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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JESSICA ROBINSON, STACEY JENNINGS, and PRISCILLA MCGOWAN, *individually and on behalf of all others similarly situated*, *Plaintiffs*, v. JACKSON HEWITT INC., and TAX SERVICES OF AMERICA, INC., *Defendants*.	Case No.: 2:19-cv-9066 (JXN) (ESK) **DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO FOURTH AMENDED COMPLAINT**

Defendants Jackson Hewitt Inc. ("JHI") and Tax Services of America, Inc. ("TSA") (collectively, "Defendants")[1], through counsel, submit this Answer and Affirmative Defenses to Plaintiffs' Fourth Amended Consolidated Class Action Complaint and Jury Demand (the "Complaint") (Document No. 161) and state as follows:

1. This is an antitrust class action brought by and on behalf of individuals who work

[1] Plaintiffs have defined JHI and TSA collectively as "Jackson Hewitt" and assert most if not all of their allegations against "Jackson Hewitt," as collectively defined. Defendants deny that this is a proper definition because it results in most allegations of the Complaint being averred as to both JHI and TSA when they apply, at the most, to only JHI or TSA.

or have worked for Jackson Hewitt, a tax preparation services provider and franchisor, and for franchise locations of Jackson Hewitt.

ANSWER: In response to Paragraph 1, Defendants admit that Plaintiffs purport to bring antitrust claims on behalf of a putative class of current and former employees of JHI, TSA, and Jackson Hewitt franchisees. Defendants deny the remaining allegations in Paragraph 1.

2. Jackson Hewitt is the second largest consumer tax services provider in the United States and provides tax preparation and assistance services at physical offices, online, and via desktop and mobile applications. Jackson Hewitt provides in-person tax preparation services at nearly 6,000 offices in the United States. Of those offices, approximately 3,900 are franchise locations and 1,800 are corporate-owned. Under Jackson Hewitt's franchise model, franchisees compete with each other and with company-owned locations.

ANSWER: In response to Paragraph 2, Defendants admit that offices operated by TSA and Jackson Hewitt franchisees provide in-person tax preparation services at nearly 6,000 locations in the United States and that there are approximately 3,900 Jackson Hewitt franchise locations and 1,800 locations operated by TSA in the United States. Defendants deny the remaining allegations in Paragraph 2.

3. Personnel in any labor market, including in the tax preparation labor market, benefit when employers compete for their services. Competition in the labor market creates negotiating leverage for personnel, which in turn leads to higher wages and greater mobility.

ANSWER: Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 3, and therefore Defendants deny the allegations therein.

4. Beginning at least by December 20, 2014, and continuing to the present day, Defendants, along with other unnamed persons and entities acting as co-conspirators, engaged in

a conspiracy to not compete for employees and potential employees, including, but not limited to, agreements not to solicit, recruit, or hire without prior approval each other's personnel (the "No-Poach/No-Hire Conspiracy" or "Conspiracy"). Defendants formed, entered into, carried out, and enforced the anti-competitive contract, combination, or conspiracy described herein.

ANSWER: Defendants deny the allegations in Paragraph 4.

5. Defendants orchestrated, dispersed, and enforced the agreement among themselves and all franchisees, including at least in part through an explicit contractual prohibition ("No-Poach Clause") and a penalty provision for violations of the No-Poach Clause ("No-Poach Penalty") contained in standard Jackson Hewitt franchise agreements.

ANSWER: Defendants deny the allegations in Paragraph 5.

6. The Conspiracy, and the anticompetitive agreements between and among Defendants and co-conspirators in furtherance thereof, are and were naked restraints of trade that constitute per se violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Conspiracy, and the agreements and conduct by Defendants and co-conspirators in furtherance thereof, had the purpose and effect of unlawfully limiting Plaintiffs' and Class members' job mobility and suppressing their compensation below the levels that would have been available absent the Conspiracy.

ANSWER: Defendants deny the allegations of Paragraph 6.

7. Under a "quick look" analysis, one with even a rudimentary understanding of economics could conclude that the arrangements and agreements between and among Defendants and their co-conspirators alleged herein would have an anticompetitive effect on Class members and markets.

