16N THE SUPREME COURT OF PENNSYLVANIA

Docket No. 68 EAL 2025

CLARENCE DAVID CORYELL, and SANDRA CORYELL, H/W,

Plaintiffs-Appellees-Respondents,

v.

STEVEN MORRIS, JASON DAWSON, ROBIZZA, INC., AND DOMINO'S PIZZA LLC,

Defendants-Appellants,

APPEAL OF DOMINO'S PIZZA LLC,

Defendant-Appellant-Petitioner.

PROPOSED BRIEF OF *AMICI CURIAE* THE INTERNATIONAL FRANCHISE ASSOCIATION AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER DOMINO'S PIZZA LLC'S PETITION FOR ALLOWANCE OF APPEAL

Domino's Petition for Allowance of Appeal is from the Superior Court's January 31, 2025 *En Banc* decision at 1977 EDA 2021, affirming a jury verdict entered by the Philadelphia Court of Common Pleas at Docket 180602732

D. ALICIA HICKOK
PA ID No. 87604
DLA Piper LLP (US)
One Liberty Place
1650 Market Street, Suite 5000
Philadelphia, PA 19103-7300
T: (215) 656-3345
F: (215) 606-3345
alicia.hickok@us.dlapiper.com

NORMAN M. LEON
DLA Piper LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606-0089
T: (312) 368-2192
norman.leon@us.dlapiper.com
Motion for Admission
Pro Hac Vice Forthcoming

Counsel for Amici Curiae The International Franchise Association and The Chamber of Commerce of the United States

STATEMENT OF INTERESTS OF THE *AMICI CURIAE*

Founded in 1960, the International Franchise Association ("IFA") is the oldest and largest trade association in the world devoted to representing the interests of franchising. The IFA's membership includes franchisors, franchisees, and suppliers.

The IFA's mission is to safeguard and enhance the business environment for franchising worldwide. In addition to serving as a resource for franchisors and franchisees, the IFA and its members advise public officials across the country about the laws that govern franchising. Through its public-policy programs, the IFA protects, enhances, and promotes franchising on behalf of more than 1,400 franchised brands in more than 300 different industries.

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Amici have a strong interest in this case because it implicates the viability of the franchise business model—and, potentially, the independent contractor business

model used by many other businesses whose interests the Chamber represents. If the mere implementation of standards that are commonplace in franchised businesses and many independent contractor relationships are deemed sufficient to impose vicarious liability, the economic viability of franchising and other businesses where such standards are necessary will be upended. These results would be greatly detrimental to business, the economy more generally, and the public.

Amici seek to provide this Court with relevant industry-specific context and practical perspectives regarding the ubiquity of and reasons for the "controls" which the Superior Court concluded supported the existence of an agency relationship here. The omnipresence of these factors throughout franchising, especially in the quick service restaurant segment, underscores the enormous risks the Superior Court's opinion poses to franchising generally and may inform this Court's decision on whether to grant review.

Pursuant to Rule of Appellate Procedure 531(b)(2), *amici curiae* state that no person or entity, other than the *amici*, their members, and their counsel, paid for or authored this brief, in whole or in part.

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I. SUGGESTED QUESTION

Should this Court review the *en banc* majority's opinion because it presents issues of such substantial importance to franchising and to the public as a whole as to require prompt and definitive resolution by this Court?

Suggested Answer: *Yes*

II. REASONS FOR ALLOWANCE OF APPEAL

A. Franchising Has a Substantial Impact on the Economy in the Commonwealth and is a Significant Driver of Small Business Ownership.

Franchising has "existed in this country in one form or another for over 150 years." *Patterson v. Domino's Pizza, LLC*, 333 P.3d 723, 733 (Cal. 2014). More recently, it has "become a ubiquitous, lucrative, and thriving business model" (*id.* at 725) that is a part of everyday life for most consumers. *See* Joseph H. King, Jr., *Limiting the Vicarious Liability of Franchisors for the Torts of Their Franchisees*, 62 Wash. & Lee L. Rev. 417, 422 (2005) (observing that franchise operations are "omnipresent"). Indeed, most of the world's best-known fast-food brands—including Dunkin', McDonald's, Burger King, and Subway—are franchisors.

