

apply in this case. Dkt. 53 at 13–14. Plaintiffs further ignore the Supreme Court’s decision in *Ohio v. American Express*, 138 S. Ct. 2274 (2018), which held that “the plaintiff has the initial burden to prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the *relevant market*,” *id.* at 2884 (emphasis added), and expressly rejected the argument Plaintiffs make here, *see id.* at 2285 n. 7 (“The plaintiffs argue that we need not define the relevant market in this case because they have offered actual evidence of adverse effects on competition—namely, increased merchant fees We disagree.”).

Second, Plaintiffs’ claim that Dr. Singer “in fact does provide the contours of relevant markets,” Dkt. 427 at 2, is directly rebutted by Dr. Singer’s own admission that he did not engage in the necessary analysis to define relevant geographic markets. *See* Dkt. 394-1, Ex. 18 (Singer Dep.) at 159:20–160:21. At most, Dr. Singer speculated that he might be able to offer such evidence if it were required. *Id.* The time to do so has come and passed, necessitating his exclusion. *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 817–18 (7th Cir. 2012) (requiring actual evidence of relevant market); *Menasha Corp. v. News Am. Mktg. In-Store, Inc.*, 354 F.3d 661, 665–66 (7th Cir. 2004) (rejecting expert opinion that assumed a market definition).

Third, Plaintiffs suggest that Dr. Singer evaluates the impact of the alleged No-Hire Agreement on Ms. Deslandes and Ms. Turner. But that is nonsense, underscored by Plaintiffs’ conspicuous failure to engage with the *undisputed* fact that Dr. Singer’s regression model incorporates *no* wage data from the restaurants at which Ms. Deslandes and Ms. Turner actually worked—not to mention no data from any other Florida franchisee (where Ms. Deslandes was employed), and data from only █████ franchisees in Ohio and Kentucky (where Ms. Turner was employed). Dkt. 302-1, Ex. 2, Figs. E-9, E-10. There is no way that an expert could reliably evaluate the economic

impact of an alleged wage-suppression conspiracy on Ms. Deslandes and Ms. Turner without considering any evidence about the wages paid in their restaurants, or even reviewing data about their local labor markets, including the competitive conditions and wages paid by the McDonald's restaurants and other employers there. And this is a problem entirely of Plaintiffs' own making: Plaintiffs chose how to sample franchisees and agreed to the scope of McDonald's McOpCo data production. In doing so, they elected not to subpoena wage data from Ms. Deslandes and Ms. Turner's own restaurants—or even any other restaurants operated by the franchise owners who employed them. That Dr. Singer's supposed “nationwide” wage suppression figures cannot demonstrate harm to the individual Plaintiffs is further underscored by the fact that, once disaggregated, his model shows *no* wage suppression in Florida, the state where Ms. Deslandes worked, which accounts for almost 50% of his total data. Dkt. 302-1, Ex. 2, ¶¶ 185–86, Figs. 19–23.

Finally, these are not issues that can be properly put to a jury. Dr. Singer's use of unrepresentative data flies in the face of foundational scientific principles. His “nationwide” wage suppression figure is based on a sample that covers just ■ states and ■ franchise owners—a mere ■ of the more than 2,000 owners who operated McDonald's restaurants during the relevant period. It is a well-accepted tenet of sampling that an analysis based “on a large but *unrepresentative* group of subjects will have . . . *low external validity*,” meaning it cannot be used to “reach more general conclusions,” Fed. Judicial Center, *Reference Manual on Scientific Evidence* 222 (3d ed. 2011) (emphasis added)—but that is precisely what Dr. Singer and Plaintiffs attempt to do. See Dkt. 301-1 at 9–10 (collecting cases excluding experts using unreliable sample sets).

For each and all of these reasons, and those more fully set forth in the prior briefing concerning Dr. Singer, which is expressly incorporated herein, this Court properly exercises its gate-

keeping function under *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), by excluding Dr. Singer's unreliable and irrelevant testimony.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rachel S. Brass, an attorney, hereby certify that the foregoing document was electronically filed on January 4, 2022 and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

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