Nos. 22-2333 & 22-2334

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LEINANI DESLANDES AND STEPHANIE TURNER,
Plaintiffs-Appellants,

v.

MCDONALD'S USA, LLC, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
Nos. 1:17-cv-04857 & 1:19-cv-05524
The Honorable Jorge L. Alonso

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

The Chamber of Commerce of the United States of America 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.

Here, Plaintiffs have advanced an implausible definition of the relevant antitrust market that is both unduly narrow because it is limited to labor supplied by a *single brand* (McDonald's) and unduly broad because it is based on a *nationwide* market for McDonald's workers. Plaintiffs' approach is not only wrong as a matter of doctrine, but it would also potentially turn every business into a monopolist for its own employees. The prospect of making every company a viable antitrust defendant in this way would have major negative repercussions and chill procompetitive behavior by businesses—particularly given the extraordinary

[1] All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

expense of antitrust litigation and the outsized threat of antitrust liability. The Chamber therefore believes it is important to affirm the district court's rejection of Plaintiffs' gerrymandered and implausible market definition.

INTRODUCTION AND SUMMARY OF ARGUMENT

Although Section 1 of the Sherman Act prohibits "[e]very contract [or] combination . . . in restraint of trade," 15 U.S.C. § 1, courts have long understood that provision "to outlaw only *unreasonable* restraints." *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997) (emphasis added). Some restraints—such as "horizontal agreements among competitors to fix prices"—are so "manifestly anticompetitive" that they are deemed unlawful *per se* without any further analysis of "the reasonableness of an individual restraint in light of the real market forces at work." *Leegin Creative Leather Prod., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007). Most restraints, however, are subject to the "rule of reason," which involves "a fact-specific assessment of market power and market structure" aimed at assessing the challenged restraint's "actual effect on competition." *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2151 (2021) (quoting *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2285 (2018)).

An essential part of this rule-of-reason analysis is identifying the relevant product and geographic markets affected by the alleged restraint. *See Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F.3d 328, 335 (7th Cir. 2012) (to prevail on a rule-of-

reason antitrust claim, a plaintiff must establish "that an agreement or contract has an anticompetitive effect *on a given market* within a given *geographic area*" (emphases added)). A "precise market definition" is necessary "in order to demonstrate that a defendant wields market power"—because without market power, a restraint imposed by a defendant cannot "produce anticompetitive effects." *Id*. at 337. In other words, without an accurately defined relevant market, there is simply "no way to measure [the defendant's] ability to lessen or destroy competition." *Am. Express*, 138 S. Ct. at 2285 (quoting *Walker Process Equip., Inc. v. Food Mach. & Chem. Corp.*, 382 U.S. 172, 177 (1965)). These same principles apply when it comes to defining labor markets. *See, e.g.*, *Agnew*, 683 F.3d at 346–47 (affirming dismissal of antitrust claims where plaintiffs failed to adequately allege relevant market for student-athlete labor).

Further, not just any theorized conception of the relevant market will do. A relevant market is defined as "the area of effective competition" in which "significant substitution in consumption or production occurs." *Am. Express*, 138 S. Ct. at 2285. Importantly, plaintiffs must define a market that "correspond[s] to the commercial realities of the industry." *Id.* (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 336–37 (1962)). That means accounting for all reasonable substitutes and "combining in a single market a number of different products or services." *United States v. Grinnell Corp.*, 384 U.S. 563, 572 (1966). If it were otherwise,

plaintiffs could manufacture antitrust claims out of thin air by defining an artificially narrow market even where there is no actual harm to competition.

Here, Plaintiffs' theory depends on the existence of one, nationwide market for McDonald's-only labor. But that market definition is implausible because it is at once too narrow and too broad. Plaintiffs' Sherman Act claim thus fails as a matter of law. *See, e.g.*, *Agnew*, 683 F.3d at 347 (affirming dismissal of Section 1 claim at the pleadings stage due to failure to allege plausible relevant market).