The economic impact of the franchise business model cannot be overstated. As of 2024, there were over 830,000 franchised businesses in the United States which collectively accounted for about 8.8 million jobs and a total economic output in excess of $896.9 billion. *2025 Franchising Economic Outlook*, Int'l Franchise Ass'n, at 2, available at https://indd.adobe.com/view/41aaf895-c7f7-43ff-9004-9455305199f3. The biggest impact of franchising, however, has been in the

opportunities it has created for those looking to go into business for themselves. As the Department of Commerce noted nearly 40 years ago:

> Franchising represents the small entrepreneur's best chance to compete with giant companies that dominate the marketplace. Without franchising, thousands of businesspersons would never have had the opportunity of owning their own businesses and never have felt the immense satisfaction of being a part of the free enterprise system.

Andrew Kosteka, U.S. Dep't of Commerce, *Franchising in the Economy 1986-1988*, at 1 (1988).

This is certainly true in Pennsylvania. As of 2024, there were more than 28,300 franchised businesses in the Commonwealth. Collectively, these businesses employed over 301,000 people and produced an economic output of more than $30 billion. *2025 Franchising Economic Outlook*, Int'l Franchise Ass'n, at 21. The quick service restaurant industry (*i.e.*, McDonald's, Domino's, etc.) is by far the largest contributor to these figures. *Id*. at 13-15.

1. The Different Forms of Franchising

Although franchising encompasses more than 300 different business lines, there are just two main forms of franchising: product franchising (*e.g.*, automobile dealerships, gasoline retailing, and soft-drink distribution) and business-format franchising (*e.g.*, quick service restaurants, convenience stores, and hotels). *Patterson*, 60 Cal. 4th at 488-490. In product franchising, the primary commodity exchanged between a franchisor and a franchisee is a tangible product (like gasoline)

that the franchisee resells to a consumer. In a business-format franchise relationship, in contrast, the primary commodity exchanged between a franchisor and a franchisee is a license that gives the franchisee the right to use the franchisor's brand and its associated intellectual property. In this regard, business format franchising differs from product franchising in an important way—the business-format franchisee is not distributing a product *for* the franchisor; rather, it is buying a service *from* the franchisor (*i.e.*, the know-how for running a retail business) and using that know-how to build its own business under the franchisor's brand. *See Patterson*, 60 Cal. 4th at 489.

2. To Protect the Public and Their Brands, and to Comply with Federal Law, Franchisors Must Exercise Certain Controls Over How Franchisees Operate Their Businesses

In a "business-format" franchise, like a fast-food restaurant, the franchisor provides not only the "product, service and trademark, but the entire business format itself—a marketing strategy and plan, operating manuals and standards, quality control, and continuing two-way communication." LaFontaine and Blair, *The Evolution of Franchising and Franchise Contracts: Evidence from the United States*, 3 Entrepreneurial Bus. L.J. 381, 385 (2009); *accord* Robert W. Emerson, *Franchise Contract Clauses and the Franchisor's Duty of Care Toward Its Franchisees*, 72 N.C. L. Rev. 905, 920-21 (1994). Business-format franchising has value when this "business format," which is typically referred to as the franchisor's "operating