ANSWER: Defendants deny the allegations of Paragraph 7.

8. Under a rule of reason analysis, Defendants and unnamed co- conspirators exploited their collective market power in the relevant market, which is the labor market for employees and potential employees of Jackson Hewitt and its franchises, as defined herein, in the United States. The Conspiracy and the conduct of Defendants and their agents and co-conspirators in furtherance thereof did not have procompetitive effects and were not intended to have procompetitive effects. In the alternative, even if the Conspiracy and the conduct of Defendants and their agents and co-conspirators in furtherance thereof have or had procompetitive effects, any such procompetitive effects are and were substantially outweighed by the anticompetitive harm caused by the Conspiracy and Defendants' and others' conduct in furtherance thereof as alleged herein.

ANSWER: Defendants deny the allegations of Paragraph 8.

9. The standard Jackson Hewitt franchise agreement in effect during the Class Period included a "Covenant Against Recruiting or Hiring Our Employees" clause, which stated:

> During the Term and for a period of two (2) years [afterward]… neither you nor any of your Owners may, without our prior written permission … solicit, recruit, or hire….any of our or our Affiliates' employees whose duties with us or our Affiliates include(d) management of or over company owned or franchised stores, franchisee training, tax preparation software writing or debugging, tax return processing, software writing or debugging, electronic filing of tax returns, tax return processing, processing support, tax return preparation, or tax return preparation advice or support.

ANSWER: In response to Paragraph 9, because Plaintiffs do not attach or identify what they contend is "the standard Jackson Hewitt franchise agreement," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations. Defendants further state that the terms of its franchise agreements speak for themselves.

10. During the Class Period, Jackson Hewitt's standard franchise agreement also

contained a provision that punished and discouraged violations of the No-Poach Clause by imposing a severe monetary penalty, equal to 300% of the annual salary of the employee recruited or hired in violation of the No-Poach Clause.

ANSWER: In response to Paragraph 10, because Plaintiffs do not attach or identify what they contend is "Jackson Hewitt's standard franchise agreement," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations, therein, and therefore Defendants deny those allegations. Defendants further deny that they entered any franchise agreement containing a provision that required a party to pay 300% of the annual salary of an employee recruited or hired.

11. The Conspiracy involves, at a minimum, Jackson Hewitt as well as its franchisees. Not only did Jackson Hewitt and its franchisees expressly agree for franchisees to not solicit or recruit employees from either other franchisees or from Jackson Hewitt's company-owned stores, Jackson Hewitt itself adhered to the same agreement in the operation of its company-owned stores.

ANSWER: To the extent that the allegations in Paragraph 11 do not relate to Defendants, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations, and therefore Defendants deny those allegations. To the extent that the allegations in Paragraph 11 relate to Defendants, Defendants deny them.

12. The purpose and effect of the restraint was to limit and suppress mobility and compensation for all Class members, regardless of whether they tried to be recruited or hired by another Jackson Hewitt corporate or franchise location.

ANSWER: Defendants deny the allegations of Paragraph 12.

13. These agreements impeded or restricted the movement of employees between Jackson Hewitt and its franchisees. These agreements also prohibited and prevented competition

for employees between and among the members of the Conspiracy, including Jackson Hewitt and its franchisees. The agreements unreasonably limited franchisees' ability to solicit employees who work for Jackson Hewitt or other franchisees, reducing the pool of experienced candidates available to them, and decreasing the employment options available to current employees. Basic economic principles inform that a reduction in the pool of potential employers tends to lower the bargaining power of employees and depress wages.

ANSWER: To the extent that the allegations in Paragraph 13 do not relate to Defendants, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations, and therefore Defendants deny those allegations. To the extent that the allegations in Paragraph 13 relate to Defendants, Defendants deny them.

14. The Conspiracy, and its anticompetitive effects on Class members' mobility and wages, is ongoing.

ANSWER: Defendants deny the allegations of Paragraph 14.