Plaintiffs' relevant product market is too *narrow* because it is limited to jobs supplied by a *single brand* (McDonald's). Courts almost invariably reject single-brand market definitions because they ignore "commercial realities" by failing to account for reasonable substitutes. *See Am. Express*, 138 S. Ct. at 2285. That is obviously the case here. There are hundreds of other quick-serve restaurants within a ten-mile radius of Plaintiffs' homes, and nothing prevented Plaintiffs from seeking comparable employment at those competitor restaurants. The evidence showed that McDonald's restaurants actively recruit employees from *non*-McDonald's employers—including not only other quick-serve restaurants but also other labor-market competitors such as large retailers—and that McDonald's workers leave for non-McDonald's employment opportunities. The district court therefore correctly

considered it "implausible" that Plaintiffs "sold their labor in [a] market that was limited to McDonald's outlets." A-65.[2]

At the same time, Plaintiffs' geographic labor market definition is too *broad* because it is national in scope. *See Agnew*, 683 F.3d at 335 (plaintiffs must show cognizable market "within a given geographic area"). Because employees are usually unwilling to uproot their lives and pay the costs associated with a big move, most labor markets are quite local. Indeed, labor markets are usually limited to multi-county commuter zones. There are exceptions for particularly specialized, high-income, or high-skilled occupations. *See* A-46. But where an increase in salary is less than the costs of translocation—such as for entry-level and lower-wage workers—competition for workers is localized. The evidence in this case confirmed that competition for quick-serve, retail, and similar positions is local as most workers commute short distances for jobs at McDonald's restaurants or similar establishments. The district court therefore rightly noted, "it defies logic to suppose" that Plaintiffs "sell their labor in a national market." A-46.

Allowing Plaintiffs' gerrymandered market definition to stand would have significant ramifications outside of this case. Limiting a relevant antitrust labor

[2] In this brief, "A-" refers by page number to the Appendix for Plaintiffs-Appellants; "McD A-" refers by page number to the Appendix for Defendants-Appellees; and "Dkt." refers by docket number to filings in *Deslandes v. McDonald's USA, LLC*, No. 1:17-cv-04857.

market to a single defendant would turn every company into a monopolist for its own employees. Further, allowing implausible national labor market definitions opens a backdoor for plaintiffs to bring sweeping nationwide class actions. The combination of these two errors would chill procompetitive behavior—including vertical restraints that *increase* competition between brands—especially given the significant costs and potential liability in antitrust cases.

This Court should therefore affirm the district court's holding that Plaintiffs' failure to establish a plausible relevant market is fatal to their Sherman Act claim. *See* A-64–66.

ARGUMENT

I. The District Court Correctly Held that Plaintiffs Did Not Allege a Plausible Relevant Market.

Unlike *per se* antitrust claims, an antitrust claim subject to the rule of reason requires a "fact-specific assessment of market power and market structure" to evaluate the challenged restraint's "actual effect on competition." *Alston*, 141 S. Ct. at 2157. Under this rule-of-reason analysis, a plaintiff bears the "threshold burden" of "showing of a precise market definition in order to demonstrate that a defendant wields market power, which, by definition, means that the defendant can produce anticompetitive effects." *Agnew*, 683 F.3d at 337; *see also Am. Express*, 138 S.Ct.

at 2285 ("courts usually cannot properly apply the rule of reason without an accurate definition of the relevant market").[3]

A plaintiff cannot meet this burden by pleading a self-serving market definition that ignores commercial realities and reasonable substitutes. Where a plaintiff "alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products even when all factual inferences are granted in plaintiff's favor, the relevant market is legally insufficient and a motion to dismiss may be granted." *Queen City Pizza, Inc. v. Domino's Pizza, Inc*., 124 F.3d 430, 436 (3d Cir. 1997).