system" or "marketing system," is consistently replicated by the independent business owners who purchase the right to use the franchisor's brand and system. *Patterson*, 333 P.3d at 733 ("The goal [in franchising]—which benefits both parties to the contract—is to build and keep customer trust by ensuring consistency and uniformity in the quality of goods and services, the dress of franchise employees, and the design of the stores themselves."). That is because when a franchisor's operating system is properly and consistently replicated, it creates brand equity. R. King, *Limiting the Vicarious Liability of Franchisors for the Torts of Their Franchisees*, 62 Wash. & Lee L. Rev. 417, 468 (2005) ("Franchising depends on the use of shared trademarks, the value of which is sustained by controlling the uniformity and quality of the products and services marketed under the trademark."). This equity, in turn, draws customers based on their preference for the brand. *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, 124 F.3d 430, 433 (3d Cir. 1997) ("The essence of a successful nationwide fast-food chain is product uniformity and consistency. Uniformity benefits franchisees because customers can purchase pizza from any Domino's store and be certain the pizza will taste exactly like the Domino's pizza with which they are familiar."). When a franchisor's operating system is not properly replicated, the entire brand suffers. This impacts every franchised location and the value of every franchisee's investment. *See Ramada Franchise Sys., Inc. v. Jacobcart, Inc.*, No. 3:01-cv-0306D, 2001 WL 540213, at *3 (N.D. Tex. May 17,

2001) ("A bad experience at one location of what is supposed to be a relatively uniform chain may influence the customer to view the entire franchise poorly.").

Franchisors attempt to make sure this does not happen by "impos[ing] comprehensive and meticulous standards for marketing [their] trademarked brand and operating [their] franchises in a uniform way." *Salazar v. McDonald's Corp*., 944 F.3d 1024 (9th Cir. 2019) (internal quotations omitted). "Policing the use of the brand, through quality, marketing, and operational standards, is necessary to maintaining its value and continued primary function as a beacon to consumers indicating the source of particular goods or the quality of a particular store." *Patel v. 7-Eleven, Inc.*, 494 Mass. 562, 569 (2024). In fact, the maintenance of these standards is so inherent in franchising that it is incorporated into the federal rule that defines what a "franchise" is. *See* 16 C.F.R. § 436.1(h)(2) (defining a "franchise" as a commercial relationship in which "[t]he franchisor will exert or has authority to exert *a significant degree of control over the franchisee's method of operation*, or provide significant assistance in the franchisee's method of operation …") (emphasis added).

The requirement that franchisors maintain uniform standards is not, however, grounded solely in the need to protect the brand—it is also grounded in the need for consumer protection. "Franchisors, such as [Domino's], license their trademarks and brand identities to franchisees, such as [Robizza]." *Depianti v. Jan–Pro Franchising*

Int'l, Inc., 465 Mass. 607, 615 (2013). Without the right to enforce standards, there is a "danger that products bearing the same trademark might be of diverse qualities." *Dawn Donut Co. v. Hart's Food Stores, Inc.*, 267 F.2d 358, 367 (2d Cir. 1959). "[U]nless the licensor exercises supervision and control over the operations of its licensees the risk that the public will be unwittingly deceived will be increased …." *Id*. For this reason, federal law requires a franchisor "to maintain control and supervision over a franchisee's use of its mark, or else the franchisor will be deemed to have abandoned its mark under the abandonment provisions of the Lanham Act, 15 U.S.C. § 1064(5)(A) (2006)." *Depianti*, 466 Mass. at 215; *accord Doeblers' Pennsylvania Hybrids, Inc. v. Doebler*, 442 F.3d 812, 823 (3rd Cir. 2006) (courts have "long imposed upon trademark licensors a duty to oversee the quality of licensees' products").

B. The Courts Have Almost Uniformly Recognized That a Franchisor's Maintenance of Standards Designed to Protect Its Brand and Trademarks Does Not Create Vicarious Liability

Because franchisors must exercise control over certain aspects of their franchisees' operations, courts and commentators have long recognized that the "right to control" test for vicarious liability—which originated in the employment context—is "not easily transferable to the franchise relationship." *Kerl v. Dennis Rasmussen, Inc*., 682 N.W.2d 328 (Wis. 2004); *accord Depianti*, 465 Mass. at 615; *Patterson*, 60 Cal. 4th at 477; *see also Citadel*, *supra*, 24 Franchise L.J. at 164

