IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEINANI DESLANDES, on behalf of herself and all others similarly situated, Plaintiff, v. McDONALD'S USA, LLC, *et al.* Defendants.	Civil Case No. 17-cv-04857 Judge Jorge L. Alonso Magistrate Judge M. David Weisman
STEPHANIE TURNER, on behalf of herself and all others similarly situated, Plaintiff, v. McDONALD'S USA, LLC, *et al.* Defendants.	Civil No. 19-cv-05524

Expert Witness Report of
Peter Cappelli

January 15, 2021

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I. QUALIFICATIONS

1. I am the George W. Taylor Professor of Management at The Wharton School and Director of Wharton's Center for Human Resources. I am also a Research Associate at the National Bureau of Economic Research in Cambridge, MA. I served as Senior Advisor to the Kingdom of Bahrain for Employment Policy from 2003-2005, and since 2007 I have been a Distinguished Scholar of the Ministry of Manpower for Singapore. I have degrees in industrial relations from Cornell University and in labor economics from Oxford where I was a Fulbright Scholar. I have been a Guest Scholar at the Brookings Institution, a German Marshall Fund Fellow, and a faculty member at MIT, the University of Illinois, and the University of California at Berkeley. I was a staff member on the U.S. Secretary of Labor's Commission on Workforce Quality and Labor Market Efficiency from 1988-1990, Co-Director of the U.S. Department of Education's National Center on the Educational Quality of the Workforce, and a member of the Executive Committee of the U.S. Department of Education's National Center on Post-Secondary Improvement at Stanford University. I have served on three committees of the National Academy of Sciences and three panels of the National Goals for Education. Since 2017, I have served on a US Department of Defense Taskforce on Diversity and Inclusion. I was recently named by HR Magazine as one of the top 5 most influential thinkers in management, and I was elected a fellow of the National Academy of Human Resources. I received the 2009 PRO award from the International Association of Corporate and Professional Recruiters for contributions to human resources. I served on the Global Agenda Council on Employment for the World Economic Forum, and a number of other advisory boards. In 2020, I received an honorary Doctorate from the University of Liege in Belgium.

2. I have expertise in a variety of relevant fields, including human resources, labor economics, management, employee compensation, employment relations, developing and

managing talent, and employee recruiting and retention. My research has been published in many leading journals, including: *Academy of Management Review*, *American Economic Review*, *Harvard Business Review*, *Industrial & Labor Relations Review*, *Industrial Relations*, *Journal of Econometrics*, *Organizational Dynamics*, *Organization Science*, and *Personnel Psychology*. My publications include *The New Deal at Work: Managing the Market-Driven Workforce*, which examines the decline in lifetime employment relationships; *Talent Management: Managing Talent in an Age of Uncertainty*, which outlines the strategies that employers should consider in developing and managing talent (named a "best business book" for 2008 by Booz-Allen); and *Why Good People Can't Get Jobs* (2012), which identifies shortfalls with current hiring practices and training practices. I teach courses on industrial relations, human resource management, and personnel economics.

3. A more complete description of my qualifications is included in my curriculum vitae in **Appendix A**.

4. In connection with this matter, I reviewed and considered materials from this case, including Plaintiff Leinani Deslandes's Amended Complaint and Plaintiff Stephanie Turner's Complaint, depositions, deposition exhibits, and business records produced by McDonald's USA, LLC and McDonald's Corporation (together, "McDonald's" or "Defendants"). Information that I relied upon in forming my opinions include the items listed in **Appendix B**. The bases for my opinions are described in this report and any attached exhibits. I reserve the right to supplement this report in view of any new material or information provided to me after the date of this report.

5. My compensation for my work in this matter is not contingent upon my findings or the outcome of this litigation. I am being compensated at my current hourly rate of $750 per hour.

II. PRIOR TESTIMONY

6. During the previous four years, I have testified as an expert at a deposition in one case, *Seaman v. Duke University, et al.*, No. 15-cv-462 (M.D.N.C.).

III. ASSIGNMENT AND SUMMARY OF CONCLUSIONS

7. I understand that Plaintiffs Leinani Deslandes and Stephanie Turner seek to represent a Class consisting of all employees who are or were employed at McDonald's restaurants, whether operated by McDonald's itself or by a McDonald's franchisee, from June 28, 2013 to July 12, 2018 ("Class Members").

8. I have been asked by counsel for Plaintiffs to determine (1) whether Class Members receive training and develop skills that are of specific value to McDonald's-branded restaurants, such that Class Members receive training that has greater value within the McDonald's-system restaurants than to employers outside that system; and (2) whether the alleged No-Hire Agreement[1] would have reduced the pay of all or nearly all Class Members.

9. The following is a summary of my conclusions as a result of my work to date:

a. Restricting competition between buyers reduces the effective demand for whatever good or service is being considered, in turn lowering its price. Here, the buyers are McDonald's and its Franchisees, all of whom operate McDonald's-branded restaurants, and all

[1] The Agreement is discussed and defined in Section V, *infra*. Sometimes participants use the term "no poaching" to describe it, but that is inappropriate: poaching refers to the act of taking, and in the context of employment refers to recruiting away employees of competitors. The McDonald's agreement applied to any hiring and not just when the potential employer solicited the candidate.

of whom compete for the same labor of Class Members. Restrictions on the ability of McDonald's and the Franchisees to hire one another's restaurant workers lowers the amount that McDonald's and the Franchisees have to pay to their restaurant workers and keeps it low. McDonald's workers receive training and develop skills specific to the McDonald's system, which are generally not transferable to non-McDonald's work settings but would be extremely valuable to other McDonald's restaurants.

b. The restraint on competition in hiring McDonald's employees across individual restaurants means that those employees cannot work for any other employer for whom those brand-specific skills are valuable. Even though employees could find jobs outside the McDonald's System, the training and skills they receive at McDonald's are not useful elsewhere because the McDonald's work practices are so specific to McDonald's. Nor do the employees see any wage premium associated with those skills at McDonald's. As a result, the McDonald's corporation and the franchisee employers are capturing most or all the benefits from the skills and training these employees receive at McDonald's. Because of the No-Hire Agreement, the employees' wages therefore are lower than they otherwise would have been.

c. The No-Hire Agreement would have suppressed the pay of all Class members for at least four reasons:

d. First, in the absence of McDonald's restrictions on hiring from each other, each restaurant would have an incentive to fill vacancies from the ranks of employees leaving other McDonald's restaurants because those workers do not need to be trained and developed to the same extent as others. There would be a robust labor market for McDonald's employees between restaurants, and those restaurants would be willing to pay more than their current wage to secure such workers who have already been trained.

e. Second, with the No-Hire Agreement, McDonald's and Franchisees face less need to raise wages, and maintain them in the face of inflation, because their employees were unable to leave to work at other McDonald's restaurants where their wages may have been higher based on their McDonald's-specific training. Again, the reason why is because the training and skill development at McDonald's is not as valuable in jobs outside the McDonald's System.

f. Third, there is an internal wage structure in McDonald's McOpCo restaurants where pay for each job is in part set in relationship to the pay of other jobs (e.g., between Crew and Shift Managers, or Shift Managers and General Managers). In large part, these relational structures exist to address psychological principles of fairness, such as the fact that supervisors expect to be paid more than the people they supervise. In virtually all compensation systems, including McDonald's, concerns about relative pay between jobs mean that increases in the pay of one job type spill over to the pay of other jobs in the structure. Any practice that reduces job opportunities reduces wages, and any reductions in wages reduce the pressure to raise wages in the rest of the wage structure.

g. Fourth, McOpCo restaurants are numerous and ubiquitous enough that they place direct competitive pressure on franchisees to adjust their own wages. This suggests the existence of a wage structure between restaurants owned and operated by McOpCo and franchise restaurants as demonstrated when McOpCo raised wages preemptively in its restaurants around the country by $1 above minimum wage, in 2015. [redacted], the corporation adopted a hiring moratorium to prevent any franchisee crew employees from working at a McOpCo for six months. The purpose was clear: to protect franchisees from competitive wage pressure caused by the pay increase. That concern would not matter unless there was a wage structure tying together the wages of McOpCo and franchisee employees.

IV. THE MCDONALD'S SYSTEM

A. Theory of Franchising and the Franchisor's Interest in Consistency

10. Franchising represents an alternative to traditional forms of business operations. Franchises are divided into two types: Brand name franchises, like the Best Western hotel chain, where franchises cooperate mainly on marketing, and business format franchises, like McDonald's, where the franchisor provides a business model and operating system in exchange for fees. The franchisee who operates the local business is the residual claimant for any remaining profits after payment of fees and royalties (Shane, 1996; Shane and Foo, 2001).

11. The existence of franchise systems is often explained by agency theory, which asserts that it is difficult for the owners of capital to engage agents to work hard on their behalf and to be trustworthy, because the interests of the agents and the owners conflict: the owner wants profits to be higher, which might require harder work and lower pay, and the agents who work for them would like higher pay and easier work (e.g. Combs et al., 2009; Lafontaine and Raynaud, 2002; Norton, 1988; Shane, 1996, 1998). Franchise arrangements address this problem by providing the local operators (in this case, franchisees) with the residual profits of their operations. Thus, the franchisees are incentivized to monitor their operations more closely, cut down on inefficiencies, and work harder to push profits higher. In this situation, the franchisor provides the franchisee with the expertise that has been honed from large scale experience over time. Maness (1996) makes the additional observation that the franchise form is especially favored where cost control at the operating level is important, as in fast food, where

food prices are a crucial component of the product's value. Cost control in those circumstances thus requires attention to execution at the local task.[2]

12. Though local franchisees are incentivized to reduce inefficiencies by the right to residual profits, there are still conflicts of interest between the franchisor and the franchisees. The franchisor always retains an interest in the overall value of the franchise brand and each franchisee as well as a longer-term interest than individual franchisees. That is not true for the franchisees. There are many ways in which individual franchisees could succeed that are not in the interest of the overall brand or even the long-term interest of the franchisor. For example, an individual franchisee might not care if other franchisees were to fail, in fact, it may even benefit them by reducing competition. The franchisor, in contrast, wants more individuals to purchase franchises, which is more easily accomplished when all of their franchisees appear to be succeeding.

13. Further, and most important, a franchisee might seek to maximize its own earnings and profits at the expense of the overall brand by violating brand standards (e.g., delivering lower-cost versions of the product and service by skimping on quality). This problem can be particularly pronounced in locations where customers for franchise food or hotels are captive and repeat business is negligible, such as airports or turnpike rest areas. Poor quality products or services will not necessarily hurt business at that location because they have a steady stream of new customers who know the brand but not the quality at that particular store. But a bad customer experience there may damage the overall brand if unsatisfied customers forego visits to other stores of the brand in their home town, where repeat business would matter. The

[2] A perhaps complementary view has been that franchises exploit an advantage in transferring knowledge between the franchisor and the franchisee (Knott and McKelvey, 1999; Knott, 2001; Knott, 2003). This literature is now quite large.

downside from an individual franchisee's failure to maintain brand standards is therefore greater for the franchisor than it is for any single franchisee. Thus, while the franchisee may face an incentive to cut costs by cheating, the franchisor has a strong incentive to ensure that franchisees are abiding by brand standards so that the customer experience across the brand is consistent. For that reason, franchisors themselves often operate the businesses in those locations,[3] but the main solution to this problem is control systems, as described below.

14. In sum, the franchisor's interest in having *all* franchisees succeed means that the franchisor is concerned with the collective value of the brand across all the franchises. To that end, the franchisor needs to ensure that individual franchises deliver consistent output; otherwise, the franchisor's common marketing efforts are undermined. Thus, franchisors work to ensure a level of consistency across franchisees to satisfy customers' expectations across the brand.

15. There are a great many ways in which franchisors influence the behavior of their franchisees. Consider, for example, the issue of pricing, where franchisees may part ways with the franchisor. Franchises may over-charge where customers are captive, for example. Franchisors and their franchisees sometimes coordinate on pricing, such as a maximum price that franchisees can charge for any item.[4] Economists Itai Ater and Oren Rigbi describe how McDonald's corporation used its "Dollar Menu" across the network of corporate-owned and franchisee stores to hold down the price of other items on the menus of the franchisees because the dollar items are substitutes for them: If a single hamburger is one dollar, many people would think twice about paying five dollars for a Big Mac, essentially a bigger hamburger, or they may

[3] For examples, see Alan Krueger. 1991.

[4] Blair, R. D., and F. Lafontaine (1999): "Will Khan Foster or Hinder Franchising? An Economic Analysis of Maximum Resale Price Maintenance," Journal of Public Policy and Marketing, 18(1), 25–36.

assemble a "meal" from the dollar menu rather than purchasing a more expensive combination of items that constitute a special meal. Ater and Rigbi found, for example, that before the dollar menu was introduced, franchisees charged on average 12.5 percent more for the Big-Mac meal. After, the premium dropped to 3.5 percent, a negligible difference.[5]

16. Because franchisees are independently owned, operated, and managed business entities, franchisors do not have authority to control all the decisions that franchisees make. But even when franchisors cannot dictate those decisions, they can strongly influence them. A key mechanism for franchisors to influence the behavior of franchisees, and thus guarantee a consistent experience, is through contractual obligations in the franchise agreement. The agreement specifies what franchisees must do to prevent producing bad quality products that may damage the brand. Drafting agreements that are detailed enough to do so is an extremely difficult challenge. Franchisors, in their contracts with franchisees, thus require that the franchisees abide by processes set out in business manuals, which attempt to codify knowledge of business operations into detailed subcomponents that are taught to franchisees. The motivation for such manuals is succinctly described by the franchise agreement for the Great Harvest Bread Company, for example:

> You acknowledge that you know less than we do about Great Harvest bread and the operation of a Great Harvest Bread Company. You promise to operate your Bread Company exactly according to the rules we set down …. Some of the rules won't make sense to you. That isn't important…. We are talking about a simple oath, nothing more, or less – your personal promise, you giving your word to us.[6]

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[5] Itai Ater and Oren Rigbi. 2007. Price Control in Franchised Chains: The Case of McDonald's Dollar Menu. 2007. Stanford Institute for Economic Policy Research Discussion Paper No. 06-22.