15. Plaintiffs bring this action to obtain injunctive relief and recover actual and treble damages, costs of suit, and reasonable attorneys' fees arising from Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

ANSWER: In response to Paragraph 15, Defendants admit that Plaintiffs purport to bring antitrust claims for injunctive relief and damages under Section 1 of the Sherman Act. Defendants deny the remaining allegations in Paragraph 15.

16. The Court has subject matter jurisdiction pursuant to Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) and 28 U.S.C. §§ 1331 and 1337.

ANSWER: The allegations of Paragraph 16 contain legal assertions regarding jurisdiction, which require no response from Defendants. To the extent a response is required,

Defendants admit that this Court has jurisdiction over the subject matter of Plaintiffs' claims and otherwise deny the allegations as they relate to Defendants.

17. As alleged in detail herein, including in Section IV(B), venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, as well as 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to Plaintiffs' claims alleged herein occurred in this District, a substantial portion of the affected interstate trade and commerce was carried out in this District, and Defendants reside in, can be found in, and/or transact business in this District.

ANSWER: The allegations of Paragraph 17 contain legal assertions regarding venue, which require no response from Defendants. To the extent a response is required, Defendants admit that they reside in, can be found in, and transact business in this District, but deny the remaining allegations in Paragraph 17.

18. In particular, all Jackson Hewitt Defendants are headquartered in the District of New Jersey and maintain their principal place of business in the District of New Jersey.

ANSWER: In response to Paragraph 18, Defendants admit that they are each headquartered in the District of New Jersey and each maintain their principal place of business in the District of New Jersey.

19. Defendants are also subject to the jurisdiction of this Court by virtue of Defendants' nationwide contacts and other activities, as well as their contacts with the state of New Jersey. Each Defendant, among other things: (a) transacted business throughout the United States, including in this District; (b) had substantial contacts throughout the United States, including in this District; and/or (c) was engaged in an illegal conspiracy that was, in part, entered into in this District and was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business in this District.

ANSWER: The allegations of Paragraph 19 contain legal assertions regarding jurisdiction, which require no response from Defendants. To the extent a response is required, Defendants admit that there are Jackson Hewitt tax preparation offices located throughout the United States, including New Jersey. Defendants otherwise deny the allegations in Paragraph 19.

20. Plaintiff Jessica Robinson is an individual residing in Rockland, Maine. Plaintiff Robinson worked as a seasonal Tax Preparer primarily at Jackson Hewitt's Rockland, Maine location from 2017 through 2018. As a result of the conspiracy, Ms. Robinson's compensation and mobility were suppressed.

ANSWER: In response to Paragraph 20, Defendants admit that Plaintiff Robinson was employed at a Jackson Hewitt tax preparation office located in Maine. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations regarding the city where Plaintiff Robinson worked or the location of Plaintiff Robinson's residence, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 20.

21. Plaintiff Stacey Jennings is an individual residing in Paramount, California. During the Class Period, Plaintiff Jennings worked as a seasonal Tax Preparer for a Jackson Hewitt franchise located at the Walmart Supercenter at Long Beach Towne Center in Long Beach, California, from 2016 to 2017. As a result of the conspiracy, Ms. Jennings's compensation and mobility were suppressed.

ANSWER: In response to Paragraph 21, Defendants admit that Plaintiff Jennings was employed at a Jackson Hewitt tax preparation office located in Long Beach, California. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation regarding Plaintiff Jennings' residence, and therefore Defendants deny this allegation. Defendants deny the remaining allegations of Paragraph 21.

22. Plaintiff Priscilla McGowan is an individual residing in Memphis, Tennessee. During the Class Period, Plaintiff McGowan worked as a seasonal Tax Preparer for a Jackson Hewitt corporate location located in Memphis, Tennessee from 2017 to 2020. As a result of the conspiracy, Ms. McGowan's compensation and mobility were suppressed.

ANSWER: In response to Paragraph 22, Defendants admit that Plaintiff McGowan was employed at Jackson Hewitt tax preparation offices located in Tennessee. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation regarding Plaintiff McGowan's residence, and therefore Defendants deny this allegation. Defendants deny the remaining allegations of Paragraph 22.