Plaintiffs' relevant market is insufficient as a matter of law because it is both overly narrow as limited to a single brand (McDonald's) and overly broad by assuming a national geographic market when competition for restaurant workers is local.

[3] Plaintiffs' reliance on alleged direct proof of anticompetitive effects does not relieve them of the burden to establish a plausible relevant market in this case. Even where a plaintiff alleges direct proof of market power or anticompetitive effects, such "[e]conomic analysis is virtually meaningless if it is entirely unmoored from at least a rough definition of a product and geographic market." *Repub. Tobacco Co. v. N. Atl. Trading Co.*, 381 F.3d 717, 737 (7th Cir. 2004). In *American Express*, for example, the plaintiffs "rel[ied] exclusively on direct evidence to prove . . . anticompetitive effects," and the Supreme Court made clear that it "must first define the relevant market" in order to "assess this evidence." 138 S. Ct. at 2284–85.

A. Plaintiffs' Market Definition Is Underinclusive Because It Is Limited to a Single Brand and Ignores Reasonable Employment Substitutes.

On appeal, Plaintiffs propose a "cognizable market limited to workers with McDonald's-specific skills and experience." Appellants' Br. 34. In the vast majority of cases—including this one—that single-brand approach to market definition is untenable.

The relevant market in an antitrust case includes those products that are "reasonably interchangeable by consumers for the same purposes." *United States v. E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956). That means that a viable market definition must account for all reasonable substitutes. *See, e.g.*, *Am. Express*, 138 S. Ct. at 2285 (market is the "arena within which significant substitution in consumption or production occurs" (quoting Philip E. Areeda & Herbert Hovenkamp, *Fundamentals of Antitrust Law* § 5.02 (4th ed. 2017)). A proposed market is thus "legally insufficient" when it "clearly does not encompass all interchangeable substitute products." *Queen City Pizza*, 124 F.3d at 436. For example, when consumers may readily substitute chocolate ice cream for vanilla, that confirms that vanilla ice cream does *not* constitute its own separate market. *See Menasha Corp. v. News Am. Marketing In-Store*, 354 F.3d 661, 664–66 (7th Cir. 2004).

Because the relevant market must include all reasonable substitutes—and because consumers are often able to substitute one brand for another—this Circuit routinely rejects single-brand market definitions. *See, e.g.*, *Sheridan v. Marathon Petrol. Co. LLC*, 530 F.3d 590, 595 (7th Cir. 2008) (no cognizable market for Marathon gasoline); *Generac Corp. v. Caterpillar Inc.*, 172 F.3d 971, 977 (7th Cir. 1999) (noting that it would be "absurd" to recognize "Olympian trademarked generator sets" as a separate market); *Digital Equip. Corp. v. Uniq Digital Techs., Inc.*, 73 F.3d 756, 763 (7th Cir. 1996) ("One could hardly imagine a weaker case for the claim that DEC's computers are a market unto themselves."); *Mullis v. Arco Petrol. Corp.*, 502 F.2d 290, 296–97 (7th Cir. 1974) (ARCO petroleum products did not constitute separate single-brand relevant market where they were "in active competition with other brands"). Single-brand market definitions are equally disfavored outside the Seventh Circuit.[4]

[4] *See, e.g.*, *PSKS, Inc. v. Leegin Creative Leather Prods., Inc.*, 615 F.3d 412, 418 (5th Cir. 2010) (rejecting claim that Brighton products constitute their own relevant market); *Green Country Food Mkt., Inc. v. Bottling Grp.*, 371 F.3d 1275, 1282 (10th Cir. 2004) ("In general, a manufacturer's own products do not themselves comprise a relevant product market . . . . [A] company does not violate the Sherman Act by virtue of the natural monopoly it holds over its own product."); *Todd v. Exxon Corp.*, 275 F.3d 191, 200 (2d Cir. 2001) ("Cases in which dismissal on the pleadings is appropriate frequently involve . . . failed attempts to limit a product market to a single brand [or] franchise . . . ."); *In re Am. Express Anti-Steering Rules Antitrust Litig.*, 361 F. Supp. 3d 324, 343 (E.D.N.Y. 2019) ("It is an understatement to say that single-brand markets are disfavored.") (collecting cases).