[6] Great Harvest Franchising Inc. 1999 . Uniform Franchse Offering Circular: Exhibit A – Apprenticeship Agreement and Continuing Agreement. Franchise Agreement, Dillon, Montana. Quoted in Winter et al 2012.

Thus, the idea with business format franchises is for the franchisees to follow the rules completely and blindly. Such operating agreements and manuals have been shown to be even more detailed than the types of rules corporations pass down to managers who operate similar businesses as divisions of their company, rather than third-party franchisees.[7] The academic literature, including Harvard Professor Jeffrey Bradach's study of franchise operations, demonstrates that such operating procedures create a self-reinforcing system that becomes difficult to change because attempts to modify one aspect of a process likely will alter other aspects of the process, because the inputs to some operational processes often come from the output of another. Moreover, significant changes at the local level are also unlikely, because, as Nelson and Winter (1982) explained in their classic study of organizational learning, any modifications mean that the template of procedures that form the operating agreement will become less and less useful as a guide.

B. How McDonald's Achieves Consistency Across Franchisees

17. A franchisor's interest in consistency of brand experiences is not only theoretical. It is also borne out by the evidence with respect to McDonald's. The testimony and corporate records I have reviewed confirm that McDonald's goes to great lengths to ensure and monitor consistency of customer experience across its thousands of restaurants, whether those restaurants are owned and operated by franchisees or by McOpCo. This control is deeply rooted in the structure and norms of McOpCo. To illustrate at the governance level, McDonald's documents routinely refer to [redacted]. Karen King's deposition reports that [redacted]

[7] R. Kosova, F. LaFonataine, and R. Perrigot. 2013. Organizational Form and Performance: Evidence from the Hotel Industry. Review of Economics and Statistics. 95(4): 1303-1323.

[redacted]. King Dep. 24:20-26:25, 28:6-28:18. [redacted]. King Dep. 48:1-48:25. [redacted]. King Dep. 92:1-93:13.

18. A straight-forward example of consistency is that McOpCo sometimes opens a restaurant and then essentially sells it to a franchisee. In those cases, the franchisee begins operations with all McOpCo practices intact and would have to act to change them. The situation happens enough that there are documents to outline how these divestitures are handled [MCDAT00134879].

19. To make an obvious point, there are many ways to influence behavior beyond legally-binding contract terms. At McDonald's, they include the following, which I consider in order:

1. <u>Franchise Agreement</u>

20. The Franchise Agreement is the legal document that provides the basis for franchisees' contractual obligations. The agreement specifies the governance arrangement with McDonald's, with which the franchisee agrees to comply fully, including by following the Corporation's National Franchise Standards and Business Manuals, giving McDonald's effectively unfettered access to monitor performance, and setting out what kind of behavior constitutes a breach of the agreement, for which McDonald's will seek relief from the Courts. It

also outlines what the grounds will be for not renewing the franchise agreement, a topic considered further below.

2. National Franchising Standards

21. The National Franchising Standards (NFS) are in addition to the Franchise Agreement. They are the set of six principles and associated behaviors that McDonald's uses to determine whether it will "rewrite" the Franchise Agreement after the current one expires (that is, whether McDonald's will renew the agreement and continue the business relationship), and whether the franchisee will be eligible for growth, which means acquiring other restaurants. The important difference from the Franchise Agreement is that it is possible to be in compliance with the Franchise Agreement and yet not meet the NFS standards, which are much broader. The ability to force the franchisee out of business at the end of the Franchise Agreement by not extending it is an additional and powerful sanction.

22. McDonalds notes the system aspect of these standards: "[redacted]."[8]

3. Business Operating Manuals

23. The business operating manuals are the detailed rules, running hundreds of pages each, that spell out precisely how to perform every business operation, from what employees wear to how French fries are cooked. The McDonald's manuals are famous for their

[8] *See* 2018 NFS [MCDAT00026823 at -823]. The NFS were revised periodically; *see also* 2005 NFS in Franchising Reference Manual [MCDAT00376335 at -345]; 2011 NFS [MCDAT00072933]; 2014 NFS [MCDAT00117925]; 2016 NFS [MCDAT00113499]. However, a version was in place at all times during the Class Period.

unparalleled detail. Indeed, McDonald's is commonly described as having the most restrictive and rigorous control systems for franchisees of any well-known franchise operation. McDonald's corporation founder Ray Kroc began its franchising model in the 1950s with the following motto, revolutionary in its day and credited by him for the company's success: "Our motto was 'In business for yourself but not by yourself." McDonald's is often thought to be the model for much of the franchising practice around the world. Hennart (1994) argues that the ability to exert tighter control over franchise operations, as pioneered by McDonald's, was the key factor in making franchise operations a source of sustainable competitive advantage. As explained in the Franchise Agreement:

[redacted]

24. Because all McDonald's restaurants are required to follow the same business manuals and franchise standards, that means that all restaurant workers—whether at franchisee or corporate locations—must perform the same work in the same way. For example, my colleague Robin Leider at the University of Pennsylvania studied McDonald's as a frontline employee and described how every task was spelled out in detail in the business manual, every subcomponent timed and measured along the lines of Frederick Taylor's Scientific Management

[9] MCDAT00049035 at -056.

approach, just as an assembly line would be.[10] This routinization of work practices was used to ensure consistency amongst the franchisees with respect to their operations.[11]

4. Explicit Monitoring of Franchisee Performance

25. Explicit monitoring includes the data that McDonald's collects on the performance and situation at each franchise restaurant, as well as its corporate-owned restaurants. McDonald's collects a remarkable amount of data on their restaurants.

26. Franchise restaurants are required to report a wide range of financial data as well as performance data on an almost continuous basis. In 2016, the corporation put all its procedures for franchisee reporting online, creating a new approach called "Dynamic Standard Operating Procedures" where the reporting by franchisees to the corporation and the directions back to them are in real time. These procedures are as detailed as temperature checks on equipment and the walk-throughs of stores to check visually on operations.[12]

27. To illustrate, [redacted] [MCDAT00195020 at -

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[10] Robin Leidner. 1993. Fast Food, Fast Talk: Service Work and the Routinization of Everyday Life. Berkeley, CA: University of California Press.

[11] The literature on the importance of these agreements is reasonably extensive. Peterson and Dant (1990) show, for example, that operating practices were the most important reason why business owners decided to join franchise chains; Kaufmann and Stanworth (1995) found that business support systems that the franchisor provided, which included training and operating systems, were key. Detail on McDonald's training programs includes Crew Development Program [MCDAT00069503], Crew Trainer Training [MCDAT00123177], Shift Manager Training [MCDAT00067640 at -646, MCDAT00192323], and Department Manager Training [MCDAT00200992 at -992, MCDAT00067650 at -649-50].

[12] Inkling, *McDonald's Selects Inkling to Deliver Critical Operating Procedures to More Than 750,000 Workers*, PR Newswire (Sept. 27, 2016), https://www.prnewswire.com/news-releases/mcdonalds-selects-inkling-to-deliver-critical-operating-procedures-to-more-than-750000-workers-300333693.html.

028]. [redacted] [*Id*. at -025]. [redacted] [*Id*. at -031].

28. McOpCo uses secret shoppers to visit stores and report what they find both to the company and ultimately back to each restaurant's management. The level of detail in these reports is considerable, such as concerns that [redacted] [MCDAT00068768]. It also uses "coffee stops," or Short Operational Reviews, which are less structured checks on the restaurant's performance.[13] In addition, each restaurant is assigned a Business Consultant from McOpCo who checks in with each restaurant periodically to evaluate performance.

29. The corporation's guidance specifies that ratings of individual employee performance were one of the criteria used to determine employee pay. For example, the [redacted] [MCDAT00279266 at -287]. Adopting consistent performance evaluation standards helps to ensure the consistency and standardization of training and thus the work performed by restaurant employees throughout the McDonald's System.

30. The most important monitoring activity, however, is the Business Review, which summarizes the information collected on each Franchise restaurant for evaluation purposes. [redacted]

[13] August 24, 2015 Deposition of Vivian Warfield, McDonald's Corporation Corporate Designee, at 54:4-8 (excerpts publicly filed in *Casey v. Ward*, No. 1:13-cv-1452 (RJL) (D.D.C. Feb. 27, 2016), Dkt. 160-44.

[redacted] [MCDAT00113518].

31. The level of detail contained in the Review is considerable and includes required action items, [redacted] No aspect of the restaurant goes unmeasured [see, e.g., MCDAT00122091]. Recommendations for more training are common. [redacted]. [MCDAT 00122081 at -082]. To put this in perspective, only 44% of large corporations have a successor in mind for their CEO,[14] and [redacted].

32. The review reports data such as the number of customer complaints, financial performance, restaurant traffic and comparisons against other stores and for some measures against other chains. An example of some of the grades the restaurant receives is below:

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[14] Patrick M. Wright, Anthony J. Nyberg, Donald J. Schepker, Ormonde, R. Cragun, and Michael D. Ulrich. 2016. Current Practices in CEO Succession. Center for Executive Succession, University of South Carolina. Available at https://sc.edu/study/colleges_schools/moore/documents/ces_research/chro_survey_2016.pdf.

[redacted]

[MCDAT00043928 at -935.]

[redacted]

[redacted]

[MCDAT0043928 at -936]

5. Feedback Systems

33. McDonald's uses feedback systems to provide operators with continuous information about the performance of their restaurants, often in real time. This information is different from the monitoring above in that restaurants are not necessarily scored on them by McDonald's. The corporation sees the information from these systems, but does not grade the franchisees on it. The most basic of these is the employee survey that franchisees are required to administer to their employees. It is administered by the franchisee, sent to the company for tabulating, and the results go back to the franchisee where they can learn about problems.

34. One of the software programs used by the franchisees is "Staffing, Scheduling, and Positioning for Operational Excellence." [redacted] [MCDAT00330173]. This is another example of standardizing operations across franchisees based on the McOpCo approach.

6. Peer Pressure

35. Peer pressure refers to information about how other franchise operators are doing, including formal interactions with them where they compare notes. One of the six criteria

in the National Franchising Standards is [redacted]. As one of the documents used to training McOpCo employees who oversee franchisees described it [redacted] [MCDAT00345873 at -944].

36. The NFS itself describes manifestations of that compliance:

[redacted]

37. These examples show how McDonald's encourages gatherings amongst franchisees. Formal mechanisms exist for such cooperation at the local and regional level, including through "Co-Ops." These provide structured avenues for information and resource sharing. [redacted]. [MCDAT00043928] An important motivation for these interactions and for [redacted] is to learn from each other, under the watchful eye of the franchisor, who organizes these interactions. Because such structured interactions have the shared purpose of improving restaurant performance by sharing know-how, such interactions also generate conformity pressures.

[15] The last criterion reflects [redacted]. [MCDAT 00320221 at -227].

38. McOpCo holds franchisees accountable for participating in these events with their peers. See, for example, [redacted] [MCDAT00122087]:

[redacted]

39. One of the fundamental principles of social psychology is the notion that humans tend to conform their actions to what they see others doing, especially when those relevant others are similar to them.[16] Any individual who sees what peers are doing feels pressure to conform to their behavior, a phenomenon in psychology known as conformity pressures. That should be true for franchisees who see what peer operators are doing as well.[17]

7. <u>Consequences for Non-Compliance</u>

40. Adherence to McDonald's system standards by the franchisees improves to the extent that there are consequences associated with being out of compliance. The biggest sanction for a material breach of the Franchise Agreement is that McDonald's may take possession of the franchisee's restaurant, leading to considerable losses for the franchisee. McDonald's also has the right to pursue other legal action against the franchisees who are not in compliance with the Franchise Agreement.

41. The other major sanction is to not extend that franchise agreement after its initial expiration. In [redacted] of the expiring agreements were not extended.

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[16] This research has a long history, but in contemporary terms, it can be traced to Solomon Asch's experiments on the effect of peer behavior on our judgments: Asch, S. E. (1951). Effects of group pressure upon the modification and distortion of judgment. In H. Guetzkow (ed.) *Groups, leadership and men*. Pittsburgh, PA: Carnegie Press.

[17] For a review of the massive literature on this topic, see Cialdini, R. B.; Goldstein, N. J. (2004). *"Social influence: Compliance and conformity.") Annual Review of Psychology. 55: 591–621.*

[MCDAT00326676 at -679.] The costs to the franchisee in that context can be considerable because they have lost whatever investment they have made in building up the business, such as marketing, and the franchise then has no value: they have nothing to sell.

42. A final material sanction on franchises is to not allow them to expand. The reason this restriction has some real consequence for most franchisees is that, having spent the time and effort to learn how to run one restaurant, there are scale economies in running an additional one. [redacted] operate multiple stores. [MCDAT00328574]

43. There are other ways in which compliance can be secured. Consider, for example, getting franchisees to use McDonald's Employee Commitment Survey. [redacted]. [MCDAT00376335 at -353. See also MCDAT00072715 at -721].

C. <u>Effects of System-Wide Standardization</u>

44. The incredible level of standardization of tasks across restaurants means that local manager and employee discretion are substituted by standardized, system-wide rules and procedures. To effectuate the standards, a significant amount of training is required; indeed, training is also an important means of standardizing operations and practices across restaurants. To some extent, this is true of all franchise operations. Our study of franchise operations in the United States found that franchise systems, as such, provide considerably more training to

employees than non-franchise operations, and almost twice as many hours of training for managers in particular.[18] Formal training programs are also important because they play a central role in socializing individuals into the culture of the organization (Kramer 2010), teaching them the norms and values that guide behavior. El Akremi et al. (2010) find that franchise training programs help create cohesion among franchisees in terms of norms and values.