23. Defendant Jackson Hewitt, Inc. ("JHI") is a Virginia corporation with headquarters at 10 Exchange Place, 27th Floor, Jersey City, New Jersey 07302. JHI is the operating company within the Jackson Hewitt enterprise and is wholly- owned by Jackson Hewitt Tax Services, Inc. Among other things, it performs the enterprise's core business and administrative functions. It directly participated in the unlawful anticompetitive conspiracy at issue here, including by implementing the nationwide franchise model and entering into express written agreements that evidence and exemplify the anticompetitive conduct Plaintiffs challenge herein.

ANSWER: In response to Paragraph 23, Defendants admit that JHI is a Virginia corporation with headquarters at 10 Exchange Place, 27th Floor, Jersey City, New Jersey 07302 and that JHI is wholly-owned by Jackson Hewitt Tax Services, Inc. Defendants deny the remaining allegations of Paragraph 23.

24. Defendant Tax Services of America, Inc. ("TSA") is a Delaware corporation headquartered at 10 Exchange Place, 27th Floor, Jersey City, New Jersey 07302. TSA is a wholly-owned subsidiary of JHI. In 1999, Jackson Hewitt formed TSA by contributing a majority of its

company-owned locations to TSA. During the Class Period, TSA directly operated Jackson Hewitt's company-owned locations nationwide, which currently make up approximately 20% of all Jackson Hewitt locations. TSA directly participated in the unlawful anticompetitive conspiracy alleged herein, including by carrying out its terms and committing other overt acts in furtherance of the Conspiracy. JHI derives substantial income from the operations of TSA.

ANSWER: In response to Paragraph 24, Defendants admit that TSA is a Delaware corporation headquartered at 10 Exchange Place, 27th Floor, Jersey City, New Jersey 07302 and is a wholly-owned subsidiary of JHI. Defendants admit that TSA operates approximately 1,800 Jackson Hewitt tax preparation offices at various locations in the United States. Defendants deny the remaining allegations of Paragraph 24.

25. Defendant Jackson Hewitt, Inc., and Defendant Tax Services of America, Inc. together are referred to herein as Jackson Hewitt.

ANSWER: The statements in Paragraph 25 are not factual allegations and require no response from Defendants. To the extent that a response is required, Defendants deny the allegations of Paragraph 25.

26. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this lawsuit and the identities of which are presently unknown, including Jackson Hewitt franchisees, as well as direct and indirect subsidiaries of Defendant Jackson Hewitt, Inc. that operate company- owned stores, have participated as co-conspirators with the Defendants in the offenses alleged in this Complaint, and have performed acts and made statements in furtherance of the Conspiracy, or in furtherance of the anticompetitive conduct. Plaintiffs reserve the right to name some or all of these persons and entities at a later date.

ANSWER: To the extent that the allegations in Paragraph 26 do not relate to

Defendants, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations, and therefore Defendants deny those allegations. To the extent that the allegations in Paragraph 26 relate to Defendants, Defendants deny them.

27. Whenever this Complaint references any act, deed, or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation's or limited liability entity's business or affairs.

ANSWER: The statements in Paragraph 27 are not factual allegations and require no response from Defendants. To the extent that a response is required, Defendants deny the allegations of Paragraph 27.

28. Throughout the Class Period, Jackson Hewitt and co-conspirators employed Class members throughout the United States, including in this District.

ANSWER: To the extent that the allegations in Paragraph 28 do not relate to Defendants, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations, and therefore Defendants deny those allegations. To the extent that the allegations in Paragraph 28 relate to Defendants, Defendants admit that JHI and TSA employed individuals at various locations in the United States, including in this District. Defendants deny all remaining allegations of Paragraph 28.

29. Jackson Hewitt's conduct substantially affected interstate commerce, and caused antitrust injury, throughout the United States.

ANSWER: Defendants deny the allegations of Paragraph 29.

