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

STEPHANIE TURNER, on behalf of herself and all others similarly situated,

Plaintiff,

v.

McDONALD'S USA, LLC, a Delaware limited liability company, McDONALD'S CORPORATION, a Delaware corporation,

Defendants.

Civil Case No. 19-cv-5524

Judge Jorge L. Alonso
Magistrate Judge M. David Weisman

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

Other Authorities

INTRODUCTION

A person who purchases a product at an artificially-inflated price is injured within the meaning of the antitrust laws. So, too, is a person who *sells* a product or service at an artificially-depressed price. Plaintiff Stephanie Turner did just that. Over the course of fifteen years, she sold her labor to McDonald's-branded restaurants. Compl. ¶¶ 18, 63-71. During that time, McDonald's and its franchisees had agreed between and amongst themselves not to recruit or hire one another's restaurant workers (the "No-Hire Agreement"). *Id.* ¶ 71. As a consequence, Ms. Turner's wages, like those of other McDonald's restaurant workers, were lower than they would have been in free market conditions unfettered by the unlawful No-Hire Agreement. *Id.* ¶ 130.

Lost wages are a quintessential injury for purposes of Article III standing. When suppressed by an agreement restraining competition, lost wages also confer standing under the antitrust laws. That the No-Hire Agreement may reduce the competitive wage by distorting the market for labor is obvious. As this Court has already held, "[e]ven a person with a rudimentary understanding of economics would understand that if, say, law firms in Chicago got together and decided not to hire each other's associates, the market price for mid-level associates would stagnate." *Deslandes v. McDonald's USA, LLC*, No. 17 C 4857, 2018 WL 3105955, at *6 (N.D. Ill. June 25, 2018) (denying motion to dismiss identical Sherman Act claim in related case). The same holds true for McDonald's restaurants.

McDonald's motion largely ignores Ms. Turner's actual claim for wage suppression, instead focusing on a straw-man issue: whether Ms. Turner personally applied for and was denied a job. But that question is irrelevant; whether she did or did not, the No-Hire Agreement suppressed market wages for her and other McDonald's employees' work. Other courts in similar no-poach franchise cases have found antitrust injury for people in Ms. Turner's shoes.

See, e.g., *Blanton v. Domino's Pizza Franchising, LLC*, No. 18-13207, 2019 WL 2247731, at *3-4 (E.D. Mich. May 24, 2019) (holding that wage suppression satisfied both Article III and antitrust injury requirements despite fact that named plaintiff did not allege specific lost job); *Butler v. Jimmy John's Franchise, LLC*, 331 F. Supp. 3d 786, 794-95 (S.D. Ill. 2018) (same); *In re Papa John's Emp. & Franchisee Antitrust Litig.*, No. 3:18-CV-00825-JHM, 2019 WL 5386484, at *9 (W.D. Ky. Oct. 21, 2019) (same).

Finally, McDonald's turns the discovery rule on its head to argue that Ms. Turner's claim is untimely because she knew about the No-Hire Agreement more than four years ago. However, Ms. Turner's action accrues from the date of her last injury, *i.e.*, the last time she sold her labor to McDonald's at an artificially-depressed price, which was fewer than four years ago.

I. FACTUAL ALLEGATIONS

Over 15 years, Ms. Turner worked in a number of McDonald's-branded restaurants. She began her career in 2000 or 2001 at a McOpCo restaurant in Latonia, Kentucky, in a crew-level position. Compl. ¶ 63. She rose through the ranks to Swing Manager, a position she held until approximately 2005. *Id*. Then, she applied for a promotion but was passed over, an experience which disillusioned her and prompted her to leave the company. *Id.* ¶ 64. A year later, in 2006, Ms. Turner was recruited back to McOpCo as a Swing Manager. *Id.* ¶ 65.