45. The same is true at McDonald's. A former HR Senior Director testified that [redacted] Langhorn Dep. 69:5-15. He continued, [redacted] Langhorn Dep. 69:20-70:24.

46. This is consistent with the Plaintiffs' experience, too. As Ms. Deslandes testified, "[y]ou train every day, all day," on things from "customer greetings, proper procedures that McDonald's requests, how to fold a bag, how to handle an order, how to handle a complaint, how to keep your patience and be calm, proper cooking procedures that McDonald's wants [employees] to know." Deslandes Dep. 112:18-113:11. Each topic involved protocols specific to McDonald's; for example, with respect to handling complaints, Ms. Deslandes explained she was trained to give customers "the [WOW] factor. McDonald's trains you to handle upset customers. They have steps you follow. As long as you follow those steps, you should have a successful customer being happy." *Id.* 118:14-20. Food prep was also proprietary and "would

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[18] Peter Cappelli and Monika Hamori. 2008. Are Franchises Bad Employers? Industrial and Labor Relations Review. 61(2): 147-162. The descriptive results for the US as a whole are in Table 2, the regression results controlling for industry and size are in Tables 3a, 3b, and 3c.

depend on the item." *Id.* 122:15-21. Ms. Deslandes' own training included "anything to do with food, food safety, cash, cleaning, employees, customers and how to handle them, proper safety, proper food handling process for McDonald's, what the proper timing for McDonald's foods needs to be." *Id.* 166:1-9. Ms. Turner testified to having received similar types of specific training. Turner Dep. 96:12-97:18; 104:3-105:8; 168:4-19; 242:17-243:19.

47. In reality, a franchisee could not meet the business standards if crew were not trained to the McDonald's System. The National Franchising Standards explicitly require [redacted] [MCDAT00113499 at -503].

D. <u>The Unique Value of McDonald's-Specific Training to McDonald's Restaurants</u>

48. Through their training and work experience, McDonald's restaurant workers develop skills that are of value primarily to McDonald's employers and that are not transferable because they are tied to McDonald's equipment and dependent on McDonald's systems. Many skills are not valuable to non-McDonald's work settings. Because the tasks that need to be performed are the same at each restaurant, mandated training at McDonald's also has the effect of creating what is essentially a template organizational chart of job roles within restaurants.

49. McDonald's provides its franchisees an Operations & Training ("O&T") Manual that [redacted] [MCDAT00115421]. McDonald's confirmed in a deposition that the O&T Manual sets the expected way of performing each job, [redacted] [Langhorn Dep. 69:5-70:24]. The Manual defines how tasks are to be performed: [redacted] *Id.* 70:22-24.

50. As I describe in more detail below, the McDonald's No-Hire Agreement prevents restaurant employees from moving to the jobs where employers most want them – which is other McDonald's restaurants. The no-hire rule obviously lowers their market value and damages them by taking away the opportunities that are most plentiful, given the scale of McDonald's jobs described below. These are also the jobs where employers have the willingness to pay the most to get those McDonald's skills. As the McOpCo O&T Manual states, [redacted] [MCDAT00115421 at -432]. Therefore, training makes workers more attractive to other McDonald's employers versus third party employers.

51. Labor economists have long studied the benefits of training and how they are split between employers and employees. What determines the division is the relative bargaining power of employers and employees. That power is often determined by their available alternatives. Professor Gary Becker described this phenomenon 60 years or so ago with his Nobel Prize-winning distinction between general training and specific training.[19] "General" training is the type of training that an employee receives which increases their productivity, and therefore their value, at all or many potential employers. Thus, the value of such training accrues generally to the employee, who becomes more marketable. "Specific" training, in contrast, is the type of training that an employee receives which increases their productivity, and therefore their value, primarily to their current employer. The value of specific training thus generally accrues to the employer, because the employee generally cannot take or use those specific skills in other

[19] Gary Becker. 1964. Human Capital. Chicago: University of Chicago Press.

settings, as they are inapplicable. The caveat, however, is that the employer retains an interest in retaining employees who have developed those specific skills.

52. The general vs specific skills distinction is arguably one of the most researched topics in labor economics. A Google Scholar search of articles finds 150,000 using the general and firm specific idea. Researchers have found that franchising works better and is more likely where human capital is intangible as in firm-specific skills[20]; a study of a restaurant chain found higher performance in those restaurants that had higher levels of human capital specific to that unit.[21]

53. At McDonald's, training also creates and enforces the promotion ladder and the restaurant-level organizational chart. Beyond basic performance in one's current role, additional training is a necessary condition for advancement to any position. The job roles and minimum training requirements, as well as the minimum training requirements for advancement, are identical at any McDonald's restaurant. It is also the case as we see below that success in the current role is a necessary condition for advancement to the next role up.

54. One of the consequences of the fact that each non-entry level job in the McDonald's System requires both experience in the job below and further training for the higher position is that all positions above entry-level Crew Member must be filled by someone already employed in the McDonald's System. Hiring anyone for non-entry positions from *outside* the

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[20] Frédéric Perdreaua, Anne-Laure Le Nadant, and Gérard Cliquet. 2015 Human Capital Intangibles and Performance of Franchise Networks: A Complementary View between Agency and Critical Resource Perspectives. MANAGERIAL AND DECISION ECONOMICS. 36: 121–138.

[21] Robert E. Ployhart, Chad H. Van Iddekinge, and William I. Mackenzie Jr 2015. *Acquiring And Developing Human Capital In Service Contexts: The Interconnectedness Of Human Capital Resources*, Academy of Management Journal. 36: 121-138.

McDonald's System would be highly inefficient (as it would require significantly more training than for promotes or laterals within the system), if not contrary to McDonald's standards (for example, a necessary pre-requisite for becoming a Department Manager is to first work as a Shift Manager). The No-Hire Agreement artificially shrinks the potential labor pool to fill such non-entry level positions to the level of individual Franchisees: each Franchisee can only look to fill these positions by promoting its own employees. It cannot hire employees of other Franchisees or McDonald's restaurants who have the necessary training or experience to fill the role right now.

55. Below is the list of standardized job roles in order of their authority and the training requirements that come with them, all of which contribute to consistency across the McDonald's System:[22]

a. **Franchisee – owner/operator**: The franchisee owns the restaurant, and most of the restaurants are owned by franchisees who own several restaurants. They differ from the other roles in that they are not employees, but have obligations to McDonald's specified through the Franchise Agreement.

b. **General Manager**: The General Manager oversees everything about their individual restaurant and also handles "outside" issues, such as marketing, relations with the community, and dealing with the Franchisee. Candidates for General Manager positions must first have been Department Managers. [redacted]

[22] MCDAT00067640 – [redacted].

[redacted] [MCDAT00024157; MCDAT00115424]. [redacted].

c. **Department Manager**: The Department Managers manage the inside aspects of the restaurant, each one in charge of a different part of the operation. They must be a Shift Manager first and then complete [redacted] [MCDAT00067640.] [redacted] [MCDAT00115424 at -449-59]. [redacted].

d. **Shift Manager:** The Shift Managers are the onsite leaders of the restaurant. In addition to supervision, they also plan shift schedules and are responsible for meeting safety, performance, training, and other targets while they are working. One cannot become a Shift Manager without having already been verified as a Crew Trainer and other crew-level verifications. Among the training requirements for Shift Manager are [redacted]. McDonald's estimates that completing the program requires roughly [redacted] [MCDAT00067640 at -646-648, MCDAT00192323].

e. **Crew Trainer**: The Crew Trainer's primary role is to teach new hires to become proficient and existing Crew Members who are changing work stations. As with airline pilots who must be certified separately for each plane they fly, Crew Members need to be verified as proficient for each station where they work – e.g., cash register vs. fryer. Crew Trainers have their own training requirements that [redacted] [MCDAT00123177]. [redacted] [MCDAT00091474, MCDAT00199891]. It takes roughly [redacted] [MCDAT00067640 at -650-653] [redacted]. [redacted] [*Id.*].

f. **Crew Member**: This is the only entry-level position in a restaurant. New hires into this position must first complete [redacted]. [redacted] (MCDAT00069503). [redacted]. [redacted] [MCDAT00096147 at -155]. From that point on, the new Crew Member can work independently. [redacted] [MCDAT00069503]. [redacted] [MCDAT00071560 at -564].

g. To get a sense of how detailed the training is even for a crew member, see the scripted questions and follow-on questions that McOpCo provides for talking to new hires at the 30 day follow-up with them [MCDAT0069503 at -512-514].

[redacted]

56. Not only does McOpCo require a great deal of training for the employees of its franchisees, it is extremely detailed in assessing how the employees performed in that training as the report card for Plaintiff Deslandes below indicates [LOPEZ/LCL 000006]:

[redacted]

57. As noted above, the training requirements at McDonald's minimize if not entirely eliminate the possibility of hiring outside the McDonald's system except at the lowest level/Crew Member job. Hiring someone from outside the system even at that level requires that they complete a considerable amount of training. Training is not free. Beyond the cost of the training materials themselves and the cost of the time of the McDonald's employees who perform the training – Crew Leaders, Shift Leaders, offsite professional trainers, etc. – is the time of the person being trained. My understanding is that non-exempt employees must be paid for the time for which they are being trained under the Fair Labor Standards Act and applicable

state and local laws. Offsite training requires transportation and accommodation costs as well as time off work. For a shift manager, for example, their own time spent on training would be roughly [redacted] of their annual pay because it represents that percentage of their time at work.[23]

58. The other issue is the benefit of work experience on the job. A shift manager in her first week on the job is unlikely to be anywhere near as effective as someone who has been doing it for a few years. Evidence that job performance rises with time in a job is inferred from the fact that wages rise on average with job tenure, especially so in the first year and then the next few, as we might expect with high turnover jobs like those at McDonald's. Estimates suggest that for average workers in the US they rise from roughly 32 to 43 percent in the first five years on the job.[24] They are likely to rise more for management jobs where there is greater discretion. The claim is not that wages rise this much with job tenure at McDonald's, it is that employee value is likely to rise considerably. A franchisee could avoid all those training costs and getting the higher performance from experience by hiring someone who had been in a shift manager role at another McDonald's restaurant. The fact that employees cannot move to other restaurants once they have those skills also means that there is no pressure to raise their wages.

E. The Non-Transferability of McDonald's-Specific Skills

59. I turn now to the situation of Class Members and their options given the No-Hire Agreement and McDonald's specific training and experience requirements. The obvious point is that the employers most interested in hiring them would be other McDonald's restaurants

[23] The amount of training time required for each job, as outlined in the paragraphs above, as a percentage of a working year represents roughly [redacted] of their work time, therefore the equivalent amount of their compensation.

[24] Henry R. Hyatt and James R. Spletzer 2016, The shifting job tenure distribution. Journal of labour economics. 41(C) 363-377.

because it would save training costs—given that they are already trained—and also secure higher performing workers because of their experience.

60. Could ex-McDonald's employees work elsewhere than in other McDonald's restaurants? Of course, any of us could work elsewhere: lawyers could be sommeliers, too, and might prefer it, but their skills are much more valuable practicing law. For the managerial roles at McDonald's, some of their training may be general in the sense that topics like [redacted] may include some concepts that are reasonably common. But even that training is conducted in the unique context of McDonald's Systems. Much of the training for managers is quite specific to McDonald's, such [redacted]. Indeed, a significant portion of Manager training is cumulative, building upon knowledge and experience acquired previously in lower positions at McDonald's. To illustrate the specificity of the training, Plaintiff Stephanie Turner describes that McDonald's had a required way to take cash from customers and place it on top of the cash drawer while counting out change, an approach that she noted was different from the one used at Kroeger, where she worked before. Turner Dep. 92:8-93:24. By leaving the McDonald's System, an employee loses the ability to sell that skill to an employer who has the greatest interest in it, another McDonald's restaurant. Ms. Turner also describes the specificity of the tasks in in a restaurant beginning with the basic task of putting a sandwich together, starting with the "initiator" job who operates the screen, "So when the order comes up on the KVS, they have like five to ten second to react to the screen. And you drop your buns, you put your wrap out or your box out on the table or whatever and then you start your sandwichs off." *See* Turner Dep.:96:22-97:21. From there, an "assembler," a separate job, takes over to

add the meat. *Id.* As she testified, the training on something like quality is only useful at McDonald's "because you would only be talking about McDonald's qualities…." *Id.* 242:21-23.

61. For Crew, Crew Trainer, and Shift Manager positions, the training is about learning to operate McDonald's specific equipment at each "station" in the restaurant to meet performance standards unique to McDonald's. Operating a particular station also depends in part on where it is located within the restaurant's production process – what comes before it, what comes after it. That training is useless to, say, a Chipotle or Subway restaurant because they do not use the same equipment, let alone the same protocols. Even in a hamburger restaurant other than McDonald's, the McDonald's skills would have to be "unlearned" to fit to a new system, manifesting the difficulty of organizational change or the more prosaic "can't teach an old dog new tricks" issue. In the context of a chain like McDonald's, "specific" training as it is generally known is not tied to a single employer (such as an individual Franchisee or McOpCo), but to all employers within the McDonald's System.

62. From the perspective of a McDonald's employer, very little is lost, if anything, when an employee is replaced by someone who had performed the same or similar job title at another McDonald's restaurant: they are largely interchangeable. It would be in the interest of the restaurants to pay more to get these more valuable workers. In fact, a study in a restaurant chain found exactly this result, that the employers paid more to get equivalent managers from outside than when they were developed internally. [25] The individual's current McDonald's employer has the same incentive to retain that worker's value by offering them a higher wage. In other words, the greater productivity and value associated with a worker already endowed with

[25] DeOrtentiis, P. S., Van Iddekinge, C. H., Ployhart, R. E., & Heetderks, T. D. (2018). Build or buy? The individual and unit-level performance of internally versus externally selected managers over time. *Journal of Applied Psychology, 103*(8), 916–928.

firm-specific skills and training raises the demand for such workers within the chain, which drives up the worker's wages. That is how open labor markets work: demand bids up the wages of valuable workers.