30. Doing business as Jackson Hewitt, Defendants collectively provide tax preparation

services to Americans seeking to file their income taxes with the federal government and their respective state governments. Through a network of approximately 6,000 locations nationwide, Jackson Hewitt is the second largest full-service tax preparation business in the United States with franchised and company-owned office locations. Jackson Hewitt Tax Services, Inc. and Jackson Hewitt, Inc. operates through a tightly controlled system of franchisees.

ANSWER: In response to Paragraph 30, Defendants admit that Jackson Hewitt-brand offices provide tax preparation services to Americans seeking to file their income taxes with the federal government and their respective state governments and that there are approximately 6,000 Jackson Hewitt-brand offices in the United States. Defendants deny the remaining allegations of Paragraph 30.

31. Jackson Hewitt was founded in 1982 by John Hewitt, a former Regional Manager of H&R Block, who started working for H&R Block in 1969. Hewitt, along with a group of investors, purchased the six-location Mel Jackson's Tax Service of Norfolk, Virginia in 1982 and renamed it Jackson Hewitt.

ANSWER: Defendants admit the allegations of Paragraph 31.

32. Jackson Hewitt began selling franchises in 1986 and rapidly expanded throughout the United States through its franchise program. Jackson Hewitt began contracting with the Montgomery Ward department store chain in 1989 to open offices in 169 of its store locations. By 1992, Jackson Hewitt became the second-largest tax preparation chain, behind H&R Block. Since then, Jackson Hewitt has opened locations in national retail chains including Wal-Mart, Sam's Club, Kmart, and Sears.

ANSWER: Defendants admit the allegations of Paragraph 32.

33. In 1999, Jackson Hewitt formed TSA to own and operate a majority of its company-

owned locations. Of Jackson Hewitt's franchisees, TSA is the largest, directly operating approximately 20% of the locations operating under the name "Jackson Hewitt," while the rest of the locations are run by non-owned franchisees.

ANSWER: Defendants deny the allegations of Paragraph 33.

34. By no later than 2000, Jackson Hewitt's standard franchise agreement, entered into between Jackson Hewitt and each and every franchisee nationwide, contained the No-Poach Clause, an express provision restricting the soliciting, recruiting, and hiring of certain employees by and between franchisees and company-owned locations.

ANSWER: In response to Paragraph 34, because Plaintiffs do not attach or identify what they contend is "Jackson Hewitt's standard franchise agreement," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations. Defendants further deny that JHI entered any franchise agreement that restricted franchisees from soliciting, recruiting, or hiring employees of other franchisees. Defendants deny the remaining allegations of Paragraph 34.

35. Jackson Hewitt filed for Chapter 11 bankruptcy on May 24, 2011. The United States Bankruptcy Court for the District of Delaware approved Jackson Hewitt's Amended Joint Prepackaged Plan of Reorganization on August 9, 2011.

ANSWER: Defendants admit the allegations of Paragraph 35.

36. During the Class Period, Jackson Hewitt's standard franchise agreement, entered into between Jackson Hewitt and each and every franchisee nationwide, also contained the No-Poach Penalty, an express provision that punishes and discourages violations of the No-Poach Clause by assessing a heavy monetary penalty for each violation of the No-Poach Clause.

ANSWER: In response to Paragraph 36, because Plaintiffs do not attach or identify

what they contend is "Jackson Hewitt's standard franchise agreement," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations. Defendants further deny that JHI entered any franchise agreement that contains the provision Plaintiffs have described as a "No-Poach Penalty." Defendants deny the remaining allegations of Paragraph 36.

37. As stated in its 2018 Franchise Disclosure Document ("FDD"), Jackson Hewitt's total revenues for fiscal year 2018 were about $244.5 million.

ANSWER: In response to Paragraph 37, Defendants state that the "2018 Franchise Disclosure Document" speaks for itself and that the allegations of Paragraph 37 are denied to the extent they are inconsistent with the language of that document.

38. At its peak, Jackson Hewitt had over 7,400 company-owned and franchise locations that prepared more than 3.4 million tax returns in a single tax season.