A few years later, Ms. Turner considered applying to a franchise-owned McDonald's restaurant closer to her home. Compl. ¶ 66. When she informed her supervisor at the Latonia McOpCo, the supervisor warned that the franchisee was forbidden from speaking to Ms. Turner unless McOpCo gave her a release. *Id.* Ms. Turner understood that she would not receive a release if she asked. *Id.* McDonald's No-Hire Agreement thus dissuaded her from pursuing an opportunity that at the very least would have saved her transportation costs. *Id.*

On March 3, 2012, Ms. Turner left her position to pursue another venture. Compl. ¶ 67. More than six months later (and thus after the No-Hire Agreement's restrictions expired, *id.* ¶ 87), on September 25, 2012, Ms. Turner decided to return to work for McDonald's, this time at a franchise restaurant owned and operated by Copeland Investments Corporation ("Copeland"). *Id.* ¶ 67. Building on her prior experience, Ms. Turner began as a Kitchen Department Manager, a role she held for six years until September 2018. *Id.* ¶ 70. Twice during her tenure at Copeland, in 2016 and 2017, Ms. Turner was reminded by a supervisor that if she wanted to work for another McDonald's franchisee, she would need a release from Copeland. *Id.* ¶¶ 69-70.

Even if McDonald's were correct that Ms. Turner needed to allege a lost job opportunity to have antitrust standing, these facts would suffice. However, Ms. Turner's claim does not hinge on whether she applied for and was denied a job at another McDonald's. Rather, her claim is that the No-Hire Agreement distorted the labor market and artificially suppressed the wages of *all* McDonald's restaurant workers, including herself. Compl. ¶¶ 15-17, 71-, 83, 130. Economic research and analysis supports this theory of harm. *Id.* ¶¶ 12-14 (citing opinions and research of economists that no-hire agreements depress wages). These are commonsense economic principles, as this Court has already found. *Deslandes*, 2018 WL 3105955, at *7.

II. PROCEDURAL HISTORY

This case is related to and consolidated with *Deslandes v. McDonald's USA, LLC*, No. 17 C 4857 (N.D. Ill.), for purposes of discovery. *See Deslandes* Dkt. 182. In June 2018, the Court denied McDonald's motion to dismiss the *Deslandes* case. *Deslandes*, 2018 WL 3105955. The central dispute at that time was whether McDonald's claim should be deemed *per se* unlawful, or whether it should be reviewed under the quick-look test or rule of reason. The Court held Ms. Deslandes plausibly alleged a claim under the quick-look test because "[e]ven a person with a

rudimentary understanding of economics would understand that if competitors agree not to hire each other's employees, wages for employees will stagnate." *Id.* at *7.

III. LEGAL STANDARD

On a motion to dismiss, the Court accepts the plaintiff's factual allegations as true and draws permissible inferences in their favor. *Boucher v. Finance Sys. of Green Bay, Inc.*, 880 F.3d 362, 365 (7th Cir. 2018). To establish Article III standing, the plaintiff must allege (1) an injury in fact; (2) caused by the defendant's misconduct; and (3) a likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).[1] Under the Sherman Act, the plaintiff must also allege an injury "of the type the antitrust laws were intended to prevent," which "reflect[s] the anticompetitive effect of either the [antitrust] violation or of anticompetitive acts made possible by the violation." *Tri-Gen Inc. v. Int'l Union of Op. Eng'rs Local 150*, 433 F.3d 1024, 1031 (7th Cir. 2006) (citation omitted).

IV. ARGUMENT

A. Ms. Turner Adequately Pleads Injury Via Wage Suppression

1. Wage Suppression Is a Concrete Injury

Ms. Turner's alleged injury is not, as McDonald's envisions, that she was denied a job. Rather, she alleges that she was paid less than she would have been paid for the work she actually performed for McDonald's but-for the No-Hire Agreement, *i.e.*, she lost money. Compl. ¶ 130 ("Plaintiff and Class Members have received lower compensation from Defendants and independent franchise businesses than they otherwise would have received in the absence of

[1] McDonald's does not challenge redressability, nor could it. "Damages redress the harm that [Ms. Turner] suffered by replacing the lost [wages she] would have earned" but for McDonald's No-Hire Agreement. *Six Star Holdings, LLC v. City of Milwaukee*, 821 F.3d 795, 803 (7th Cir. 2016). *See also Grant-Hall v. Cavalry Portfolio Servs., LLC*, 856 F. Supp. 2d 929, 936 (N.D. Ill. 2012) (compensatory damages satisfy redressability); *Kole v. Village of Norridge*, No. 11 C 3871, 2017 WL 5128989, at *8 (N.D. Ill. Nov. 6, 2017) (same).