V. MCDONALD'S NO-HIRE AGREEMENT

63. Plaintiffs challenge an alleged No-Hire Agreement between and among McDonald's and its franchisees, by which they agreed to limit competition between one another for restaurant employees.

64. The No-Hire Agreement had several components. In its standardized franchise agreement, McDonald's included a provision by which Franchisees agreed not to hire or solicit people working for McDonald's or other Franchisees. This provision is known as "Paragraph 14," and it provides:

> During the term of this Franchise, Franchisee shall not employ or seek to employ any person who is at the time employed by McDonald's, any of its subsidiaries, or by any person who is at the time operating a McDonald's restaurant or otherwise induce, directly or indirectly, such person to leave such employment. This paragraph 14 shall not be violated if such person has left the employ of any of the foregoing parties for a period in excess of six months.[26]

65. Other documents produced by McDonald's explain what Paragraph 14 requires and how McDonald's enforced it.

a. For example, the Franchising Reference Manual (dated July 1, 2008) includes the [redacted] which describes the Paragraph 14 requirement: [redacted]

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[26] MCDAT00005225 at -234-35. This appears in a franchise agreement dated 2017. *Id.* at -234. However, I understand that a substantially identical provision was in place throughout the entire Class period (June 2013 to July 12, 2018), and was included in McDonald's franchise agreements since at least 1973. MCDAT00026839.

[redacted][27]

b. A December 4, 1995 McDonald's memorandum entitled [redacted] that was sent to regional franchisees noted that [redacted].[28]

c. A 2011 memorandum from McDonald's to all Houston region franchisees, entitled [redacted] reminded franchisees that [redacted][29] Losing eligibility for an NFS standard ultimately leads to losing the franchise at renewal time and may be perceived as breach of the Franchise agreement, leading to termination.

d. A summary of a business review of one franchisee indicates that McOpCo wanted [redacted] [MCDAT00335736 at -738]:

[redacted]

[27] MCDAT00376335 at -369.

[28] MCDAT00219729 (Leon Dep. Ex. 33).

[29] MCDAT00351646 at -648.

66. Although Paragraph 14 explicitly refers only to limitations on Franchisees' hiring decisions, McDonald's reciprocated the agreement, and did not hire or solicit people for management positions who worked for its Franchisees.

a. For example, McDonald's recruiter Deb Leon testified that [redacted][30] [redacted].[31] Ms. Leon indicated that [redacted]. *Id.* [redacted].[32] At times, McDonald's was even more strict. For example, one McOpCo Operations Manager commented: [redacted][33] [redacted]

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[30] Leon Dep. 32:21-33:2.

[31] *Id.* 58:7-59:6

[32] *Id.* 33:3-14; 37:21-38:15.

[33] MCDAT00342473 at -474 (Leon Dep. Ex. 40).

b. So deep did the understanding of Paragraph 14 run in the McDonald's system that it became an assumption. To illustrate, Karen King claims that [redacted]. King Dep. 64:19-24. But she described it as [redacted], *id.*, and testified that [redacted], *id.* 58:13-18.

c. In one example, [redacted] [MCDAT00351647.]

[redacted] Even with the no-hire agreement in place, McDonald's restaurants found themselves in competition with each other due to differing entry-level wages. Consider the following exchange in this message to McDonald's corporate about [redacted]

[redacted]

[redacted]

68. In April 2015, McDonald's announced that it would raise wages at McOpCo restaurants system-wide by at least one dollar above the local minimum wage.[35] Lori Duggan described in her deposition that [redacted]. Duggan Dep. 65:14-66:14. She noted that [redacted] *Id.* 67:6-7. [redacted]. The public relations value of being one dollar above the minimum required wages everywhere across the country was much more powerful. This is especially so given the attention minimum wages were being given and the pressure on government to raise them because employers were not doing so: ten states saw their minimum wages rise by statute, and ten more saw them increase by cost-of living formulas before the McDonald's announcement.[36] It reflected a concern about the structure of wages across the system.

69. McOpCo could not raise those entry-level wages unilaterally at the franchisees. What they could do unilaterally, and did, was introduce a new program for all McDonald's workers, including those of franchisees, that would pay for them to get a high-school diploma if

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[34] MCDAT00153405. See also MCDAT 00362584.

[35] See MCDAT00362584; MCDAT00132090.

[36] Burnett, Jennifer, *Minimum Wage Watch 2015*, The Council of State Governments (Dec. 2, 2014), http://knowledgecenter.csg.org/kc/content/minimum-wage-watch-2015-0.

they did not have one already and provide tuition assistance for some college courses. When McDonald's CEO Steve Easterbrook announced the increase and the educational support in the Wall Street Journal, he said that the reason for doing it was to help turn around McDonald's slide in sales over the previous two years: "Motivated teams deliver better customer service, and delivering better customer service in our restaurants in clearly going to be a vital part of our turnaround."[37] In other words, it was a McDonald's system issue, not a McOpCo specific concern.

70. At least one observer suggested that the goal of the pay raise was to get franchisees to raise their wages. Richard Adams, head of the Franchise Equity Group that advises McDonald's franchisees said the McOpCo pay increase "forces the franchisees to raise wages." [38]

71. Several months prior to that announcement, [redacted].[39] [redacted]

[37] Gasparro, Annie & Morath, Eric, *McDonald's Joins Trend in Raising Pay*, Wall Street Journal (Apr. 1, 2015), https://www.wsj.com/articles/mcdonalds-to-raise-hourly-pay-for-90-000-workers-1427916364. The details of the support for schooling were also announced in this story.

[38] Strom, Stephanie. *McDonald's to Raise Pay at Outlets it Operates*, N.Y. Times (Apr. 1, 2015), https://www.nytimes.com/2015/04/02/business/mcdonalds-raising-pay-for-employees.html.

[39] [redacted].

[redacted].[40] [redacted].[41] This demonstrated that McOpCo was aware that, even though McOpCo restaurants comprise only approximately 10% of McDonald's restaurants nationwide, a change in wages at those restaurants would place competitive pressure on franchisee-operated restaurants to raise their wages in order to remain competitive in that labor market. In other words, there was a market tying together the wages of franchisee and McOpCo restaurant employees, and both McOpCo and the franchisees were aware of that.

72. [redacted], McDonald's implemented a one-year hiring moratorium at McOpCo restaurants of all crew people who worked, or had worked within six months, at a franchisee restaurant within [redacted] miles of any McOpCo.[42] McDonald's advised franchisee leaders on the eve of the April 1 announcement that this was intended to alleviate franchisees' concerns about competitive pressure they would face for workers, noting that McDonald's was "not to benefit by hiring [their] best and brightest."[43] Nearly a week later, [redacted].[44] Other personnel in McDonald's HR department, who oversaw recruitment and hiring at McOpCo restaurants, understood this to be [redacted]

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[40] King Dep. 97:14-99:22.

[41] King Dep. 97:20-99:10.

[42] MCDAT00397883.

[43] King Dep., Ex. 126; King Dep., Ex. 127.

[44] [redacted] (Lopez Dep. Ex. 106).

[redacted].[45] Thus, the effect of the policy was to further limit the mobility of McDonald's workers, as it prevented crew members at franchisees from being hired at a McOpCo in any circumstances (whereas McDonald's reciprocation of Paragraph 14, which was already in place, [redacted]).

73. From a human resources perspective, it is obvious that the moratorium was imposed because the McOpCo wage hike would have put immediate pressure on nearby franchise restaurants to match McOpCo's wage increase, or face the threat that their employees would seek better paying positions at McOpCo. By adopting a moratorium, McOpCo removed that competitive pressure. Such an effect (competitive pressure) would not be possible unless there was a wage structure that, absent a restraint, tied together the wages of McOpCo and Franchisee restaurant employees, such that changes in one group's eventually get transmitted to the other group in competitive market conditions.

74. In its presentations to franchisees, the company's bullet points noted that: [redacted] [MCDAT00132041 at -066.]

75. McOpCo's description of franchisees within [redacted] miles of a McOpCo as [redacted] [King Dep. 140:14-146:17] meant they would be pressured to raise wages to match McOpCo. Franchisees themselves complained that McDonald's was "throwing owner/operators under the bus," and complained that the cost of matching McOpCo's pay would put them out of

[45] MCDAT00342220; MCDAT00342473 at -475.

business. [MCDAT00334049.] This demonstrates McDonald's recognition that a pay structure exists between restaurants owned by different people—not just within individual restaurants.

76. The other reason for raising wages across McOpCo and then across all McDonald's restaurants was to impose more standardization in pay practices across its operations: [redacted] [MCDAT00267877 at -905.]

77. In response, franchisees complained that [redacted][46] McOpCo staff asked if there were ways to [redacted][47]

78. A franchisee's complaint to the corporation described [redacted]. [MCDAT00334049 at -050.] This message also indicates that McOpCo's wage hike placed competitive pressure on the franchisees to raise their wages, or they would not have bothered to explain [redacted]. Describing the reaction of the franchisees to the corporate pay increase, McDonald's franchisee James Rivello noted in a report to regional McOpCo leadership that "I haven't seen this type of anger in my years in McDonalds in this region." [MCDAT00334049.] It is difficult to see why

[46] See Email chain between [redacted] [MCDAT00334494 at -498].

[47] *Id.* at -495.

franchisees would have such a reaction if the corporate decision did not put pressure on them to raise their own wages. McDonald's assurance that company-run McOpCo stores would not hire anyone who had worked for a franchisee in the past six months was announced shortly after the wage hike and reaction from franchisees. [MCDAT00342238.]

VI. WHY NO-HIRE AGREEMENTS HARM WORKERS

A. Literature Linking Pay Increases to Job Mobility

79. When we think of efforts to interfere with the market, we usually think of sellers who collude to raise prices – restricting the supply, for example, or agreeing to stay out of each other's markets. Such restrictions raise the prices of the products they sell. When there is only one seller, we refer to that situation as a monopoly. The reverse also happens, where buyers collude to reduce demand, to achieve the opposite result of lowering prices. When there is only one buyer, the situation is referred to as monopsony.[48] When there is more than one seller but competition among sellers is restricted artificially, we refer to those situations as representing degrees of monopoly or oligopoly. When there is more than one buyer but competition among those buyers is restricted artificially, we refer to that situation as representing degrees of monopsony or sometimes oligopsony.

80. No-hire agreements are an artificial restriction on hiring that take other employers out of the market, reducing the employees' ability to move, an effect similar to monopsony in the labor market. In some cases, even when individuals quit their employer, the other employers are prohibited from hiring those individuals for some period thereafter. The more monopsony there is, the less demand for labor there is, and the lower wages and associated compensation are for employees in that labor market.

[48] *See* Alan Manning. 2003. Monopsony in Motion: Imperfect Competition in Labor Markets. Princeton: Princeton University Press.

81. The McDonald's no hire agreement creates a monopsony context for individual McDonald's restaurants. Because its current employees cannot take their skills to other competing McDonald's restaurants, of which there are roughly 14,000, their current employer has considerable power to keep their wages down. There is little doubt that employees of all kinds benefit from the freedom to change jobs, and therefore that restricting their ability to freely change jobs hurts them. The literature on this topic is extensive and concludes, for example, that even in a period when mobility across employers was low, one-third of all the growth individuals experienced over their careers came from changing employers (the rest came from advancement within an organization).[49] The gains from moving geographically in order to change employers grow with higher levels of skill.[50]

82. My Wharton colleague Matthew Bidwell examined changes in managerial jobs and found that those who moved to a new employer made considerably more money than those who held exactly the same job but moved into it from inside the employer. That pay premium associated with coming into a given role from outside lasted for seven years.[51] Bidwell and another Wharton colleague Ethan Mollick examined the careers of managerial workers across industries and found that even when individuals move to a new employer to take an identical job to the one they just left, they receive a substantial increase in pay simply for moving.[52] Giuseppe Moscarini and Fabien Postel-Vinay conclude that the average US worker saw their pay rise by

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[49] For a classic study, see Topel, Robert H. and Michael P. Ward. 1992. Job Mobility and the Careers of Young Men. Quarterly Journal of Economics. 108: 439-479.

[50] *See* Yankow, Jeffrey J. 2003. Migration, Job Change, and Wage Growth: A New Perspective on the Pecuniary Return to Geographic Mobility. Journal of Regional Science. 43(3): 483-516.

[51] Bidwell, M. J. (2012). Paying More to Get Less: The Effects of External Hiring Versus Internal Mobility. Administrative Science Quarterly. 1-39.

[52] Matthew Bidwell and Ethan Mollick. 2015. Shifts and Ladders: Comparing the Role of Internal and External Mobility in Managerial Careers. *Organization Science 1-17.*

four percent over time with every employer change and that 40 percent of wage increases over one's lifetime come from changing employers.[53]

83. After McOpCo agreed not to enforce the No-Hire Agreement, it became possible for individual employees to move across competing McDonald's restaurants. Employees who were prepared to leave to advance – say a Crew Trainer who is prepared to be a Shift Manager and was otherwise left waiting for an opening in their restaurant – might find an opening for a Shift Manager at another competing restaurant. These employees would see substantial increases in pay because of the promotions. This increased Classwide mobility would cause competing employers to bid up wages.

84. The estimates of the returns from changing jobs discussed above are biased downward because employers also raise the wages of employees who remain in their organizations when others start to leave in order to retain them, essentially trying to dissuade them from leaving. Job changes therefore have some benefit to those who stay in the organization as well as to those who leave. The general term for this benefit is "spillover" effects, in that employees who quit for better paying jobs elsewhere are improving the wages for those who stay, too.[54]

85. Further, Census data suggests that virtually all the individuals hired in the US in a given year, 66 million out of a labor force of 165 million, are backfilling vacancies created by

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[53] Giuseppe Moscarini and Fabien Postel-Vinay. 2018. The Cyclical Job Ladder. Annual Review of Economics 10(1):165-188.