The same principles apply when it comes to defining a relevant labor market. A cognizable labor market consists of all jobs that are reasonable substitutes for each another. *Eichorn v. AT&T Corp.*, 248 F.3d 131, 147 (3d Cir. 2001); *see also Agnew*, 683 F.3d at 335, 346–47. And because employees generally are not confined to a single company when they search for a new job, single-brand labor markets—just like single-brand product markets—are typically nonstarters. *See, e.g.*, *Madison 92nd St. Assocs., LLC v. Courtyard Mgmt. Corp.*, 624 F. App'x 23, 29 (2d Cir. 2015) (rejecting alleged market "limited to labor at Marriott-managed hotels" because it could not "plausibly be said to encompass all interchangeable substitute products" (cleaned up)); *Eichorn*, 248 F.3d at 147–48 ("[T]he relevant [labor] market is not limited to AT&T and its affiliates but rather includes all those technology companies and network services providers who actively compete for employees with the [relevant] skills and training[.]"); *Rock v. Nat'l Collegiate Athletic Ass'n*, 928 F. Supp. 2d 1010, 1021 (S.D. Ind. 2013) (proposed market limited to NCAA student athlete labor was "impermissibly narrow because it ignore[d] the existence of other associations that offer athletic scholarships and the opportunity to obtain a high-quality education").

The fact that McDonald's operates a franchise system does not save Plaintiffs' claim: courts reject single-brand markets in the franchise context as well. For example, in *Queen City Pizza, Inc. v. Domino's Pizza*, Inc., 124 F.3d 430 (3d Cir.

1997), a seminal case on relevant market definition, the plaintiffs brought various antitrust claims premised on Domino's Pizza, Inc.'s alleged monopoly "in the market for ingredients, supplies, materials and distribution services used in the operation of Domino's stores." *Id.* at 433. The Third Circuit rejected that proposed single-brand market because it failed to account for "all reasonably interchangeable products." *Id.* at 438. Specifically, the Court noted that "the dough, tomato sauce, and paper cups that meet Domino's Pizza, Inc. standards and are used by Domino's stores are interchangeable with dough, sauce and cups available from other suppliers and used by other pizza companies." *Id.* Given those available substitutes, the relevant market could not "be restricted solely to those products currently approved by Domino's Pizza, Inc. for use by Domino's franchisees." *Id.* Accordingly, the complaint was correctly dismissed on the pleadings for failure to allege a plausible relevant market. Other courts have similarly rejected single-brand market definitions in franchise cases. *See, e.g.*, *Marathon*, 530 F.3d at 595 (rejecting market definition limited to gasoline from Marathon franchises); *Subsolutions, Inc. v. Doctor's Assocs*., 62 F. Supp. 2d 616, 625 (D. Conn. 1999) (rejecting market definition limited to Subway franchises).

Under this long-standing and well-accepted antitrust precedent, Plaintiffs' single-brand market definition fails because it excludes other quick-serve restaurant

jobs and other entry-level positions that are reasonable substitutes for employment at McDonald's.

The evidence in this case revealed intense competition between McDonald's and a wide range of other employers—including not only other quick-serve restaurants, but also other labor-market competitors. *See* McD A-319, 321–22. For example, business documents produced in discovery showed that McDonald's would routinely "compare the wages and benefits offered at McDonald's stores to the wages and benefits offered by other employers," including quick-serve restaurants, coffee shops, and major retailers. McD A-138. That competition resulted in tangible benefits for workers, with McDonald's restaurants "adopt[ing] costly improvements to their wage and benefit packages, with the stated goal of competing against other employers and reducing employee turnover." McD A-137; *see also* Expert Report of Kevin M. Murphy ¶¶ 40–44 (Apr. 15, 2021) ("Murphy Rpt."), Dkt. 310-1 Ex. 2 (discussing examples of McDonald's pay increases in order to remain competitive with local non-McDonald's employers). The evidence thus confirmed that McDonald's "faces vigorous interbrand competition for its workers." McD A-137. Plaintiffs' own work history also demonstrates that they took advantage of non-McDonald's employment options. Deslandes worked for major retailers, and Turner worked at hotels and restaurants, all in addition to McDonald's. *See* McD A-325.