Defendants' unlawful conduct."). Such "concrete financial injuries, namely deprivation of wages . . . are prototypical of injuries for the purposes of Article III standing." *Milwaukee Police Ass'n v. Flynn*, 863 F.3d 636, 639 (7th Cir. 2017). *See also Sierra Club v. Morton*, 405 U.S. 727, 733 (1972) ("[P]alpable economic injuries have long been recognized as sufficient to lay the basis for standing . . . ."); *In re Aqua Dots Prods. Liab. Litig.*, 654 F.3d 748, 751 (7th Cir. 2011) ("A financial injury creates standing.").

A claim for lost wages also constitutes antitrust injury in a challenge to an unlawful labor restraint. This Court has already found that to be true: "defendants do not dispute (nor could they) that [Ms. Deslandes] has alleged antitrust injury in this case, just like other suppliers do when they allege a restraint in a supply market." *Deslandes*, 2018 WL 3105955, at *4. As the Court observed in *Deslandes*, here, Ms. Turner sold a product (her labor) to McDonald's restaurants. Under basic economic principles, the price of her labor would ordinarily be set by free market competition and the dynamics of supply and demand. McDonald's No-Hire Agreement, however, disrupted that process by imposing artificial constraints on competition. Compl. ¶¶ 84-96, 101-108. McDonald's argument that Ms. Turner has not alleged injury, therefore, "is a non-starter." *Butler*, 331 F. Supp. 3d at 793 (rejecting argument that plaintiff in franchise no-poach suit must allege specific lost job). Just as there is no question that a consumer who pays an inflated price due to an antitrust conspiracy suffers antitrust injury, *see Loeb Industries, Inc. v. Sumitomo Corp.*, 306 F.3d 469, 580-81 (7th Cir. 2002), there is no doubt that one who sells their labor at an artificially suppressed price also suffers antitrust injury.[2]

[2] *See Omnicare, Inc. v. UnitedHealth Grp., Inc.*, 524 F. Supp. 2d 1031, 1040 (N.D. Ill. 2007) ("[A] seller sufficiently alleges antitrust injury by pleading that it has received excessively low prices from members of the buyers' cartel."); *In re Se. Milk Antitrust Litig.*, 555 F. Supp. 2d 934, 947 (E.D. Tenn. 2008) (dairy farmers adequately pleaded antitrust injury as "underpaid sellers"). Indeed, "[s]tanding for employees . . . parallels that for 'suppliers' generally . . . . [T]here is no

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Numerous other courts have agreed with the commonsense notion that employees subject to no-hire agreements that restrict the terms of their employment, including compensation, adequately allege antitrust injury.[3] Importantly, other courts addressing motions to dismiss in franchise no-poach cases have rejected McDonald's exact argument, finding that allegations of depressed market wages suffice to allege antitrust standing, with or without a denied job application. *Blanton*, 2019 WL 2247731, at *3-4; *Butler*, 331 F. Supp. 3d at 794-95; *In re Papa John's*, 2019 WL 5386484, at *9. *See also In re High-Tech Emp. Antitrust Litig.*, 856 F. Supp. 2d 1103, 1123 (N.D. Cal. 2012) (in no-poach case, holding plaintiff adequately alleged antitrust injury in the form of suppressed wages); *cf. Nichols v. Spencer Int'l Press, Inc.*, 371 F.2d 332, 336, 334 (7th Cir. 1967) (holding that no-hire agreements among competitors suppress employee mobility and confer antitrust injury).

McDonald's argument that Ms. Turner never requested a "release," Mot. at 6, is irrelevant because her damages claim is based on wage suppression caused by the No-Hire Agreement, not the loss of a particular job. Compl. ¶ 130. *Kelsey K. v. NFL Enterprises LLC*, is thus inapposite, as the plaintiff there did not allege market-wide wage suppression caused by a

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reason why the business of selling one's own employment services should be any less a 'business' than the business of selling other goods and services." Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 352a-b (4th ed. 2018).