[54] Historically, the spillover term was used to describe how unions raised wages at non-union firms because employers there increased wages to buy out interest in unionization. The most common example of spillover effects in contemporary research is with minimum wages pushing up wage rates for higher paid jobs. See David Neumark and William L. Wascher. 2008. Minimum Wages, Cambridge: MIT Press.

employees leaving, and virtually all of those who take new jobs are currently employed elsewhere.[55] In other words, there is a huge amount of movement of individuals across jobs in the economy. The majority of individuals who change employers report that they were not actively looking for one: other employers recruited them.[56] "Poaching" and solicitation are major reasons why employees leave their current employer. My review of the hiring literature suggests that employers on average seem much more interested in external candidates to fill positions than their own internal candidates.[57] Given all this, there is no doubt that the No-Hire Agreement restricted the ability of Class Members to move and was costly to employees.

B. <u>Interference With Employee Job Mobility Results In Lower Wages</u>

86. Keeping good employees from leaving matters for employers not just because of the chance that a good employee who leaves might be replaced by an employee of lesser quality, but also because replacing a good employee with an identical good employee involves transaction costs: the search for replacements, training, and ramp-up time to learn the new employer's practices, and lost opportunities during the period when the position may be vacant. The textbook solution to employee retention in economics is to offer terms and conditions that are good enough to keep employees from leaving.

87. The standard description of the way open labor markets work is that the value that employees create, often referred to as their marginal product, determines the demand that the

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[55] *See* U.S. Bureau of Labor Statistics, *Job Openings and Labor Turnover—November 2020* (Jan. 12, 2021), https://www.bls.gov/news.release/jolts.nr0.htm. 70.7 million vacancies are filled each year with a workforce of roughly 160 million: voluntary turnover is the reason.

[56] Carlos Carrillo-Tudela, Bart Hobijn, Patryk Perkowski, and Ludo Visschers. 2015. Majority of Hires Never Report Looking for a Job. Federal Reserve Bank of San Francisco Economic Letter, March 30th.

[57] Peter Cappelli. 2019. Your Approach to Hiring is All Wrong. *Harvard Business Review*. May/June, 57-56.

employer has for labor and also the maximum amount they are willing to pay. That marginal product declines as we add more workers because the first ones handle the biggest tasks and make the biggest contributions, the next set handle less important tasks and make smaller contributions, and so forth. Employers stop hiring workers when the wage they have to pay is greater than the marginal product of that last worker. In this simple model, all employees are paid the same amount for the same job because once they are employed, it is not relevant who performs the tasks that would have been carried out first. The wage that they are paid also depends on the supply of labor, and that is shaped by opportunities elsewhere: If other employers have jobs with a higher marginal product and are willing to pay more, workers go to them first. An individual employer therefore cannot pay less than those opportunities – what is effectively the market wage – and retain their employees.

88. When we begin to relax the extreme assumptions of this model, we see different behavior, of course. Because job search takes time and also requires opportunities, employers are unlikely to lose all their employees at once. If they are good at recruiting and hiring, they may be able to pay employees less than the market rate, lose them over time to competitors, and backfill with new hires. This approach is not necessarily efficient, of course. There may also be attributes of an employer or of its location that allow them to pay less than the market average. We return to this topic below. *See* Section VI, *infra.*

89. If the employee's contribution is truly unique to the employer and the best use of that employee's skills and capabilities is with that employer, such as if the tasks do not exist elsewhere, then the above explanation does not hold because the value of their contributions on the open market is less than the value at their current employer. In that situation, the labor market alone does not determine wages. Such employees should be willing to stay at their

current job as long as it pays at least the market wage, but because employees are more valuable to the employer than any replacements that could be hired in, the employer should also be willing to pay them more if necessary to keep them up to the limit of their replacement costs. The wage the employee will actually receive is somewhere between the lower-bound market wage and the upper-bound value to the employer. What determines the outcome is the bargaining power between the employer and the employee. That power depends largely on the ability of the employee to leave.

90. It is also possible to pay employees less than the value of their current marginal product and less than their value elsewhere by interfering with the market through contracts and agreements that circumvent open labor markets and prevent current employees from leaving to take jobs elsewhere. No hire agreements and other efforts to interfere with the functioning of the labor market reduce opportunities for workers elsewhere and therefore their market wage. This is the monopsony context described above. In other words, my skills might be valuable to employers elsewhere, but if they will not hire me, my opportunities to pursue those options are eliminated. My market wage is therefore less, and it may also be less than the marginal product that the employer earns from its marginal worker. That creates a situation very similar to that where an employee has skills and capabilities more valuable to their current employer than to employers elsewhere. Employers can create that situation by imposing restrictions on the labor market.

91. Until the Washington Attorney General interceded, no-hire agreements in the franchise context were common, perhaps because until recently they have not been challenged. An influential study found that 58 percent of US-based franchise operations had no-hire requirements as part of their franchise agreements that governed the operation of the franchise

and that a whopping 80 percent of fast-food companies like McDonalds had them.[58] These agreements restricted the franchise operations, from hiring employees from other operators in the same franchise chain. Doing so limits the demand in the labor market for current employees, making it more difficult for employees to leave, and reduces their wages as a result. As with the McDonald's arrangement that is the focus here, these arrangements appear on their face to be explicit efforts to restrain the labor market.

92. Princeton professors Alan Krueger and Orley Ashenfelter illustrated the potential effects of these agreements using the state of Rhode Island as an example. There were 261 franchise-based fast food restaurants across different franchise chains in the state. Assuming all the chains had no-hire requirements like the one McDonald's had, the effective number of alternative employers for entry-level labor fell from 261 to six.[59] As noted above, other employers even in fast food restaurants could not use the distinctive skills that McDonald's employees have, so any competition across chains would only be at the entry level.

93. It is also possible to understand the potential effect of no-hire agreements on employee outcomes by looking at research about other legal restrictions on employee mobility. The evidence that they lower employee wages is extensive.[60] For example, research in economic

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[58] Alan B. Krueger and Orley Ashenfelter. 2018. Theory and Evidence on Employer Collusion in the Franchise Sector.

[59] Krueger and Ashenfelter, ibid. That conclusion makes the reasonable assumption that where franchisees have more than one store in the state, such franchisees do not allow competition for labor among their stores.

[60] The mechanism through which restrictions on mobility play out is monopsony. For a recent review of the extent of monopsony in the labor market that includes studies of non-compete agreements and other legal constraints creating monopsony, see Anna Sokolova and Todd Sorensen. 2021. Monopsony in Labor Markets: A Meta-Analysis. ILR Review 74(1): 27-55. A review of the concept of monopsony and anti-trust issues related to it, see Alan Manning 2021. Monopsony in Labor Markets: A Review. ILR Review. 74(1): 3-26.

history examined when criminal penalties for violating the Master-Servant laws in the UK were lifted making it easier for worker/servants to leave and found that wages rose.[61] A study of the reconstruction period in the South when criminal fines were imposed on sharecroppers who were enticed to move to a new owner found that higher fines reduced mobility and lowered the returns or rents that sharecroppers received.[62] A change in immigration law in the United Arab Emirates that making it easier for immigrants to change employers led to an increase in their earnings.[63]

94. In the US, the most common of these legal restrictions are non-compete agreements. While no-hire agreements like the one at McDonald's were contractual agreements among the employers not to hire each other's employees, non-compete agreements are contracts between employers and their employees prohibiting the employee from working for competitors of the current employee. Traditionally, such agreements have been justified by the employer's desire to protect its intellectual property and trade secrets from competitors. Though non-compete agreements may be lawful in certain circumstances (though some states prohibit them), researchers have routinely found that they tend to suppress wages.[64]

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[61] Naidu, Suresh, and Noam Yuchtman. 2013. Coercive contract enforcement: Law and the labor market in nineteenth century industrial Britain. American Economic Review 103(1): 107–44.

[62] Naidu, Suresh. 2010. Recruitment restrictions and labor markets: Evidence from the postbellum US South. Journal of Labor Economics 28(2): 413–45.

[63] Nyarko, and Shing-Yi Wang. 2016. Monopsony power in migrant labor markets: Evidence from the United Arab Emirates. Journal of Political Economy 124(6): 1735–92.

[64] Among the references here are an early report by the U.S. Treasury: Non-Compete Agreements: Economic Effects and Policy Consequences. April 2016. Washington, D.C.: US Department of the Treasury, Office of Economic Policy. Also a series of academic papers, such as Evan Starr, J.J. Prescott and Norman Bishara. 2020. Noncompetes in the US Labor Force. University of Michigan Law and Economics Research Paper No. 18-013 and Johnson, Matthew and Lavetti, Kurt and Lipsitz, Michael, The Labor Market Effects of Legal Restrictions on Worker Mobility (September 17, 2019). Available at SSRN: https://ssrn.com/abstract=3455381 or http://dx.doi.org/10.2139/ssrn.3455381.

95. The fact that states vary in the enforceability of these non-compete agreements allows researchers to estimate their effects on wages. Equivalent workers in states that did not enforce these agreements would see their earnings fall by four percent if their states began enforcing them.[65] The ban on enforcing non-compete agreements for tech workers in Hawaii was associated with a four percent increase in their wages, and a related estimate suggested that tech workers in states that enforced those agreements had roughly 4.6 percent lower earnings than did equivalent workers in states that did not enforce them.[66] Note that these effects are not estimating the difference for individuals who were bound by non-compete agreements. These effects are simply associated with being in locations where those agreements can exist.

96. Oregon passed legislation rendering non-compete agreements unenforceable with respect to a variety of workers, including workers who earned less than the median wage for a family of four, which is especially relevant for the current context.[67] The legislation raised wages for all hourly workers by 2-3 percent and appeared to raise wages for those who had actually been bound by non-compete agreements by 14-21 percent.[68] This example illustrates

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[65] Starr, Evan. 2019. Consider this: Training, wages, and the enforceability of covenants not to compete. ILR Review 72(4): 783–817.

[66] Balasubramanian, Natarajan, Jin Woo Chang, Mariko Sakakibara, Jagadeesh Sivadasan, and Evan Starr. 2018. Locked In? The Enforceability of Covenants Not to Compete and the Careers of High-Tech Workers. Published online before print in Journal of Human Resources (May 2020): 1218-9931R1.

[67] Chapter 902 Oregon Laws 2007. AN Act SB 248. https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2007orLaw0902.html.

[68] Lipsitz, Michael and Starr, Evan, Low-Wage Workers and the Enforceability of Non-Compete Agreements (December 9, 2019). Available at SSRN: https://ssrn.com/abstract=3452240.

that interference with competition in the labor market, including for low-wage workers, can have a dramatic effect on wages and employee welfare.

C. Labor Markets Are Imperfect

97. Another important point about labor markets is that they are imperfect. In other words, while economic theory often assumes that markets are perfectly competitive, they almost never are because buyer needs are rarely identical across participants, also true for sellers. Further, information about opportunities for buyers and sellers is typically incomplete. In a commodity product context, where all sellers are offering an identical product, even a one cent price hike above the market rate will cause people to immediately switch to the lower-priced competitor because of the assumption that everything else is equal among the choices. Labor markets are very different because employees rarely have full information about market rates (typically not even the same degree of information that employers like McDonald's who regularly perform market surveys do), and because there are significant frictions and transaction costs associated with searching for and obtaining a new job or a new hire. Due to these aspects of how labor markets normally function, no-hire agreements can be expected to have particularly serious consequences because they restrain opportunities and information about job opportunities.

98. This distinction is demonstrated by the concept of "job search." For example, a hypothetical textbook market model might assume that individuals face a constant stream of job offers, and their decision is mainly whether to remain with their current employer or take a new offer. In fact, however, finding an alternative job requires considerable effort and skill. Further, a market can be perfectly competitive only if buyers and sellers have access to information about the state of the market. That is not usually the case in labor markets, particularly from the employee's perspective. Employees generally do not know how much competing employers are

paying unless they apply for a job, receive an interview, and in some cases, receive an offer—or, if they are solicited by a prospective employer with information about the wage offerings. In contrast, employers usually have access to market surveys and other sources of information about the competitive wage. Anything that interferes with the flow of information to employees, then, contributes to the imperfection of the market.

99. The impediments to job search and the flow of information are particularly pronounced here where, as explained above, McDonald's No-Hire Agreement eliminated the most obvious alternative source of employment for Class Members: other McDonald's-branded restaurants. Indeed, not only is it the most obvious source due to Class Members' familiarity and experience with McDonald's standardized restaurant operation protocols, but because McDonald's is also one of the largest and most ubiquitous employers in the country. There are approximately 14,000 McDonald's restaurants in the United States as of September 2018.[69] Not surprisingly, they are concentrated where the population is. Researcher Stephen Von Worley mapped out all the McDonalds locations in the US and noted that they "cluster at the population centers and hug the highway grid. East of the Mississippi, there's wall-to-wall coverage, except for a handful of meager gaps centered on the Adirondacks, inland Maine, the Everglades, and outlying West Virginia."[70] Orlando, Florida, for example, has one McDonalds for every 5000

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[69] Colman Andrews, *Is your state 'lovin' it? A look at where the most McDonald's are located in the US*, USA Today (Sept. 13, 2018), https://www.usatoday.com/story/money/business/2018/09/13/mcdonalds-states-most-stores/37748287/ (analyzing placement based on data from McDonald's website).

[70] Stephen Von Worley. Where the Buffalo Roamed: How Far Can you Get from McDonalds" Data Pointed, September 22 2009. http://www.datapointed.net/2009/09/distance-to-nearest-mcdonalds/.

residents.[71] (To put that in perspective, there are only 10 to 15 *doctors* across all specialties per 5000 residents in Orlando,[72] so there may well be more McDonald's per capita than primary care doctors.) It is generally not difficult for a current McDonald's employee to find another McDonald's nearby, nor to find one should they move elsewhere in the United States. Without the No-Hire Agreement, these other restaurants would be high-value employment options given the skill set that the employee would bring to the table.