(applying a traditional agency model for vicarious liability purposes does not work because franchising is "all about controls"). Courts have largely accommodated the realities of franchising by recognizing that "the mere fact that the franchisor has reserved the right to require or suggest uniform workplace standards intended to protect its brand, and the quality of customer service, at its franchised locations is not, standing alone, sufficient to impose "employer" or "principal" liability on the franchisor for statutory or common law violations by one of the franchisee's employees …." *Patterson*, 60 Cal. 4th at 498 n.21; *accord Cislaw v. Southland Corp.*, 4 Cal. App. 4th 1284, 1295 (1992). Any other approach would not only "have the undesirable effect of penalizing franchisors for complying with Federal law" (*Depianti*, 465 Mass. at 615-16), but would turn franchising "on its head." *See Control*, *supra*, 19 Franchise L.J. at 120.

The courts in Pennsylvania have recognized this same principle. *See*, *e.g.*, *Smith v. Exxon Corp.*, 647 A.2d 577, 582-83 (Pa. Super. 1994) (a marketing plan and standards "implemented to maintain a uniform quality of service … concerning the appearance of personnel and restrooms and the response to customer complaints do not amount to Exxon having control over the manner in which the work is accomplished"). For example, in *Myszkowski v. Penn Stroud Hotel, Inc.*, 634 A.2d 622 (Pa. Super. 1993), the plaintiff claimed that Best Western (the franchisor) was vicariously liable for injuries she sustained when she was assaulted at a Best Western

Inn that was owned and operated by an entity named Penn Stroud (the franchisee). According to the plaintiff, Best Western was liable because it "concerns itself with the total operation of Penn Stroud through the workshops and programs it conducts, the rules and regulations it imposes and its ability to sanction for noncompliance with its quality standards." *Id*. at 625. The Superior Court disagreed. In the court's view, neither the fact that Best Western had the right to terminate Penn Stroud's membership agreement nor its imposition of standards supported the notion that Best Western was liable for acts committed by Penn Stroud. *Id*. at 626 n.4 & 627. "[T]he fact that Best Western sets certain standards in order to maintain a uniform quality of inn service only addresses the result of the work and not the manner in which it is conducted." *Id*. at 626.

The Superior Court's opinion in this case disregarded the principles on which *Myszkowski* and these other cases are premised. If not corrected, its approach could have significant ramifications on the viability of franchising in the Commonwealth.

C. The Superior Court Attempted to Distinguish but Instead Created a Conflict with *Myskowski* and a Standard That Ignores the Way Franchising Works

Seeking to explain its departure from the approach taken by other courts, the Superior Court concluded this case was "not a franchisor-franchisee relationship like the one at issue in *Myskowski*." (January 31, 2025, Slip Op., pp. 39-46.) In the court's view, the franchisee in *Myskowski* was supposedly "free to operate the hotel as they

saw fit as long as it did not fall below minimum quality standards" (*id*.), while Domino's Franchise Agreement and operating standards supposedly left Robizza "with practically no discretion to conduct the day-to-day operations of its franchise store." (*id*. at 19.) Both statements ignore how franchising works.

First, the Superior Court's assumption that the Best Western franchisee in *Myszkowski* was largely free to operate its hotel as it saw fit disregards the Rules and Regulations at issue in *Myszkowski.* And it certainly does not reflect how the Best Western system actually operates today. In fact, a comparison of the "mandates" the Superior Court relied on in this case and those set forth in Best Western's Rules & Regulations demonstrates that Best Western franchisees must comply with the very same standards the Superior Court believed justified its departure from *Myszkowski*:

DOMINO'S ALLEGED CONTROLS	**BEST WESTERN'S RULES & REGULATIONS**[1]
Domino's specifies the terms of a store's lease and site plan and allows it to	"If a [Best Western] Member fails to conform to the obligations or meet the