[3] *See Banks v. Nat'l Collegiate Athletic Ass'n*, 977 F.2d 1081, 1095 (7th Cir. 1992) ("It is well settled that an agreement among employers to control a material term of employment harms competition in the labor market at issue"); *Eichorn v. AT&T Corp.*, 248 F.3d 131, 141 (3d Cir. 2001) ("[E]mployer conspiracies controlling employment terms . . . tamper with the employment market and thereby impair the opportunities of those who sell their services there."); *Roman v. Cessna Aircraft Co.*, 55 F.3d 542, 545 (10th Cir. 1995) (antitrust standing to challenge no-hire agreement).

no-hire agreement. No. C 17-496, 2017 WL 3115169 (N.D. Cal. July 21, 2017).[4] In *Kelsey*, the plaintiff failed to plausibly allege the existence of a no-hire agreement in the first place, as NFL rules "expressly prohibit[ed] any attempt to restrict mobility among clubs for cheerleaders . . . ." *Id.* at *2. The cheerleader's failure to allege she was denied any particular job was just an additional reason why the court could not infer a no-poach agreement. *Id.* at *5 (noting plaintiff fell short of alleging that director told her "she could not tryout for another club *because of* any purported no-poaching agreement"). Similarly, McDonald's reliance on *Eichorn* is misplaced because that case merely held a lost job was sufficient, but not necessary, to allege injury. *See Eichorn*, 248 F.3d at 141-42. And *In re Digital Music Antitrust Litigation* involved the plaintiff's failure to allege how the price-fixed market for digital online music had any effect on a different market for music on physical compact discs. 812 F. Supp. 2d 390, 402 (S.D.N.Y. 2011). In contrast, Ms. Turner alleges a restraint in and affecting the same market: McDonald's labor.

McDonald's also relies on *Ogden v. Little Caesar Enterprises, Inc.*, but that outlier case is both distinguishable and unpersuasive. 393 F. Supp. 3d 622 (E.D. Mich. 2019).[5] Unlike this case, the plaintiff in *Ogden* "contend[ed] that he had no knowledge of the no-poaching agreement, and that he never was subjected to any invocation of the clause by either his former or any prospective employer." *Ogden*, 393 F. Supp. 3d at 638. Because there were no facts alleged to show that the no-poach agreement there was actually enforced, the *Ogden* court concluded that the plaintiff did "not offer[] any facts to show that the agreement precipitated any

[4] The plaintiff separately alleged a conspiracy to fix wages, but that is different. *Id.* at *5-7.

[5] McDonald's speculates that Ms. Turner's reference to "considering" applying to another McDonald's job was "artful pleading" to circumvent *Ogden*, Mot. at 9, but *Ogden* post-dates Ms. Turner's allegations by nearly two months. *See Deslandes* Dkt. 147-2 at 22-23 (proposed second amended complaint filed May 31, 2019).

specific wage or opportunity loss to him." *Id.* In contrast, here, Ms. Turner's McDonald's supervisors explicitly invoked the No-Hire Agreement as a limitation on her mobility on at least *three* occasions. Compl. ¶¶ 66, 68-9. This demonstrates that McDonald's and its franchisees observed and enforced the No-Hire Agreement. McDonald's suggests that its release requirement was in some way *advantageous* to Ms. Turner as a "specific mechanism" through which she could seek alternative employment. Mot. at 8. This ignores that whatever "release" procedure applied, it was only because there existed a labor restraint in the first place. Indeed, even if McDonald's had granted Ms. Turner a release, that would have been an example of enforcement.

In any case, if *Ogden* is read broadly to hold that wage suppression never confers antitrust standing in no-poach cases absent a particular job loss, it is wrong as a matter of law. That interpretation cannot be reconciled with clear Seventh Circuit authority. *Banks*, 977 F.2d at 1095 ("[A]n agreement among employers to control a material term of employment harms competition in the labor market"); *Nichols*, 371 F.2d at 336 (same). It also contradicts the black-letter rule that a seller who is forced to sell a product at an artificially-depressed price by an anticompetitive conspiracy has antitrust standing. *Omnicare*, 524 F. Supp. 2d at 1040; *Se. Milk*, 555 F. Supp. 2d at 947; Areeda & Hovenkamp, ¶ 352a-b. And it is at odds with the rest of the courts that have considered this precise question. *Butler*, 331 F. Supp. 3d at 794-95; *Blanton*, 2019 WL 2247731, at *3-4; *High-Tech*, 856 F. Supp. 2d at 1123.