100. The other side of the equation, noted above, is that a McDonald's restaurant would be especially interested in hiring someone who is already working at another McDonald's restaurant because the training and ramp-up time required to work at McDonalds are eliminated. *See* Section IV, *supra*. Employers would generally prefer to hire somebody who already possesses both the general and specific skills necessary to perform the job rather than bear the costs of such training themselves (which include not only out-of-pocket costs associated with training, but also lost productivity during the training period).[73] This self-interest of each employer would normally give it an incentive to raise wages to preempt poaching by other

[71] Irene Jiang. The 10 Cities with the Most McDonald's Restaurants Per Capital are Almost All in the South. Business Insider. December 19th 2019. https://www.businessinsider.com/10-cities-with-the-most-mcdonalds-restaurant-per-capita-2019-12.

[72] *See* Florida Health: 2017 Physician Workforce Annual Report. http://www.floridahealth.gov/provider-and-partner-resources/community-health-workers/physician-workforce-development-and-recruitment/2017-doh-physician-workforce-report.pdf.

[73] *See* McDonald's Second Set of Interrogatory Responses No. 3: [redacted]

employers, as well as to solicit well-trained employees at other employers. The No-Hire Agreement interferes with that process by removing each employer's incentive to pre-emptively raise wages, as well as its ability to solicit or hire people who already have the requisite training or experience from other McDonald's restaurants.

101. This dynamic can be illustrated by game theory and the "prisoner's dilemma," as first articulated by John Nash.[74] The "prisoner's dilemma" refers to a situation in which two accomplices have been arrested on suspicion of a crime, and are placed in separate rooms for interrogation and unable to communicate with one another. Thus, the suspects do not know whether the other will remain silent or will confess to obtain leniency. If both suspects remain silent, they both go free. If one suspect confesses and testifies against their partner, they get a light sentence, and their partner gets a heavy one. Knowing that and not trusting their partner, both confess and end up worse off than if they were silent.

102. The analogy can and has been be applied to our franchise restaurant context here. Imagine two McDonald's employers: Franchisee A and Franchisee B. Both have a natural incentive to raise wages to recruit one another's experienced and trained employees to fill their vacancies. If only one does so, they will reap the benefits while the other loses employees. Suspecting that the other restaurant will raise wages even if they do not, they both do so. Then wages would be bid up for both stores. Whether they are actually both worse off in that case is not so clear, as described below.

[74] Nash, John, 1950, *Non Cooperative Games*, Princeton University PhD dissertation, reprinted in *Annals of Mathematics* 54, 1951 (September) 286–295. See also Schelling, Thomas, 1978, *Micromotives and Macrobehavior* New York: Norton.

103. Academics have discussed the application of the "prisoner's dilemma" to chain stores, including McDonald's.[75] An inelegant solution from the perspective of theorists, but an extremely effective one from the point of view of suspects (or, here, various owners of McDonald's restaurants), would be collusion: an agreement to foreclose competition for employees: If they can bind themselves to prevent either of them from trying to hire each other's employees and raising wages to do so, then the problem is solved. Indeed, McOpCo did exactly that. Records produced by McDonald's demonstrate that franchisees relied on the No-Hire Agreement, and McDonald's corporate enforcement of it, to keep their wages lower than they otherwise would:

[redacted]

VII. MCDONALD'S RESTAURANTS HAVE FORMALIZED PAY SYSTEMS

104. I turn next to the topic of why McDonald's-branded restaurants sharing of a common pay system means that wage suppression from the No-Hire Agreement would impact all or nearly all Class Members.

A. The Principles Behind Formal Compensation Systems

105. The role of compensation is to attract candidates to work for the organization, prevent them from leaving for jobs elsewhere (because turnover is costly), and motivate them to perform their jobs well. Textbooks describe some of the factors at work here: that employees

[75] Reinhard Selten. 1978, "The Chain-Store Paradox," *Theory and Decision*, 9: 127–159. James R. McGuigan, R. Charles Moyer, Frederick H.deB. Harris. 2010. Managerial Economics: Applications, Strategy and Tactics Cengage Learning: P.456.

[76] *See* MCDAT00319342.

search for opportunities and leave if they find jobs that pay better than their current position, and that fairness concerns (i.e., internal equity) within an organization affect a range of employee behavior, from motivation to perform jobs to decisions to search for new jobs or leave.[77]

106. Compensation plays a very important role in employee behavior and job performance after employees are hired. Neither can be taken as a given. Virtually the entire human resources function is a management effort to influence employee attitudes and behavior and improve job performance. This takes place at all stages: from deciding who is hired, the process through which such people are hired (e.g., recruitment and selection), how they are trained, how they are paid, and so forth—all of which are designed to influence job performance. This theme takes us into the field of management, which is much more concerned about psychology and social interactions that go beyond economic models.

107. One of the factors important to the field of management relates to social comparisons. This is where concerns about fairness enter the picture. Employees ask: is the pay I receive for my work fair given the work I am doing, and is it fair compared to what others are earning? Thus, what constitutes "fair" is based on the comparisons that employees make with others doing similar work. They certainly care about how they are paid as compared to employees doing similar jobs elsewhere,[78] but as they stay in their current organization, their comparisons shift to include those they work with, including on a relative basis even where the

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[77] *See* George T. Milkovich, and Jerry M. Neuman, and Barry Gerhardt, *Compensation*, at Chapter 3, "Defining Internal Alignment." New York: McGraw-Hill, 11th Edition.

[78] *See, e.g.*, Peter Cappelli & Peter D. Sherer, *Satisfaction, Market Wages, and Labor Relations: An Airline Study*, 27 Indus. Rel. 56-73 (1988). In this study, satisfaction with pay depended on the gap between current pay and market averages.

jobs are not identical.[79] They also care about whether their performance is recognized and rewarded, again typically in a relative context: we want to be paid consistent with others, taking into account relative contributions. We expect, for example, to be paid more if we are contributing more.

108. The reason employers care that their employees feel that pay is fair is that if it feels unfair, they may react in ways that are harmful to the employer, such as with reduced productivity or possible departure. This well-documented phenomenon is known in organizational psychology as "equity theory."[80] Fairness, or equity, is based on what we contribute to a job relative to what we get out of it; we compare that ratio to what we see in our referents, and when we believe it is unfair, we try to adjust it.[81] If, for example, we believe that others are contributing less than we are, yet our pay is similar, we may try to adjust that inequity by pulling back our effort to make that equation fair, which harms organizational performance. One way to think about these responses is that we are trying to make the relationship fair. We may also decide to leave if the inequity becomes severe.

109. Most organizations thus attempt to administer compensation systems that their employees will perceive as fair. Some part of that is to adjust individual pay according to contributions within the set of individuals doing similar jobs, typically through performance reviews. Another component has to do with relative pay as compared to other jobs. For example, if I hold a job that requires more from me, I expect to be paid more than those in jobs

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[79] *See, e.g.*, Peter Cappelli & Peter D. Sherer, *The Effect of a Two-Tier Wage Plan on Employee Attitudes*, 43 Indus. & Labor Rel. Rev. 225-44 (1990). New hires who entered under a lower, two-tier pay scale eventually shift their referents from outside the firm to inside.

[80] The foundational study here is J.S. Adams, *Toward an understanding of inequity*, 67 J. of Abnormal & Social Psychol. 422-36 (1963).

[81] *Id.*

that require less. If I am in an organization that has a hierarchy of authority, I expect to be paid more than those who are lower in that hierarchy.

110. As a result, compensation in such organizations, including at McDonald's, is organized within a carefully designed system. The design of compensation systems generally begins in three steps: (1) job descriptions to identify the requirements and demands of all jobs, (2) a job evaluation to value those requirements and demands consistently across jobs, in the process calculating a wage for each job, and (3) sorting jobs into clusters or hierarchies (job families) reflecting the organizational hierarchy and advancement pathways. Of course, the scope of this task generally varies depending on the size of a firm and the number and types of employees who work there.

111. Pay levels are typically first set by benchmarking wage levels for equivalent jobs in the labor market. Jobs that are identical in similar employers are referred to as "benchmark" jobs, and wages for those jobs form the foundation of a pay system. The next step involves addressing concerns about fairness in pay levels across jobs that are otherwise similar but differ in the experience levels. For example, Restaurant Managers in the same restaurant are paid more than Shift Managers, who, in turn, are paid more than Crew Members. Finally, there are concerns about the structure of pay across different job titles: employees in different jobs who nevertheless have similar relative skills and value to their employer, or who work together on projects. These employees care about their compensation relative to their peers, and pay structures reflect those concerns. For example, a McDonald's restaurant may have different departments, but the managers of each department may have similar scopes of responsibility and skill and experience levels. Pay systems adjust pay levels to reduce some of the differences in pay that we might otherwise expect in order to create more equality where these comparisons

matter. And pay systems also recognize differences in performance across individuals within the same jobs, paying more to those who perform better.

112. McDonald's employs standard practices in compensation systems of the kind described above. This begins within the McOpCo restaurant system, and includes [redacted]. As explained below, McDonald's then encourages individual franchisees [redacted]. Together, practices like these create pay structures. What we see at McDonald's is a common, formal compensation structure recognizable to compensation specialists in any major corporation or large public or non-profit entity. McOpCo builds its pay system on [redacted] Duggan Dep. at 51:19-22.

113. Pay systems are not static, of course. Typically, pay rises across-the-board with inflation; overall rates of increase also reflect resources available to the employer, such as changes in budgets. Changes in the supply and demand within specific labor markets raise the pay of benchmark jobs. Employers respond by raising the pay of those jobs to prevent employees in them from leaving and from feeling underpaid. Such increases also spillover to other jobs because they are part of the same pay structure and have a relative relationship to one another that must be preserved in order to maintain that relationship.

114. As noted above, individual employees may have opportunities to change employers, which may reflect changes in market pay before market survey data does, leading to

adjustments of the kind above. Raising the pay of one employee in order to retain them may lead to pay raises for similar employees, who otherwise recognize that they, too, could secure higher offers in the outside market. In this way, increases for one employee spill over to increases for others.

B. <u>How McDonald's Creates a Standard Compensation System</u>

115. McDonald's centralized compensation team created a very structured, consciously-designed, and centrally-coordinated pay system that applied to all McOpCo restaurants nationwide. The important question is how it influenced pay systems at franchisees.

116. Because franchisees are independent contractors and separate employers, the franchisor cannot dictate key terms of employment, like setting pay and benefits. What they can do, however is use all the practices outlined above, from monitoring to business manuals to peer pressure to sanctions, to shape and influence how franchisees exercise their independent discretion. An obvious point is that the franchisees have little choice but to adopt McDonald's job titles and job requirements of the people working in their restaurants. Otherwise, they would not conform to the operating manuals, the reporting requirements, and other systems McDonald's uses. The job titles create their organizational chart. Which job titles report to which managers is specified by McOpCo requirements.

117. It is also the case that individual franchise restaurants do not have a great deal of discretion on many of the other factors that affect their business, such as revenue, costs of supplies, fees to McOpCo, and so forth because of how constrained they are by the NFS standards and business manuals. If a restaurant has revenues of $10,000,000 per year with a profit target of 20 percent, its supplies cost $5,000,000, building costs and taxes are $2,000,000, and fees are $1,000,000, they could have all the official autonomy they want, but, practically speaking, there is only $2,000,000 to pay employees.

[redacted] We often believe that the ability to pay higher wages is dependent on productivity, but at McDonald's, so many factors that affect productivity are outside the control of the franchisee – the production process and performance standards, basic job requirements, and staffing – that they do not have much scope for increasing productivity if they are compliant with NFS standards. McDonald's essentially standardizes the job structure in the franchises and what each job entails. If Franchisee restaurants try to use a different job structure, the tools provided by McDonald's for monitoring and reporting will not work, creating strong pressures on Franchisees to conform by adopting similar job and thus compensation structures. For example, [redacted]

119. With respect to how McOpCo determined how much restaurant employees would be paid, the pay structure for all restaurant employees, including managers, began with [redacted][82] McDonald's provides franchisees with [redacted] [MCDAT00248405] as in this example below [MCDAT00116264 at -320]. Even if the Franchisees stray somewhat from these precise guidelines, what matters is that there are structured relationships between the

[82] MCDAT00148170 [redacted]).

compensation of employees in different job titles.

[redacted]

120. [redacted] [MCDAT00116264 at -318]:

[redacted]

121. A 2014 document sent to franchisees explains that [redacted][83] By default, [redacted]. [redacted] [redacted].

122. Even though McOpCo collected [redacted]. [redacted] [MCDAT00229127 at -128]. A corporate webinar noted the same year that [redacted][85] Two years later, the corporation concluded that [redacted].[86]

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[83] Email from [redacted] [MCDAT00068728].

[84] *Id.*

[85] [redacted] [MCDAT00228992 at -998, speaker notes, and at -9000, slide listing [redacted]].

[86] *See* MCDAT00149367 & MCDAT00149370, at -378.]

Its internal communication noted (in bullet points) that: [redacted] [MCDAT00267877 at -905.]

123. Amanda Yarbrough, Global People Insights Manager, Human Resources, stated in 2017 that [redacted][87] She also notes that [redacted].[88] McDonald's 2015 "Pay deck" presentation asserts that [redacted][89] A 2017 compensation strategy document stated that [redacted] [MCDAT00149367 & MCDAT00149370 at -378].

[redacted]If we think about real wage cuts as imposing declines in wages on current employees and on potential candidates, then we can see that doing so would impose costs on an employer. It would become more difficult to attract candidates, especially those of the

[87] MCDAT00110783.

