnert

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the

for the

Plaintiff(s)

V.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the

for the

Plaintiff(s)

V.

Defendant(s)

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☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____ , a person of suitable age and discretion who resides there,
 on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable [class action lawsuit database](#)