ANSWER: In response to Paragraph 38, because Plaintiffs do not provide a time period or date for Jackson Hewitt's alleged "peak," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny the allegations therein.

39. Today, Jackson Hewitt has nearly 6,000 office locations in the United States, with approximately 1,900 corporate-owned offices and 3,800 franchise offices. About half of all Jackson Hewitt offices are located inside Wal-Mart stores. There are both corporate-owned and franchise locations in virtually every state and the District of Columbia. Jackson Hewitt is, and has been throughout the Class period, the second-largest tax preparation firm in the United States.

ANSWER: In response to Paragraph 39, Defendants admits that there are nearly 6,000 Jackson Hewitt-brand offices at particular locations in the United States and of those offices,

approximately 3,900 are franchise offices and 1,800 are operated by TSA. Defendants admit that approximately half of all Jackson Hewitt-brand offices are located inside Wal-Mart stores. Defendants deny the remaining allegations in Paragraph 39.

40. Jackson Hewitt's major revenue sources include tax preparation fees and related services performed at corporate-owned tax offices, franchise royalties, sales of desktop tax preparation software, and fees from related services and products.

ANSWER: Defendants admit the allegations of Paragraph 40.

41. Jackson Hewitt holds itself out as an "industry leading provider of full-service individual, federal, and state income tax preparation with offices all across the country." https://www.jacksonhewitt.com/careers/ (last visited Dec. 14, 2018).

ANSWER: In response to Paragraph 41, Defendants admit that the quotation appears at the URL cited therein, but otherwise deny the allegations about them and deny that the out-of-context statements communicate the totality of the statement from which they are taken.

42. Jackson Hewitt states on its public website that it employs "over 25,000 Tax Pros who know taxes and tax reform inside and out." https://www.jacksonhewitt.com/ (last visited Dec. 14, 2018).

ANSWER: In response to Paragraph 42, Defendants deny that the quoted language appears on the webpage linked by the cited URL. To the extent that the quoted language appears elsewhere, Defendants deny the allegations about them and deny that the out-of-context statements communicate the totality of the statement from which they are taken.

43. Jackson Hewitt franchisees throughout the United States operate on standardized terms pursuant to a common franchise license agreement. They are competitors with Jackson Hewitt and with each other.

ANSWER: In response to Paragraph 43, because Plaintiffs do not attach or identify what they contend is the "common franchise license agreement," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations relating thereto, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 43.

44. Jackson Hewitt franchise offices operate as independent companies and separate economic entities from Jackson Hewitt.

ANSWER: The allegations of Paragraph 44 constitute legal conclusions, which Defendants are required neither to admit nor to deny. To the extent a response is required, Defendants deny the allegations of Paragraph 44.

45. Jackson Hewitt franchisees are independent contractors. Such franchisees independently own and operate their businesses. As stated in Jackson Hewitt's standard franchise agreement, Jackson Hewitt franchisees function in an "independent contractor" relationship with Jackson Hewitt Defendants.

ANSWER: In response to Paragraph 45, Defendants admit that Jackson Hewitt franchisees are independent contractors in relation to JHI as franchisor. Because Plaintiffs do not attach or identify what they contend is "Jackson Hewitt's standard franchise agreement," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations relating to the contents of that agreement, and therefore Defendants deny those allegations.

46. Jackson Hewitt makes clear in its standard franchise agreement to Jackson Hewitt franchisees, "[y]ou acknowledge that you are an independent contractor and that no principal-agent, partnership, employment, joint venture or fiduciary relation exists between you and us." In

fact, the standard franchise agreement specifically requires that franchisees hold themselves out as "independently owned and operated."

ANSWER: In response to Paragraph 46, because Plaintiffs do not attach or identify what they contend is the "standard franchise agreement to Jackson Hewitt franchisees," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations.

47. Jackson Hewitt further makes clear in its standard franchise agreement to Jackson Hewitt franchisees that, "[y]ou are not authorized to make any contract, warranty or representation, or incur any obligation on our behalf," and that "[t]his Agreement is solely a license to use our Marks in a tax return preparation business using our Operating System."