Perhaps most compellingly, McDonald's motion ignores that at least three courts have, on a full evidentiary record, certified classes of employees challenging no-poach agreements which overwhelmingly included employees who had not applied for or been denied a job. In doing so, these courts expressly considered and rejected the argument that individual class

members needed to show denial of a specific job opportunity to prove impact or damages where market-wide wage suppression was alleged, because market distortions can suppress *all* employees' wages, not just those who applied for or lost a job opportunity.[6]

In sum, Ms. Turner's claimed injury is that the payment she received for labor she actually sold was lower than it would have been in a labor market unfettered by the No-Hire Agreement. She did not merely "think" about selling her labor, but in fact did so at depressed prices. *Compare Sanner v. Board of Trade of City of Chi.*, 62 F.3d 918, 924-25 (7th Cir. 1995) (soybean farmers who did not sell their soybeans lacked standing because "[t]he decision to sell or not to sell is not clearly attributable to the price of soybeans (nor will it ever be)," but those who *did* sell at allegedly depressed prices had standing). That is a concrete injury, not a hypothetical or speculative one about future contingencies. *Compare Lujan*, 504 U.S. at 564.

2. Ms. Turner Adequately Alleges That The No-Hire Agreement Caused Wage Suppression

McDonald's also argues Ms. Turner failed to plead that the No-Hire Agreement suppressed her wages. Mot. at 10-13. But "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *Lujan*, 504 U.S. at 561 (citation, quotations, and alteration omitted). McDonald's ignores this modest requirement, and instead relies on cases decided at the summary judgment

[6] *See Seaman v. Duke Univ.*, 1:15-cv-462, 2018 WL 671239, at *8 n.10 (M.D.N.C. Feb. 1, 2018) (class-wide theory of wage suppression "does not require [plaintiff] to prove that the movement of every faculty member was restrained"); *In re High-Tech Emp. Antitrust Litig.*, 289 F.R.D. 555, 574 (N.D. Cal. 2013) (rejecting argument that every class member needed to prove they would have received cold calls or job offers, or negotiated wages); *Nitsch v. Dreamwork Animation SKG Inc.*, 315 F.R.D. 270, 301 (N.D. Cal. 2016) (certifying class though "as many as 70% of class members were . . . not actively looking for new jobs").

stage, where the plaintiff's burden is more exacting.[7] Ms. Turner meets the *Lujan* standard by explicitly alleging that her wages were suppressed on account of McDonald's No-Hire Agreement. Compl. ¶¶ 16, 130. *See Robinson v. Jackson Hewitt, Inc.*, No. 19-9066 (SDW) (LDW), 2019 WL 5617512, at *3 (D. N.J. Oct. 31, 2019) (causation adequately pled in franchise no-poach case with similar allegations). As the Seventh Circuit explains, "[d]etails . . . can come later" when "[i]t is easy to imagine facts *consistent* with th[e] complaint . . . that will show plaintiffs' standing, and no more is required." *Alliant Energy Corp. v. Bie*, 277 F.3d 916, 920 (7th Cir. 2002). Here, it takes only a "rudimentary understanding of economics" to "understand that if competitors agree not to hire each other's employees, wages for employees will stagnate." *Deslandes*, 2018 WL 3105955, at *7.

McDonald's provides several arguments against causation, each of which is unavailing as well as inappropriate on a motion to dismiss. *See, e.g.*, *County of Cook v. HSBC N. Am. Holdings, Inc.*, 136 F. Supp. 3d 952, 961 (N.D. Ill. 2015) (agreeing that "factual disputes over causation 'cannot be resolved via a motion to dismiss'") (citation omitted). First, McDonald's cites a Statement of Interest filed by the United States Department of Justice regarding whether no-poach agreements should be held *per se* unlawful or reviewed under the rule of reason or quick-look test. Mot. at 10.[8] It relies on this Statement to argue that the No-Hire Agreement may have procompetitive benefits, and therefore, antitrust injury cannot be presumed. But as the Supreme Court has explained, these are two distinct inquiries, and the causation analysis is the

[7] Mot. at 13 (citing *O.K. Sand & Gravel, Inc. v. Martin Marietta Techs., Inc.*, 36 F.3d 565, 573 (7th Cir. 1994) and *Greater Rockford Energy & Tech. Corp. v. Shell Oil Co.*, 998 F.2d 391, 404 (7th Cir. 1993)).