[88] MCDAT00110786 at -788.

[89] MCDAT00229127 at -129.

appropriate quality, and it would be more difficult to retain them. This is especially the case in the 2010's when the labor market got stronger and store wages did not rise proportionately. There is some evidence in the materials provided of that difficulty: [redacted]

[redacted]

125. The above discussion also reflects [redacted].

126. Beyond the level of wages for individual jobs as they relate to their respective job markets is the question of the relationship between pay rates for different jobs in the same restaurants. The point here is that McOpCo also had an interest in the pay differences between jobs in the same restaurants. To see this in its own restaurants, consider the following exchange around wage increases for crew members:

[redacted]

127. [redacted]

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[90] MCDAT00361842.

[91] *See* MCDAT00339861 at -862.

[redacted].[95]

128. [redacted] [MCDAT00279278] [redacted].

129. Lori Duggan noted that in the McOpCo-run stores, [redacted]:

> [redacted]

[redacted] [MCDAT00133521 at -524.] *See also* [redacted] [MCDAT00362034].

[93] MCDAT00219860.

[94] [redacted]. [MCDAT00279266 at -273].

[95] *See also* [redacted] [MCDAT00227461 at -461.]

[redacted]

130. More specifically, McOpCo examined [redacted] [MCDAT00152828]. As noted earlier, [redacted]

131. McDonald's consistently adhered to and operationalized the principle of increasing pay when wages rose for one particular group, especially at the entry-level. For example [redacted][97] In [redacted]. As noted above, [redacted].[98]

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[96] Duggan Dep. 34:15-34:20.

[97] *See* presentation "[redacted]" [MCDAT00145879].

[98] As Lori Duggan noted, [redacted] Duggan Dep. 79:16-80:7. A Florida owner/operator [redacted] and the response was [redacted] [MCDAT00219860.] [redacted]

132. [redacted] [MCDAT00279266 at -288].

133. [redacted] [MCDAT00279266 at -278-29].

134. [redacted][99] [redacted]

[99] *See* [redacted] [MCDAT00126733].

[redacted].[100] [redacted].[101]

C. McDonald's Pay Structure Would Have Spread Anticompetitive Harm from the No-Hire Agreement

135. The existence of this pay structure suggests that changes in some employees' compensation caused by the No-Hire Agreement would have spread to and also impacted other employees' compensation. Thus, we would expect that the No-Hire Agreement here caused system-wide depression of wages, affecting all Class Members.

136. What we have documented above that at the entry level, where there is some competition among McDonald's restaurants for employees, pay increases that were driven by state and local minimum wage increases created competition for workers and pressures to raise wages even in restaurants not covered by the minimum wage increase. The same is true after McOpCo's decision to raise its entry wages $1 above minimum wage levels. Doing so put pressure on its own restaurants to raise wages for jobs above the entry-level to address concerns about fairness. McOpCo urged franchisees [redacted]. Of course, McOpCo acknowledged the competitive pressure that raising its own wages $1 dollar above the minimum wage placed on the franchisees to raise theirs.

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[100] MCDAT00136907.

[101] [redacted] [MCDAT00221052].

137. The Classwide effects of such no-hire agreements as compared to the situation in their absence is straight-forward. First, in the absence of such agreements, restaurants have an interest in filling positions above the entry level with lateral hires in the form of employees already trained for the particular jobs and working at other McDonald's restaurants, and would be willing to pay more to hire those McDonald's workers from other restaurants. That fact puts pressure on their current employers to raise their wages and prevent them from quitting. In doing so, we have a competitive labor market and something closer to a market wage.

138. This is true for every job in the McDonald's restaurants and so increased competition should have a direct effect on the pay for every job. It is also the case, though, that changes in the pay for any one job creates pressure to raise the pay of other jobs in order to maintain perceptions of fair pay in those jobs. As a practical matter based on fairness concerns, these adjustments are always upward in nominal terms, noting that ongoing inflation reduces all nominal wages in real terms. These relative wage pressures are in addition to market pressures raising wages for each individual job. We see this in the record above, even with the No-Hire Agreement, there is some competition for labor at the entry-level, and wage increases there led to pressures to raise wages throughout the hierarchy of jobs in each restaurant.

VIII. CONCLUSION

139. People who work at McDonald's restaurants, whether at franchise or corporate restaurants, receive training on specific skills that are principally of value to McDonald's restaurants. Thus, the No-Hire Agreement prevented Class Members from selling those skills to competing McDonald's restaurants. Furthermore, there is a pay structure tying together the wages of Class Members, whether they work at McOpCos or at Franchisee restaurants. Thus, impacts caused by the No-Hire Agreement would have been spread and felt Class-wide, not just

by employees who specifically attempted to or tentatively obtained employment with an alternate McDonald's employer.

Peter Cappelli

APPENDIX A

Peter Cappelli

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Curriculum Vita

Education

B.S. Industrial Relations, Cornell University, 1978.
D. Phil. Labor Economics, Nuffield College, Oxford University, 1983.
Doctor Honoris Causa, Liege University, Belgium, 2020

Current Positions

George W. Taylor Professor of Management and
Director, Center for Human Resources at The Wharton School
Research Associate, National Bureau of Economic Research, Cambridge, MA
U.S. Govt - Top Secret/SCI clearance

Awards, Scholarships, Fellowships

Honorary Doctorate, Liege University, Belgium 2020
Next Avenue| PBS Top 50 Influencers in Aging, 2015.
Lee Kong Chain Fellow, Singapore Management University, 2015-2016
HR Magazine's list of "top 5" Management Thinkers in the World, 2014
International Association of Corporate and Executive Recruiters 2010 "Pro" award for
"Exceptional contributions to the human resources field."
Elected as a Fellow, National Academy of Human Resources, 2003
2001 Vault.com's list of 25 most influential people in field of human capital, 2000.
Elected as a Principal, Council on Excellence on Government, since 1998
Research Fellowship, Australian Center for Industrial Relations Research and Teaching,
1990-1991.
German Marshall Fund Fellow, 1986.
Guest Scholar, The Brookings Institution, Fall 1980.
Fulbright Scholar, United Kingdom, 1978-1980.
Studentship/scholar of Nuffield College, Oxford, 1978-1981.
Summer Fellow, American Institute for Economic Research, 1980.
Irving Ives Award, Outstanding member of the Freshman class, School of Industrial
Relations, Cornell University.
Irving Ives Award, Outstanding member of the Sophomore class.
Daniel Alpern Award, Academic leader of the class of 1978.

Academic Positions:

George W. Taylor Professor of Management at the Wharton School since 1998.
Joseph Wharton Associate Professor at Wharton from 1985-1990, with tenure since 1990, Full Professor since 1994.
Professor of Education Graduate School of Education secondary appointment since 2009.
Research Associate, National Bureau of Economic Research, since 2003.
Director of the Certified Employee Benefits Specialist program for the International Foundation of Employee Benefit Plans since 2014.
Founding Editor, Academy of Management *Perspectives*, 2005-2008.
Board of Directors and Project Area Leader, U.S. Department of Education's National Center on Postsecondary Improvement, Stanford Graduate School of Education, 1996 ($12 million 5-year project).
Chair, Department of Management, The Wharton School, 1995-1998.
Co-Director, U.S. Department of Education's National Center on the Educational Quality of the Workforce 1990 – 1995 ($6 million 5-year project).
Visiting Scholar, Centre for Economic Performance, London School of Economics 1993.
Visiting Professor, Universitia Luigi Bocconi (Milan) 1993.
Staff Member, U.S. Secretary of Labor's Commission, "Work Force Quality and Labor Market Efficiency," 1988-1989.
Acting Associate Professor, Haas School of Business, U.C. Berkeley, 1989.
Assistant Professor, Institute of Labor and Industrial Relations, University of Illinois, 1983.
Research Associate/Post-Doctorate, Sloan School of Management, MIT, 1982.

Other Relevant Academic Experience

Chair – University of Pennsylvania Faculty Senate Committee on Compensation, 2019-2020.
Chair – Wharton MBA Committee for Curriculum Review – 1999.
Editorial Boards: Administrative Science Quarterly (Cornell University), Employee Relations (University of Manchester), Industrial and Labor Relations Review (Cornell University, currently), Industrial Relations (Berkeley, currently), Organizational Dynamics, Journal of Industrial Relations (currently), Leadership and Organizational Development Journal (currently).
Delegate, US/USSR Emerging Leader's Summit (American Center for International Leadership), USSR, 1989.
Industrial Relations Research Association Executive Committee, 1993-96 (elected position); Program Committee, 1992; Research Evaluation Committee, 1988-1989, Nominating Committee, 1984.
Illinois Education Labor Relations Board Panel of Mediators.
President of the student body/Representative to the Governing Body (trustees), Nuffield College, 1981.
Editor-in-Chief, ILR Forum, student research journal, 1977-1978.
Editor, Daily Labor Report, Employee Relations Reporter, Summer 1977, 1978, Fall

1980, Bureau of National Affairs.
Legislative Assistant, New York State Senate Labor Committee, 1978.

Other Roles

Chair of the Gerontological Society of America's Workgroup, Longevity Economics: Policies to Promote the Economic Advantages of Aging, 2017.
Member of the National Security Agency's Task Force on Equality, 2017 to present.
Harvard Business Review/McKinsey best paper judging panelist, 2016-2019.
Director of Wharton Business Radio and Host of *In the Workplace*, SiriusXM Channel 111. 2014-2018.
Member – City of Philadelphia's Commission on Sick Leave, 2014.
Board Member, Human Capital Research Institute, Government of Singapore, 2013 to 2017.
MacArthur Foundation Fellowship Nominator, 2013.
Member, Human Resources Steering Committee, OECD Paris, 2010 to 2012.
Academic Director, Advanced Management Program, Wharton School 1999 to 2013.
Member, World Economic Forum's Global Agenda Council on the Skills Gap, 2009 to -2014.
Member, Business Roundtable "Springboard" Commission on Workforce Training and Development, 2009-2010.
Advisory Board Member, University of Zurich program on education and the economy, 2009 to 2013.
Distinguished Visitor, Ministry of Manpower, Singapore, 2008 to 2016.
External Expert, London School of Economics promotions committee, 2008 to 2010.
Member National Academy of Sciences committee on changing skill requirements in the US economy, 2007.
Member, Select Greater Philadelphia Human Capital committee, 2006-2007.
Advisory Board member, Council on Adult and Educational Learning (CAEL), 2006-07.
Graduate Management Admissions Council (GMAC) Advisory Board member, 2004 to 2008.
Academy of Management Governing Board, 2007.
Sloan Foundation Industry Fellows award committee, 2006-2008.
Senior Advisor for Employment Policy, Kingdom of Bahrain, 2003-2004.
Visiting Scholar, Singapore Management University, 2003.
Visitor, Emirates Center for Social Science Research, Abu Dhabi, 2001.
Committee Member, Kennedy School/Harvard University Executive Session on the Future of the Federal Workforce, 2001-2002.
Member, National Academy of Sciences/National Research Council Committee on the Impact of the Changing Economy on the U.S. Education System, 2000-2001.
Member, National Goals for Education advisory panel, 2000.
Member, National Academy of Sciences/National Research Council Committee on Human Performance, 1997-'98.
Member, US Delegation Drafting Committee, International Telecommunication's Union

Developmental Conference, 1992.
Member, National Goals for Education, technical subcommittee, 1991.

Publications

Journals:

1. " Stop Over-Engineering People Management." *Harvard Business Review*, September-October 2020. Cover story.

2. Agency Workers Hurt Performance. With Liat Eldor. *Academy of Management Journal. Forthcoming.*

3. The Advancement of Women in Executive Careers, with Rocio Bonet and Monika Hamori. *Strategic Management Journal. 2019.*

   a. *Excerpted in How More Women Can Become Business Leaders. Network for Business Sustainability, November 24th 2020.*

4. The Payoff from a College Education. *Oxford Review of Education*, 2019.

5. Artificial Intelligence in Human Resources: Challenges and a Path Forward. With Prasanna Tambe and Valery Yakubovich. *California Management Review*, 2019.

6. Where Measuring Engagement Goes Wrong. Peter Cappelli and Liat Eldor, *Harvard Business Review*, May 2019 (online)

7. Paying to Program? Engineering Brand and HiTech Wages. *Management Science.* Prasanna Tambe, Yuan Yi, and Peter Cappelli. 2019.

   NBER Working paper excerpted in National Bureau of Economic Research Reporter, 2018.

8. How You are Hiring is All Wrong. *Harvard Business Review*. May 2019.

9. A Social Exchange Perspective on Stock Options, with Martin Conyon, *ILR Review*, 2019.

10. New Rules for Talent, *Harvard Business Review*, with Anna Tavis, March-April 2018.

11. What do Performance Appraisals Do? *ILR Review*, Peter Cappelli and Martin Conyon. 2017.

12. The Performance Management Revolution. *Harvard Business Review*, Peter Cappelli and Anna Tavis. October 2015.

    Reprinted in HBR's Best Reads 2018. Boston: Harvard Business Press.

    Excerpted in Asian Link, 2017, Issue 24: 30-35.

13. Why We Love to Hate HR. *Harvard Business Review*, August 2015. Cover story.

14. Skill Gaps, Skill Shortages, Skill Mismatches: Evidence and Conclusions for the US. ILR Review, 2015.

15. Whose Got those Top Jobs? *Harvard Business Review*, Peter Cappelli, Monika Hamori, and Rocio Bonet, March 2014.

16. Talent Management: The Academic-Practitioner Gap. Peter Cappelli and JR Keller. *Annual Review of Psychology*. 2013.

17. Labor Market Intermediaries and the New Paradigm for Human Resources. Rocio Bonet, Peter Cappelli, and Monika Hamori. *Academy of Management Annals*, 2013.