[1] These rules are attached to Best Western's statutorily mandated Franchise Disclosure Document and are annexed hereto as Exhibit A. *See* 16 C.F.R. § 436.1 *et seq*. That document and the Franchise Agreements referenced below are included in the Addendum annexed to this Brief for the Court's convenience. All of these documents are publicly available. *See, for example,* Wisconsin Department of Financial Institutions, Franchise Search, https://www.wdfi.org/apps/franchiseSearch/MainSearch.aspx. The Court can take judicial notice of publicly accessible reports available for download. *See*, *e.g*., Pa.R.E. 201(b)(2) (permitting courts to take judicial notice of facts that may be "determined from sources whose accuracy cannot reasonably be questioned"); *see also Gurvich v. Board of Property Assessment Appeals and Review of Allegheny County*, No. 717 C.D. 2022, 2023 WL 4938779, at *5 n.14 (Pa. Cmwlth. Aug. 3, 2023) ("Courts may take judicial notice of information made publicly available by government entities, including on their websites."). Further, Rule 201 "permits a court to take judicial notice at any stage of a proceeding, including the appellate stage …." *Hill v. Dep't of Corr*., 64 A.3d 1159 (Pa. Cmwlth. 2023).

require that franchisees refurbish their stores.	standards set forth in the Bylaws, Rules and Regulations, New Construction Guidelines, Renovation & Refurbishing Guidelines … the Board may cancel the Membership ….” (Best Western Rule [“Rule”] 1100.6.) Rule 500.20 requires that leases contain provisions permitting assessments and renovations. (Rule 500.20.)
Domino’s requires that employees have a professional appearance and wear certain types of uniforms.	“All guest contact personnel shall be neat, well-groomed and properly attired.” (Rule 500.32.)
Domino’s specifies a list of acceptable computer and server models.	“Best Western has provided or will provide access to computer software that is to be used by the Property to access Best Western supporting applications (“Software”).” (*See* Membership Agreement ¶ G.3, a copy of which is annexed hereto as Exhibit B.)
Domino’s obligates franchisee to maintain sales records and records regarding the amount and types of food sold.	“It is required that each Best Western affiliated Member permit assessment of all accommodations, facilities, and procedures by a Best Western accredited assessor to determine compliance with these Rules and Regulations ….” (Rule 500.15.)
Domino’s outlaws the promotion of free delivery.	Not applicable, although the Rules provide that “Additional charges shall not be made for reasonable requests for additional services, such as extra towels, soap, glasses, ironing boards, folding table and chairs, bedboards, blankets, etc.” (Rule 600.5.)
Domino’s imposes security features by requiring the use of an approved type of safe and limiting the amount of money that should be kept in the cash register.	“All guest room entrance doors shall be solid-core or metal” (Rule 700.26) and “equipped with a lock that is self-locking”, “a one-inch bored-in deadbolt lock, designated as Grade 2 type”, “a chain- or bar-type door guard” (Rule

	700.27), and "one-way door viewers with a minimum of 180-degree viewing." (Rule 700.29.)
Domino's precludes the use of delivery vehicles with excessive wear and tear.	"Exterior and interior of buildings shall be maintained in good condition and in a good state of repair at all times." (Rule 700.1.)
Domino's stores must be equipped with at least three telephones and digital clocks.	All guest rooms must have specific types and amounts of bedding (Rule 900.9), a lamp on each night stand, a games/parsons table, a credenza/mirror, and a desk (Rule 900.12), and flat panel televisions in different sizes depending on the type of guess room (Rule 900.17).
Domino's bans the presence of gaming machines or literature unrelated to work.	"In order to foster, promote and continue Best Western's image as a provider of high quality service to the traveling public, including families, it is declared to be in the best interest of all Members to uniformly prohibit the offer, sponsorship or provision of any entertainment which could be classified as adult, pornographic, lewd, sexually explicit or obscene." (Rule 500.33)
Domino's requires employees to deal with complaining customers by apologizing, giving them what they want, and giving them something extra.	"The telephone switchboard shall be answered as promptly as possible in a pleasant, courteous manner. All incoming calls shall be answered using the words "Best Western." Callers should not be left holding dead lines, be asked to wait or otherwise be inconvenienced through inefficient service." (Rule 600.7.)