[8] Notably, two courts have declined to defer to DOJ's analysis. *See In re Papa John's*, 2019 WL 5386484, at *5; *Conrad v. Jimmy John's Franchise, LLC*, No. 3:18-cv-00133-NJR-RJD, 2019 WL 2754864, at *3 (S.D. Ill. May 21, 2019).

same regardless of what standard of scrutiny applies. *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 342 (1990). *See also Deslandes*, 2018 WL 3105955, at *4 (citing *Atlantic Richfield*). McDonald's reliance on cases concerning the level of scrutiny is therefore misplaced.

Second, McDonald's cites a research paper that it claims "suggest[s] that no-poaching provisions likely do not affect wages at all." Mot. at 10 (citing Daniel S. Levy & Timothy J. Tardiff, *Measurement of Market Concentration Faced by Labor Pools: Theory and Evidence from Fast Food Chains in Rhode Island with No-Poaching Clauses*, Advanced Analytical Consulting Group, Inc. Working Paper Series 1, 19-22 (Sept. 14, 2018)). In fact, the Levy and Tardiff paper does not study wages. Rather, it proposes a new method of measuring market power and concentration in the franchise context. Contrary to McDonald's assertion, the paper actually acknowledges the viability of Ms. Turner's claim. Levy & Tardiff at 27 (recognizing that "[e]mployees may learn certain skills that make them additionally valuable due to on-the-job experience that is specific to a franchise brand" and that "[m]easurement of this type of limitation is not captured by the concentration measures proposed . . . in this paper."). That is precisely what Ms. Turner alleges. *See* Compl. ¶ 15 ("marketable skills acquired through their work at McDonald's primarily have value only to other McDonald's restaurants and do not transfer to other fast food restaurants or similar businesses"); *id.* ¶ 109 ("the education, training and experience within the McDonald's enterprise are unique to McDonald's and not transferrable to other restaurants"); *id.* ¶¶ 110-11 (explaining platforms and procedures unique to McDonald's). These claims are entitled to a presumption of truth. *Boucher*, 880 F.3d at 365.

Third, McDonald's claims that "even in quick-look cases, showing anticompetitive effect requires proof that the restraint was effective and established prices (or wages) at a point 'more favorable to the defendant than otherwise would have resulted from the operation of market

forces.'" Mot. at 11 (quoting *Law v. Nat'l Collegiate Athletic Ass'n*, 134 F.3d 1010, 1020 (10th Cir. 1998)). This is just another way of saying that Ms. Turner must eventually prove damages. At the pleading stage, "general factual allegations of injury" suffice. *Lujan*, 504 U.S. at 561.

Fourth, McDonald's asserts that Ms. Turner's wages could not have been suppressed if they actually grew over the course of 15 years when she was promoted. Mot. at 11-12. That her wages went up for some reasons (*e.g.*, changes to the minimum wage, promotions, etc.), however, does not mean that they were not also suppressed; *e.g.*, they would have gone up even more but for the No-Hire Agreement. Further, McDonald's reliance on *In re Railway Industry Employee No-Poach Antitrust Litigation* is misplaced, as that court's holding concerning "compensation structures" related to the defendants' motion to strike the class allegations, and not to antitrust standing. 395 F.Supp.3d 464, 495 (W.D. Pa. 2019). Indeed, the *Railway* plaintiffs' claims were not dismissed although they did not allege they were denied a specific job opportunity.

Fifth, McDonald's suggests Ms. Turner caused her own harm because she did not seek a release or other job opportunities, Mot. at 10, relying on *Kochert v. Greater Lafayette Health Services, Inc.*, 463 F.3d 710 (7th Cir. 2006), where the plaintiff anesthesiologist challenged the exclusionary conduct of local medical providers. The problem in *Kochert*, however, was not, as McDonald's claims, that "her own conduct in fact precipitated alleged harm." Mot. at 10. To the contrary, the *Kochert* court held that the plaintiff had satisfied Article III standing by "construct[ing] a reasonable causality chain linking her injury to defendants' actions," but not antitrust standing requirements because the anticompetitive acts did not occur until *after* the plaintiff suffered harm and had stopped practicing anesthesiology. *Kochert*, 463 F.3d at 715-18.