Although the evidence showed a vast range of competing employers for Plaintiffs' labor, this Court need not look any further than other quick-serve restaurants. Even limiting the market just to other quick-serve restaurants, it is "undisputed" that there were 517 quick-serve restaurants within ten miles of Plaintiff Deslandes' home and 253 quick-serve restaurants within ten miles of Plaintiff Turner's home. A-66. Plaintiffs' exclusion of these local restaurant employers renders their relevant market insufficient as a matter of law. *See Queen City Pizza*, 124 F.3d at 436.

On appeal, Plaintiffs attempt to avoid the evidence of vigorous competition from outside of the McDonald's franchise in two ways. First, Plaintiffs claim that the No-Hire Agreement itself is evidence that the relevant market is limited to McDonald's workers, Appellants' Br. 33, but nothing in the alleged agreement prevented McDonald's employees from working for *non*-McDonald's employers. Moreover, courts have rejected relevant markets created solely through contractual arrangements. *See, e.g.*, *Queen City Pizza*, 124 F.3d at 438; *United Farmers Agents Ass'n, Inc. v. Farmers Ins. Exchange*, 89 F.3d 233, 236–37 (5th Cir. 1996) ("Economic power derived from contractual arrangements such as franchises . . . has nothing to do with market power, ultimate consumers' welfare, or antitrust." (cleaned up)).

Second, Plaintiffs attempt to justify their implausible single-brand market definition by claiming that "workers with McDonald's-specific training have unique value to McDonald's employers." Appellants' Br. 33–34. But if company-specific training were sufficient to create a sub-market for labor, every employer would be a monopolist, as almost every company has some training specific to that firm. Besides, training nearly always leads to the development of *transferable* skills that increase an employee's competitiveness for jobs with other employers. Such was the case here: McDonald's recognized that its training gave employees skills that could be leveraged in non-McDonald's jobs, and Plaintiffs themselves conceded that their McDonald's skills were transferable in this way. *See* Defs.' Class Cert. Opp'n at 14 (Apr. 15, 2021), Dkt. 303 (summarizing evidence on this point).

On these facts, the district court correctly considered it "implausible" that Plaintiffs "sold their labor in [a] market that was limited to McDonald's outlets." A-64. Rather, Plaintiffs easily "could have sold their labor to other buyers." *Id.*; *accord Conrad v. Jimmy John's Franchise, LLC*, No. 18-CV-00133-NJR, 2021 WL 3268339, at *11 (S.D. Ill. July 30, 2021) (denying class certification for lack of predominance where expert analyses confirmed that relevant labor market included "not merely Jimmy John's franchisees but also other quick-service restaurants," since it was likely that putative class members would "seek employment in a labor market . . . that is . . . much broader than Jimmy John's branded stores").

B. Plaintiffs' Market Definition Is Also Overinclusive Because It Encompasses One National Geographic Market and Fails to Account for the Local Nature of Labor Competition.