ANSWER: In response to Paragraph 47, because Plaintiffs do not attach or identify what they contend is the "standard franchise agreement to Jackson Hewitt franchisees," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations.

48. Moreover, Jackson Hewitt's standard franchise agreement states that its franchisees compete with each other and with Jackson Hewitt's company- owned locations. The franchise agreement expressly notifies franchisees that, "you may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control."

ANSWER: In response to Paragraph 48, because Plaintiffs do not attach or identify what they contend is "Jackson Hewitt's standard franchise agreement," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations.

49. Jackson Hewitt on the one hand, and the franchisees on the other, purport to make separate and independent decisions.

ANSWER: Defendants deny the allegations of Paragraph 49.

50. Jackson Hewitt's standard franchise agreement states that all decisions related to employment are to be made entirely and independently by each franchisee. Further, it states that employees of the franchisee are not employees of Jackson Hewitt:

> Since you are an independent contractor, you have the sole right to control all aspects of your relationships with your employees and prospective employees, including all decisions regarding hiring, firing, training, supervision, discipline, scheduling (including if you use any scheduling modules we provide to you) and compensation (paying wages and withholding and paying taxes) in respect of your employees…Neither you, nor your manager or your employees shall be considered or represented as our employees or agents.

ANSWER: In response to Paragraph 50, because Plaintiffs do not attach or identify what they contend is "Jackson Hewitt's standard franchise agreement," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations.

51. Thus, as Jackson Hewitt's standard franchise agreement and FDD makes clear, Jackson Hewitt franchise locations are intended to compete, and do compete, with each other as well as with Jackson Hewitt corporate-owned locations. Each franchisee independently owns and operates its franchise location(s) as such. Among other things, such franchisees possess and exercise sole and complete decision-making authority as to all employment-related decisions, including, but not limited to, recruitment, hiring, firing, advancement, promotion, staffing, compensation, conditions of employment, discipline, and other day-to-day management of employees.

ANSWER: In response to Paragraph 51, because Plaintiffs do not attach or identify what they contend is "Jackson Hewitt's standard franchise agreement," Defendants lack sufficient

knowledge or information to form a belief as to the truth of the allegations related thereto, and therefore Defendants deny those allegations. In further response to Paragraph 51, Defendants admit that franchisees independently own and operate their locations and that franchisees have sole and complete decision-making authority as to all employment-related decisions for their respective franchise locations, including recruitment, hiring, firing, advancement, promotion, staffing, compensation, conditions of employment, discipline and day-to-day management of employees. Defendants deny the remaining allegations of Paragraph 51.

52. But for the conspiracy, and the conduct of Jackson Hewitt and its co- conspirators in furtherance thereof, each Jackson Hewitt franchisee would have been free to make its own market decisions relating to recruitment, hiring, firing, advancement, promotion, staffing, wages, conditions of employment, discipline, and other day-to-day management of employees throughout the Class Period. But for the conspiracy, and the conduct of Jackson Hewitt and its co-conspirators in furtherance thereof, Jackson Hewitt franchisees would have competed with other Jackson Hewitt franchisees and with Jackson Hewitt itself for employees, and would have solicited, recruited, and hired employees from other Jackson Hewitt franchisees and from Jackson Hewitt corporate-owned locations throughout the Class Period.

ANSWER: Defendants deny the allegations of Paragraph 52.

53. Notwithstanding the provisions of the standard franchise agreement, including its definition of the franchisor-franchisee relationship as a competitive one, Jackson Hewitt and its franchisees have agreed not to compete with respect to recruiting, soliciting, and hiring of employees.

ANSWER: Defendants deny the allegations of Paragraph 53.

54. Beginning at least by December 20, 2014, and continuing through the present,

Jackson Hewitt, along with unnamed co-conspirators, carried out a scheme related to the solicitation, recruitment, and hiring of employees and potential employees, which included policies and agreements not to solicit, recruit, or hire each other's personnel without prior approval.

ANSWER: Defendants deny the allegations of Paragraph 54.