18. HR for Newbies. *Harvard Business Review* October 2013.

19. Understanding Executive Job Search. Peter Cappelli and Monika Hamori. *Organization Science*, 2013.

    Excerpted as "Who Says Yes When the Headhunter Calls?" in The European Management Review. Jan/Feb 2014.

    Reprinted in Keys to Leadership Success. 2016. Paris: European Business Review.

20. Classifying Work in the New Economy. Peter Cappelli and JR Keller. *Academy of Management Review*, 2013.

21. A Study of the Extent and Causes of Alternative Work Arrangements. Peter Cappelli and JR Keller. ILR Review, 2013. Vol.66(4): 874-900.

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23. HR Sourcing Decisions and Risk Management. Organizational Dynamics, 2011 Vol. 40, 310-316.

24. Reprinted in The World Financial Review, July/August 2011.

25. "Leadership Lessons from India." Peter Cappelli, Harbir Singh, Jitendra Singh, and Michael Useem. *Harvard Business Review*, March 2010.

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    Reprinted in Wolfgang Jaeger (ed.) Essays in Talent Management. Wolters Kluwer, 2008.

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    Reprinted in "Global Competition and the American Employment Landscape – As We Enter the 21st Century." Samuel Estreicher (ed.). The Hague: Kluwer International, 2001.

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44. "Changes in Managerial Pay Structures 1986-1992 and Rising Returns to Skill." K.C. O'Shaughnessy, David I. Levine, and Peter Cappelli. *Oxford Economic Papers*, (3) 2001, 482-507.

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    An Emerald Publishing citation of excellence designee

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66. "Comment on Ratifications" (same issue).

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    Reprinted in John B. Miner and Donald P. Crane. Advances in the Practice, Theory, and Research of Strategic Human Resource Management. (New York:

Harper Collins, 1995.)

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71. "Plant Level Concession Bargaining," *Industrial and Labor Relations Review*. Vol. 39, No. 3, October 1985, pp. 90-104.

72. "Fair Wages and the Industrial Civil Service," *Scottish Journal of Political Economy*. Vol. 32, No. 1, February 1985, pp. 51-66.

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    Reprinted in U.S. Congress, Oversight Hearings, "Has Labor Law Failed?" Ninety Eighth Congress, Second Session, 1984, p. 1181.

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Management Without Managers. Tracy Anderson and Peter Cappelli. *Academy of Management Perspectives.*

How you Pay Determines How You Do: The Effects of Financial Aid on Student Performance, with Shinjae Won. NBER Working Paper.

Contracting-Lite: The Conflict between Contracting and Employment Practices and the Implications for Theory.

Never Too Much? The Nonlinear Effect of Psychological Safety on Professional service and Productivity at the Organization level, with Liat Eldor and Mical Hodor.

Books:

77. What People Earn. (London: MacDonald-Futura, 1981).

78. Training and Development. Editor. (London: Dartmouth Publishing, 1994.)

79. Airline Labor Relations in the Global Era. Editor. (Ithaca, NY: Cornell University ILR Press, 1995.)

80. Change at Work (with Laurie Bassi, David Knoke, Harry Katz, Paul Osterman, and Michael Useem). (New York: Oxford University Press, 1996).

    Excerpted in Looking Ahead *by the National Policy Association, 1996.*

81. The New Deal at Work: Managing the Market-Based Employment Relationship. (Boston: Harvard Business School Press, 1999.)

    Japanese edition, 2001 (3rd printing). Selected as one of the 10 best business books of 2001 by academics surveyed by Weekly Diamond *magazine. Spanish edition, 2001, Chinese edition, 2002.*

82. Employment Strategies: Why Similar Companies Manage Differently. Editor. (New York: Oxford University Press, 1999.)

83. The Changing Nature of Work (as a member of the Committee on Techniques for the Enhancement of Human Performance). Washington, D.C.: National Academy Press, a Report of the National Research Council, 2000.

84. Employment Relations: The Future of White Collar Work. (editor). Cambridge: Cambridge University Press, 2008.

85. Talent on Demand: Managing Talent in an Age of Uncertainty. Boston: Harvard Business School Press, 2008. *Japanese edition, 2008, Thai and Vietnamese editions, 2008. Indonesian Edition, 2009, Chinese edition 2012 titled Talent Management Lectures.* Booz-Allen notable business book for 2008.

86. Managing the Older Worker (with Bill Novelli). Harvard Business, 2010

87. The Indian Way (with Harbir Singh, Jitendra Singh, and Michael Useem). Harvard Business, 2010. Hindi edition 2011, Chinese and Korean editions 2012.

88. Why Good People Can't Get Jobs: The Skills Gap and What Companies Can do About It. Wharton Digital Press, 2012.

Excerpted in Time Magazine (Time.com) and the San Francisco Chronicle, Podcast version for Federal Reserve Bank of Atlanta.

Reviewed/Discussed in The New Yorker, The Atlantic, Forbes, Inc, Wall Street Journal, Washington Post, LA Times, Harvard Business Review, BBC Radio, various NPR shows, 60 Minutes on CBS. Chinese and Portuguese editions 2012.

89. Will College Pay off? A Guide to the Most Important Financial Decision You'll Ever Make. New York: Perseus-Public Affairs, 2015. Reviewed in *Wall Street Journal, Financial Times, Barrons*, and other business publications.

90. Fortune Makers: The Leaders Creating China's Great Global Companies. Michael Useem, Harbir Singh, Neng Liang, and Peter Cappelli. New York: Perseus-Public Affairs, 2017. Chinese (Taiwanese) edition simultaneous publication.

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Columns for the *Wall Street Journal:*

"Why Companies Aren't Getting the Employees They Need," *Wall Street Journal*, October 24, 2011. P. B1. Most read and emailed article in WSJ for week of October 23rd. Reposted on website March 2011.

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"Why Focusing Too Narrowly on College Could Backfire," *Wall Street Journal*, November 15th 2013.

Used as the entrance exam question for Waseda University, Tokyo, Japan, 2015.

"Are Entrepreneurs Really Different that the Rest of Us?" With Laura Huang. *Wall Street Journal*, November 3rd 2014.

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Other Media Publications

What Determines Pay? Sir Henry Phelps Brown and Peter Cappelli, Working Together Society monograph, London, 1980.

"Labor Relations Enters New Territory," *Management Review*, Vol. 75, No. 3, March 1986, pp. 28-31.

"The Fare Wars Have Just Begun," *Philadelphia Inquirer*. March 25, 1986, p. 17.

"Settling Inexorably into Oligopoly" (Airlines after Deregulation), *The New York Times*

Sunday Business Forum, September 7, 1986, p. B2.

"The Worst of Times for Airline Labor," *Newsday.* August 27, 1987.

"Two-Tier Wage Plans," *Journal of Commerce*. September 1, 1988.

"Sorry, Perestroika Isn't Enough," *The Christian Science Monitor,* Monday August 6, 1990.

"A Lesson for Labor from the American Airlines Strike," *Los Angeles Times*, November 26, 1993, p. B5.

“Part time: Good for Whom?” *Philadelphia Inquirer*, April 8 1997, pp.A31.

“Do Pepsi and Oatmeal Mix?” *Wall Street Journal*, December 5 2000, p. A26.

“Workers Clip the Wings of United.” *Financial Times*, December 4 2002.

“Guest Workers and the Distorting Effects on Labor Markets.” *Philadelphia Inquirer*, January 15, 2004.

“What Does ‘Qualified’ Truly Mean?” *Newsday*, January 11 2009.

“Why Tomorrow’s Wall Street Leaders Don’t Like Bonuses.” *Washington Post*, December 19, 2010, with Michael Useem, John Paul MacDuffie, and Matthew Bidwell.

“Our Irrational, Harmful Bias Against the Unemployed.” *Washington Post*, May 2nd 2012.

“If There is a Gap, Blame It on the Employers.” *New York Times*, July 9th 2012.

“What Employers Want? Workers They Don’t Have to Train.” *Washington Post*, September 5th 2014.

“How to Save Good Jobs.” *The Washington Post*, February 10th 2017.

Major Grants:

1989 -- $55,000 from U.S. Department of Labor to study transportation labor relations.
1991-1996 $6 million from U.S. Department of Labor to establish the National Center for the Educational Quality of the Workforce. Co-Director.
1996-2001 $12 million from U.S. Department of Labor to establish the National Center for Post-Secondary Improvement (run jointly with Stanford University), Executive Committee member, Project Area leader.
2000 $143,000 School-to-Work Office of the U.S. Department of Education to study

employer involvement with schools.
2001 $150,000 Ford and Rockefeller Foundations Project on Work to support the 2000 National Employer Survey.
2001 $83,000 Russell Sage Foundation to examine the determinants of contingent work.
2003 $285,000 National Science Foundation to study demographic issues in the IT workforce.

Selected Presentations:

Pierce Memorial Conference, "Collective Bargaining in American Industries," New York State School of Industrial and Labor Relations, Cornell University, 1986.

International Conference on Management Strategy and Industrial Relations, Manchester Business School, 1986.

Academy of Management Centennial Panel on Negotiations, 1986.

Sidney Harmon Lecture (panel), "Airline Experiments that Crashed," Kennedy School of Government, Harvard University, 1987.

Forty-first Annual NYU Conference on Labor Relations, Keynote Speaker, 1987.

National Mediation Board/Cornell University Conference on Airline Labor Relations, Keynote panel, 1987.

University of Sydney/Australian Center for Industrial Relations Research and Teaching Conference on Industrial Relations, May 1991.

Keynote Speaker, International Labour Organization Conference on Training (Geneva), 1993.

Keynote Speaker, National Planning Association Annual Meeting (Washington), 1993.

Milton Derber Memorial Lecture, University of Illinois Institute of Labor and Industrial Relations, 1998.

Peirce Memorial Labor Law Lecture, Kent University Law School, 1999.

Keynote Speaker, Stetson University Law School Annual Conference on Labor and Employment Law, 2000.

Master Class presentation, Society for Human Resource Management annual meeting, 2001.

Keynote Speaker, NASSCOM (Indian IT-BPO organization), 2005 and 2007, Chennai

India.

US Army Senior Conference XLVII, Key Note Speaker, West Point, NY 2010.

Convener, U.S. Department of Education/National Center on the Educational Quality of the Workforce Seminar Series, Washington, D.C., 1991-2000.

Keynote Speaker US Army's Annual Senior Conference, West Point, NY 2012.

The City Club of Cleveland presentation (the oldest free speech form in the US) October 2015

Teaching Experience:

Intermediate micro, macro, and labor economics, Oxford University.
Collective bargaining, statistics/research methods, and compensation systems, University of Illinois.
Negotiations and conflict resolution, organizational behavior, U.C. Berkeley.
Collective bargaining, compensation/labor economics, organizational behavior, and negotiations and conflict resolution, The Wharton School.

Teaching Awards:

Elected to University of Illinois list of Excellent Teachers, 1984.
Nominated for Wharton's Anvil Award for excellence in teaching, 1990.
Anvil Award Finalist, 1993.
MBA "Core" teaching award, 1999; 2000; 2001.
Miller-Sherrerd MBA Core Teaching Award, 2002, 2006 (for highest-rated courses).
Executive MBA Teaching Award (for highest-rated course), 2002, 2005, and 2007, 2009, 2011, 2013.
Undergraduate teaching award, 2019.

Executive Education - Academic Director for Wharton Executive Education Advanced Management Program (AMP); Program on Managing Higher Education/Institute for Research on Higher Education; Human Resource Business School; Middle East Partnership Initiative program for women managers from the Middle East.

Consulting Experience:

Among significant consulting engagements was a study for the US Secretary of Transportation on pay in the airlines, a report outlining solutions to the labor-related conflicts holding back the expansion of the Pennsylvania Convention Center, a report outlining the process through which the State of Pennsylvania would take over responsibility for the administration of local courts, a proposal to the Kingdom of Bahrain outlining the reform of their labor markets, a study of the effects of the Work Opportunities Tax Credit for the National Employer's Opportunity Network.

Member of Ford Motor Company's Global Competency Board, advisory board member of Saba, Vault.com, Taleo, SkillSurvey, HireIQ. Member, New Products Committee, DBM International. Consultant to the IMF on performance management, OECD and WTO on human resources.

APPENDIX B

Appendix B: Materials Considered

Academic Literature

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Bidwell, M. J. (2012). Paying More to Get Less: The Effects of External Hiring Versus Internal Mobility. Administrative Science Quarterly. 1-39.

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Litigation Materials

- Amended Complaint by Leinani Deslandes (September 18, 2017)
- Plaintiffs' Responses and Objections to McDonald's Second Set of Interrogatories (March 26, 2020)
- McDonald's Responses and Objections to Plaintiffs' Second Set of Interrogatories (April 8, 2019)
- Deposition Transcript of Stephanie Turner
- Deposition Transcript of Deb Leon
- Deposition Transcript of Karen King
- Deposition Transcript of Lori Duggan
- Deposition Transcript of Jez Langhorn
- Deposition Transcript of Leinani Deslandes
- Exhibit 33 to the Deposition of Deb Leon
- Exhibit 40 to the Deposition of Deb Leon
- Exhibit 126 to the Deposition of Karen King
- Exhibit 127 to the Deposition of Karen King
- Exhibit 129 to the Deposition of Karen King
- Exhibit 106 to the Deposition of Jessie Lopez
- Exhibit 14 to the Deposition of Stephanie Turner
- Exhibit 4 to the Deposition of Stephanie Turner
- GROEN000001-000190
- LOPEZ/LCL000006
- LOPEZ/LCL000001-000252
- MCDAT00113518
- MCDAT00122081
- MCDAT00122091
- MCDAT00134879
- MCDAT00320221
- MCDAT00351647
- MCDAT00362584
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- MCDAT00026823
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- MCDAT00067650
- MCDAT00068728
- MCDAT00068740
- MCDAT00068757
- MCDAT00068767
- MCDAT00068768
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- MCDAT00071560
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- MCDAT00072933
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