While Plaintiffs' theory is too narrow in restricting the relevant product market to a single brand, Plaintiffs' geographic market is at the same time too broad because it "assumes that [P]laintiffs sell their labor in one national market." A-46. But as the district court correctly noted, Plaintiffs offered no evidence showing there is a nationwide market for their labor—and it "defies logic" to imagine that such a market exists. *Id.*

As with product markets, a relevant geographic market also must "correspond to the commercial realities of the industry." *Brown Shoe*, 370 U.S. at 336 (cleaned up); *see also 42nd Parallel N. v. E Street Denim Co.*, 286 F.3d 401, 406 (7th Cir. 2002) (geographic market should be evaluated with "sensible awareness of commercial reality"). A market's geographic scope is the "area of effective competition"—i.e., the region where consumers regularly and practically turn for a particular product or service. *See Tampa Elec. Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961). A relevant geographic market should include the "sellers or producers who have the . . . ability to deprive each other of significant levels of business." *FTC v. Advoc. Health Care Network*, 841 F.3d 460, 468 (7th Cir. 2016) (citation omitted). When it is impractical for the relevant consumer to travel significant distances to obtain the relevant product or service, the market is generally

localized. *See, e.g.*, *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 460–61 (1986) (recognizing that "markets for dental services tend to be relatively localized").

Labor markets in particular tend to be local. The geographic boundaries of labor markets are "driven mainly by the location and mobility of current or prospective employees." Ioana Marinescu & Herbert Hovenkamp, *Anticompetitive Mergers in Labor Markets*, 94 Ind. L.J. 1031, 1048 (2019). "Most jobs still require physical proximity to the employer, greatly narrowing the geographic scope of most labor markets, given that many workers are not willing to move away from family to take a job." Suresh Naidu et al., *Antitrust Remedies for Labor Market Power*, 132 Harv. L. Rev. 536, 555 (2018). Job applications thus "decline rapidly with distance," Marinescu & Hovenkamp, *supra*, at 1048, and "most labour markets are geographically quite small," Herbert J. Hovenkamp, OECD Roundtable on Competition Issues in Labour Markets, *Competition Policy for Labour Markets* at 5 (June 5, 2019), https://one.oecd.org/document/DAF/COMP/WD(2019)67/en/pdf.

Indeed, "[e]conomic studies . . . have found that the geographic market within which employees seek employment" is so limited that it is "best approximated by commuting zones." Murphy Rpt. ¶ 110. Commuting zones are county clusters identified by the U.S. Department of Agriculture as a "spatial measure of the local labor market." Jose A. Azar et al., *Concentration in U.S. Labor Markets: Evidence from Online Vacancy Data* at 10 (Nat'l Bureau of Econ. Rsch., Working Paper

No. 24395, 2019). There are hundreds of recognized commuting zones within the United States,[5] and more than 80% of job applications are submitted by prospective employees who live in the same commuting zone as their prospective employer. Azar et al., *supra*, at 10.

It is true that employees in certain sectors apply more frequently to prospective employers outside their local region. For example, the district court recognized that "companies recruit nationally" for CEOs, and geography is less of a factor in "other high-skill, high-earning jobs" as well. A-46. But "[m]ost employees who hold low-skill retail or restaurant jobs are looking for a position in the geographic area in which they already live and work, not a position requiring a long commute or a move." A-16. That follows because "[t]here are certain fixed time and monetary costs of relocating"—such as "finding a new place to live" or "moving children into new schools"—and those costs are "relatively higher" for lower-wage workers. Murphy Rpt. ¶ 109. Potential workers at McDonald's and other comparable employers are thus unlikely to seek out employment opportunities "more than a few miles from where they reside." *Id.*

Deposition testimony in this case also confirmed that employees tend to commute relatively short distances for jobs at McDonald's restaurants and other

[5] *See* U.S. Dep't of Agric., *Commuting Zones and Labor Market Areas* (last updated Mar. 26, 2019), https://www.ers.usda.gov/data-products/commuting-zones-and-labor-market-areas/.