Second, the Superior Court's conclusion that the development of these standards impacted Robizza's ability to control the day-to-day operations of its

franchise reflects, with respect, a misconception about how franchising works. As noted above, an individual that elects to purchase a quick service restaurant franchise does not do so simply to acquire a recipe for making pizzas or a license to use a particular trademark. *See* Killion, *Franchisor Vicarious Liability—The Proverbial Assault on the Citadel*, 24 Franchise L.J. 162, 165 (2005) ("Franchising is not just about the product tasting or looking the same from store to store."). Rather, the franchisee "also acquires a business plan, which the franchisor has crafted for all of its stores." *Patterson*, 60 Cal. 4th at 489. "This business plan requires the franchisee to follow a system of standards and procedures" (*id*.) which establish uniform specifications with regard to:

> advertising and promotion; site selection; construction and design; furniture and fixtures; products and services; cash control; bookkeeping and reporting procedures; general operations; personnel; revenue reports; customer lists; accounting; display of signs and notices; authorized or required equipment, appliances, and appurtenances; required uses of trademark; insurance requirements; license requirements; standards for management and personnel; hours of operation; required uniforms; local advertising; required manner of offering or selling products or services; standards of maintenance and appearance; and training requirements.

Shelley & Morton, "*Control*" *in Franchising and the Common Law*, 19 Franchise L.J. 119, 121 (2000).

In attempting to distinguish this case from *Myszkowski*, the Superior Court seems to have been under the impression that Domino's standards are out of the ordinary or somehow inconsistent with the way franchise systems typically operate.

But that is plainly incorrect.[2] The franchise agreements of the best-known and most well-respected franchise systems in the world contain the very same standards.

The Superior Court made much of the fact, for example, that the Franchise Agreement "set standards that Robizza was mandated to follow" and that "[t]hese standards could be changed by Domino's at any time, without Robizza's approval …." (January 31, 2025, Slip Op., pp. 17-18.) But that is a feature of *every* franchise agreement. For example, McDonald's franchise agreement provides that "The foundation of the McDonald's System and the essence of this Franchise is the adherence by Franchisee to standards and policies of McDonald's providing for the uniform operation of all McDonald's restaurants within the McDonald's System including, but not limited to, serving only designated food and beverage products; the use of only prescribed equipment and building layout and designs; strict adherence to designated food and beverage specifications and to McDonald's prescribed standards of Quality, Service, and Cleanliness in the Restaurant

[2] The Superior Court made note of the fact, for example, that Domino's operating standards addressed the permissible length of fingernails and facial hair, the size and amount of jewelry that should be worn, and how often a store should be cleaned. (January 31, 2025, Slip Op., p. 18.) However, such references constitute no more than a recitation of obligations that already appear in most States' health-code requirements. *See*, *e.g.*, N.Y.C. Health Code Article 81.13 (imposing standards governing hair, clothing, hygiene, and jewelry); Wash. Agency Code §246-215-02325(1)-(2). Further, franchise agreements typically contain references to how employees should dress and present themselves. *See*, *e.g.*, McDonald's Franchise Agreement at ¶ 12(h) (Franchisee shall "[c]ause all employees of Franchisee, while working in the Restaurant, to: (i) wear uniforms of such color, design, and other specifications as McDonald's may designate from time to time; (ii) present a neat and clean appearance; and (iii) render competent and courteous service to Restaurant customers.").