Finally, McDonald's argues that "wages are affected by endless market forces," and that therefore "no injury can be presumed without a 'more sedulous' economic analysis and at least some pleaded facts in support of the conclusion of depressed wages." Mot. at 13. That other market factors influence wages does not mean the No-Hire Agreement had no effect on wages by reducing competition between employers. In any case, Ms. Turner does not "presume" injury but rather alleges it. For example, Ms. Turner alleges that the No-Hire Agreement helps McDonalds and franchisees "artificially protect themselves from having their own employees poached by other franchises or locations that see additional value in those employees, such as their training, experience and/or work ethic." *Id.* ¶ 104. As a result, "franchisees or McOpCo restaurants [can] retain their best employees without having to pay market wages to these employees or compete in the market place relative to working conditions and promotion opportunities." *Id.* The No-Hire Agreement "does not incentivize McDonald's franchisees and McOpCo restaurants to invest in higher wages," whereas "competition among employers [would] help[] actual and potential employees through higher wages." *Id.* ¶ 106. These allegations regarding how the market would have functioned but for the No-Hire Agreement are entitled to a presumption of truth. *Boucher*, 880 F.3d at 365. In light of these detailed allegations, McDonald's reliance on *Warth v. Seldin* is inapposite. *See* 422 U.S. 490, 506 (1975) (plaintiffs could not challenge zoning ordinance for making housing unaffordable where "descriptions of their individual financial situations and housing needs" suggested their issues were caused by "the economics of the area housing market" rather than the ordinance).

Ms. Turner adequately alleges causation.

B. Ms. Turner's Claims Are Timely

The Sherman Act's four-year statute of limitations "runs from the *most recent* injury caused by the defendant[s] . . . ." *Xechem, Inc. v. Bristol-Myers Squibb Co.*, 372 F.3d 899, 902

(7th Cir. 2004) (emphasis added). Thus, Ms. Turner must merely allege she was injured at some point from August 15, 2015 through the present. She does that by alleging she sold her labor to McDonald's at depressed rates after that date. Compl. ¶¶ 67-70.

McDonald's attempts to move the accrual date backwards, *before* Ms. Turner's injuries, by selectively quoting *In re Copper Antitrust Litigation* to turn the discovery rule on its head. Mot. at 14. *In re Copper* makes clear that the rule only "*postpones* the beginning of the limitations period from the date when the plaintiff is wronged to the date when he discovers he has been injured." 436 F.3d 782, 789 (7th Cir. 2006) (emphasis added); *see also Wendt v. Handler, Thayer & Duggan, LLC*, 613 F. Supp. 2d 1021, 1032 (N.D. Ill. 2009) (discovery rule "delays" the "commencement of the statute of limitations"). Postponement is unnecessary here. Ms. Turner only seeks damages within the limitations period.

Further, under the continuing violation doctrine, McDonald's ongoing overt acts in support of the conspiracy "start[ed] the statutory period running again, regardless of the plaintiff's knowledge of the alleged illegality at much earlier times." *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189 (1997). McDonald's incorporated the no-poach agreement into new (and renewing) franchise agreements and enforced it until at least March 2017. Compl. ¶¶ 2, 41, 86–88.[9] Ms. Turner's McDonald's manager enforced the no-poach agreement in 2016 and 2017. *Id.* ¶¶ 68–69. These allegations distinguish Ms. Turner's case from the lone case McDonald's relies on, *In re Animation Workers Antitrust Litigation*, where the "Plaintiffs ha[d] not pled any facts showing that Defendants continued to engage in the wrongful conduct . . . on or after [the end of the limitations period]." 87 F. Supp. 3d 1195, 1213 (N.D. Cal. 2015). In contrast, here, in the words of *Animation Workers*, "Defendant[s] abided by, attempted to enforce, or otherwise

[9] Thus it is irrelevant whether Paragraph 14 was in the public domain earlier. Mot. at 15, n.4.

reaffirmed the" no-hire agreement during the limitations period, "independent actions . . . that caused Plaintiff[] . . . new or accumulating injury." *Id.* at 1212. *See also* Areeda & Hovenkamp, ¶ 320 ("[E]ach independent predicate act that is part of the violation and that injures the plaintiff starts the statutory period running again . . . .").

V. CONCLUSION

Ms. Turner respectfully requests the Court deny McDonald's motion.

Dated: November 15, 2019

Respectfully submitted,

/s/ Dean M. Harvey

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CERTIFICATE OF SERVICE

I, Dean M. Harvey, an attorney, hereby certify that **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** was electronically filed on November 15, 2019 and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

/s/ Dean M. Harvey
Dean M. Harvey