comparable employers. *See, e.g.*, Groen Dep. 163:1–18 (May 13, 2021), Dkt. 381-13 (former McDonald's executive with over 40 years of experience in the industry stating it was "highly unlikely" that an employee would travel 25 miles for work); King Dep. 97:5–12 (Nov. 13, 2020), Dkt. 382-14 (franchisee estimating that recruitment area for a given McDonald's is within a radius of "10 to 20 miles"). And Plaintiffs' own data indicated that more than 90% of McDonald's workers commute 10 miles or fewer to their McDonald's jobs. McD A-322. None of this is surprising. Given the existence of *hundreds* of comparable employers within a ten-mile radius of Plaintiffs' homes, there was little reason for them or other similarly situated workers to cast a nationwide geographic net when searching for jobs where the costs of relocating would likely be greater than any potential increase in salary. The district court correctly concluded that it "defies logic" to insist otherwise. A-46.

For similar reasons, the district court also rightly rejected Plaintiffs' proposed nationwide class of McDonald's workers. *See* A-50. To certify a Rule 23(b)(3) class, a plaintiff must establish that common questions predominate. *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 811 (7th Cir. 2012). Because there are "hundreds or thousands of relevant [local] markets among the class members," the district court reasoned that it would be impossible to establish the existence of anticompetitive effects with evidence that is "common to a nationwide class." A-49. Setting aside the other defects in their legal theory, Plaintiffs could have sought

to certify a class limited to "the relevant market of, say, the Chicago Loop." *Id.* But instead, they asserted an implausible, nationwide market for McDonald's workers that ignores commercial realities and is insufficient as a matter of law. Plaintiffs' proposed class based on that artificial market was properly rejected. *See, e.g.*, *Funeral Consumers Alliance, Inc. v. Serv. Corp. Int'l*, 695 F.3d 330, 350 (5th Cir. 2012) (affirming denial of certification of nationwide class where the "correct geographic market [was] localized and not nationwide," making each claim "not susceptible to class-wide proof").

II. Permitting Plaintiffs' Implausible Single-Brand National Relevant Market Definition Would Have Significant Repercussions.

Plaintiffs' artificial approach to market definition is not only doctrinally incorrect, but would have major adverse consequences if accepted. As discussed above, Plaintiffs' gerrymandered relevant market definition would convert virtually every company into a monopolist for its own employees and thus a plausible antitrust defendant. This in turn would chill procompetitive behavior and impose considerable and unjustifiable costs on businesses—particularly in light of the extraordinary expense associated with antitrust litigation and the outsized threat of liability that comes with a potential antitrust judgment.

Permitting plaintiffs to assert implausible single-brand relevant antitrust markets risks deterring procompetitive vertical restraints that have the effect of *increasing* horizontal competition between brands. Promoting interbrand

competition is "the primary purpose of the antitrust laws." *State Oil*, 522 U.S. at 15. Myopically focusing on a single-brand market, including in the labor context, ignores the impact on competition *between* companies and thus risks deterring procompetitive behavior. That competition benefits consumers, in the form of lower prices and higher product quality. *See Alston*, 141 S. Ct. at 2157 (recognizing that certain "restrictions in [a particular] labor market [can] yield benefits in its consumer market"). Vertical restraints that enhance interbrand competition also benefit employees, including by encouraging companies to invest in employee training and development and to improve wage and benefits packages. *See supra* pp. 11–12; *see also Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 265 (7th Cir. 1981) ("The recognized benefits of reasonably enforced noncompetition covenants are by now beyond question."); Richard Epstein, *Antitrust Overreach in Labor Markets*, 15 N.Y.U. J. L. & Liberty 407, 415–16 (2022) ("There are sensible efficiency reasons why firms might want to enforce these covenants to prevent internal rivalries.").

The risk of chilling procompetitive behavior through implausible market definitions is especially severe because antitrust cases are so costly for defendants. The exorbitant costs of antitrust litigation have long been recognized. Decades ago, this Court warned "against sending the parties into discovery" based on dubious claims given "the costs of modern federal antitrust litigation." *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984). And in its landmark decision

on the 12(b)(6) plausibility standard, the Supreme Court collected authority discussing the "unusually high cost of discovery in antitrust cases." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). Antitrust litigation remains notoriously expensive to this day. *See, e.g.*, David F. Herr, *Annotated Manual for Complex Litigation* § 30 (4th ed., updated May 2022) (noting that antitrust litigation "involve[s] voluminous documentary and testimonial evidence, extensive discovery, complicated legal, factual, and technical (particularly economic) questions, numerous parties and attorneys, and substantial sums of money").