operation." (*See* McDonald's Franchise Agreement at ¶ 1(c); a copy of this agreement is annexed hereto as Exhibit C.) It also provides that "Franchisee agrees to promptly adopt and use exclusively the formulas, methods, and policies contained in the business manuals, now and as they may be modified from time to time." (*Id*. at ¶ 4.) The franchise agreement for Dunkin' likewise provides that Dunkin' has "the right to periodically establish and modify "Standards" for various aspects of the System and the development and operation of Dunkin' Restaurants that include the location, physical characteristics and quality of operating systems and other aspects of restaurants; the products sold and services provided; the qualifications of suppliers; the qualifications, organization and training of franchisees and their personnel; the timely marketing of products and our brand, including execution of marketing windows; and all other things that we periodically specify affecting the experience of consumers who patronize Dunkin' Restaurants." (*See* Dunkin' Franchise Agreement at ¶ 1(c); a copy of this agreement is annexed hereto as Exhibit D.)[3] It cannot be the law in Pennsylvania that all these franchisors are now the masters of their franchisees and liable for any acts they or their employees commit within the scope of their alleged agency.

[3] The Franchise Agreements of Burger King, Taco Bell and Papa John's contain substantively indistinguishable provisions. (*See* Burger King Franchise Agreement ¶ 5.H, a copy of which is annexed hereto as Exhibit E; Taco Bell Franchise Agreement § 3.1, a copy of which is annexed hereto as Exhibit F; Papa John's Franchise Agreement ¶ 11(c), a copy of which is annexed hereto as Exhibit G.)

The other provision that the Superior Court found "critical[]" to its analysis—that Domino's could terminate a franchise agreement if the franchisee failed to comply with standards—is similarly ubiquitous in franchising, and necessarily so: without such provisions, franchisors would have no power to enforce their standards and protect their brands, other franchisees' investments, and the expectations of the consuming public.[4] (*See*, *e.g.*, McDonald's Franchise Agreement at ¶ 18 [Exhibit C]; Dunkin' Franchise Agreement ¶ 14 [Exhibit D]; Burger King Franchise Agreement Art. 18 [Exhibit E]; Taco Bell Franchise Agreement § 15 [Exhibit F]; and Papa John's Franchise Agreement ¶ 19 [Exhibit G].) That is why the overwhelming weight of authority recognizes that the power to terminate a franchise agreement is *not* enough to establish an agency relationship. *See*, *e.g.*, *Myszkowski*, 430 Pa. Super. at 324 (the right to terminate "does not indicate that there is continuous subjection to the will of the alleged master so as to constitute a master-servant relationship"); *see also Wu v. Dunkin' Donuts, Inc.*, 105 F. Supp. 2d 83, 88 (S.D.N.Y. 2000) (observing that "[m]ost courts have found that retaining a right to enforce standards or to terminate an agreement for failure to meet standards" does not create an agency relationship).

[4] To be clear, in Domino's franchise agreement, absent exceptional circumstances, the power to terminate exists only if a franchisee fails to cure its default after being afforded an opportunity to do so. (R.335a, ¶18.2.2.)

III. CONCLUSION

For the foregoing reasons, this Court should grant Domino's petition for allowance of appeal from the Superior Court's January 31, 2025 *En Banc* ruling.

Dated: March 3, 2025

Respectfully submitted,

/s/ D. Alicia Hickok

Dorothy Alicia Hickok
PA ID No. 87604
DLA Piper LLP (US)
One Liberty Place
1650 Market Street, Suite 5000
Philadelphia, PA 19103-7300
T: (215) 656-3345
F: (215) 606-3345
alicia.hickok@us.dlapiper.com

CERTIFICATES OF COMPLIANCE AND PROOF OF SERVICE

I hereby certify that the foregoing brief complies with the word limit of Pennsylvania Rule of Appellate Procedure 531(b)(3). Specifically, it contains 4450 words based on the word count of Microsoft Word 2010, the word processing system used to prepare the brief, exclusive of supplementary matter.

I further certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information.

I further certify that on March 3, 2025, I caused true and correct copies of the foregoing Application and Proposed Brief in Support of Appellant of *Amici Curiae* the International Franchise Associations and the Chamber of Commerce of the United States of America to be electronically served on all parties listed in this Court's docket through PacFile.