The burdens of antitrust litigation are exacerbated by the outsized threat of antitrust *liability*. By statute, antitrust defendants must pay treble damages if they are found liable—i.e., three times the aggregate overcharge imposed through the alleged antitrust conspiracy. *See* 15 U.S.C. § 15. That figure often amounts to billions of dollars. The consequences for antitrust defendants can be "economically devastating." Edward D. Cavanagh, *The Private Antitrust Remedy: Lessons from the American Experience*, 41 Loy. U. Chi. L.J. 629, 633–34 (2010). And as a result, there is intense pressure to settle antitrust cases. Indeed, antitrust "[d]efendants frequently face a Hobson's choice: either pay some amount to settle, even though they believe in their innocence, or try the matter and risk uncapped liability." Edward D. Cavanagh, *Contribution, Claim Reduction, and Individual Treble Damage Responsibility: Which Path to Reform of Antitrust Remedies?*, 40 Vand. L.

Rev. 1277, 1284 (1987); *see also Twombly*, 550 U.S. at 559 ("[T]he threat of discovery expense will push cost-conscious defendants to settle even anemic cases before reaching [summary judgment and trial] proceedings.").

These inherent features of antitrust litigation and liability magnify the potential harms that would flow from endorsing Plaintiffs' flawed approach to market definition. If it is permissible to gerrymander a single-brand market, then it is also permissible to subject nearly any company to the expense of antitrust litigation—including sizeable discovery costs, the threat of catastrophic liability, and coercive settlement pressure.

The harm caused by permitting a single-brand relevant market definition is compounded where, as here, plaintiffs seek to certify a nationwide class of employees based on an equally implausible national geographic market. The class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011). Under Rule 23(b)(3), plaintiffs must establish that common questions predominate. *Messner,* 669 F.3d at 811. To support a nationwide class action, plaintiffs therefore must show a national relevant market that corresponds with the geographic scope of the class. *See Funeral Consumers*, 695 F.3d at 348. Plaintiffs cannot meet this requirement simply by asserting a national labor market where the evidence—and common sense—confirm that competition for employees is

inherently local. *See id*. (denying class certification because there was no national market and prices varied considerably across geographic markets).

Just as plaintiffs cannot use a self-serving single-brand market definition to manufacture an antitrust claim, plaintiffs cannot rely on an artificially expansive geographic market definition to circumvent the requirements for class certification. And permitting such implausible labor markets to proceed as nationwide class actions—aggregating thousands upon thousands of antitrust claims—would exponentially increase legal exposure without any sound justification.

Finally, plaintiffs could impose all these costs without any showing of actual harm to competition. The overriding purpose of the rule-of-reason analysis is to determine whether there is harm to competition in a relevant market. *See supra* pp. 2–5. But that inquiry is impossible if the proposed relevant market ignores the commercial realities. Permitting artificial market definitions thus undermines the existing antitrust framework by allowing costly lawsuits that have not plausibly alleged competitive harm. It is for these very reasons that single-brand markets are suspect—and often rejected at the dismissal stage. *See, e.g.*, *Marathon*, 530 F.3d at 596; *Generac*, 172 F.3d at 978; *Queen City Pizza*, 124 F.3d at 433. Here, where the case proceeded through discovery, the record evidence confirms beyond doubt that Plaintiffs' market definition is implausible.

CONCLUSION

For the foregoing reasons, the district court's rejection of Plaintiffs' Sherman Act claim for failure to allege a plausible relevant market should be affirmed.

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Respectfully submitted,

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