55. As alleged herein, the Conspiracy, including the anticompetitive No- Poach agreements, were between and among separate economic actors pursuing separate economic interests such that the agreements deprive the marketplace generally and the Class members in particular of the benefits of independent centers of decision making as well as the benefits of free and open competition.

ANSWER: Defendants deny the allegations of Paragraph 55.

56. In relation to and in furtherance of the Conspiracy, Jackson Hewitt and its franchisees entered into express contractual agreements forbidding competition for employees among franchisees and Jackson Hewitt's corporate- owned tax offices. In particular, the standard language in Jackson Hewitt's franchise agreements with all franchisees who executed franchise agreements during the Class Period includes an express No-Poach Clause that prohibits franchisees from soliciting, recruiting, or hiring employees of their competitors – other Jackson Hewitt franchisees and Jackson Hewitt and its affiliates.

ANSWER: In response to Paragraph 56, because Plaintiffs do not attach or identify what they contend is "the standard language in Jackson Hewitt's franchise agreements," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 56.

57. The standard franchise agreement between Jackson Hewitt and its franchisees

during the Class Period included a clause entitled "Covenant Against Recruiting or Hiring Our Employees" that states:

> During the Term and for a period of two (2) years [afterward]…neither you nor any of your Owners may, without our prior written permission … solicit, recruit, or hire….any of our or our Affiliates' employees whose duties with us or our Affiliates include(d) management of or over company-owned or franchised stores, franchisee training, tax preparation software writing or debugging, tax return processing, software writing or debugging, electronic filing of tax returns, tax return processing, processing support, ta return preparation, or tax return preparation advice or support.

ANSWER: In response to Paragraph 57, because Plaintiffs do not attach or identify what they contend is "the standard franchise agreement between Jackson Hewitt and its franchisees," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations.

58. This prohibition against soliciting, recruiting, or hiring such employees remains in effect for one year after the termination of their employment with Jackson Hewitt or its affiliates.

ANSWER: In response to Paragraph 58, because Plaintiffs refer back to Paragraph 57 and do not attach or identify what they contend is "the standard franchise agreement between Jackson Hewitt and its franchisees," purportedly containing the referenced provision, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations.

59. Moreover, beginning no later than 2015 and continuing through at least July 2018, the standard franchise agreement included a "Recruiting Fee" in connection with the No-Poach Clause. As described in the FDD, the fee was "300% of the annual salary of person recruited or hired." In "plain English," this fee applies:

> if you recruit or hire any person then employed, or who was employed within the immediately preceding 24 months by us, any of our Affiliates, or a Jackson Hewitt

franchise owner, or any of our or our Affiliates' officers or directors.

ANSWER: In response to Paragraph 59, because Plaintiffs do not attach or identify what they contend is "the standard franchise agreement," Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations relating to the contents of that agreement, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 59.

60. Duane Mora, Jackson Hewitt's Senior Vice President of Franchise Operations, admitted that Jackson Hewitt's No-Poach Penalty was intended to act as a "disincentive for new franchisees" to violate Jackson Hewitt's No-Poach Clause in order to "protect existing franchisees from having their best tax preparers hired away from them." Julie Bennett, *Switches at top for Jackson Hewitt*, May 23, 2017, available at https://www.franchisetimes.com/June-July-2017/Switches-at- top-for-Jackson-Hewitt/.

ANSWER: In response to Paragraph 60, Defendants admit that the quotations appear at the URL cited therein, but otherwise deny the allegations about them and deny that the out-of-context statements communicate the totality of the statement from which they are taken.

61. Accordingly, Jackson Hewitt has acknowledged that the No-Poach Clause and the No-Poach Penalty were in furtherance of the Conspiracy, which purpose and effect was to reduce and/or eliminate competition for employees between and among Jackson Hewitt Defendants and their co-conspirators and to suppress employee compensation.

ANSWER: Defendants deny the allegations of Paragraph 61.

62. The No-Poach agreements, including but not limited to the No-Poach Clause and the No-Poach Penalty, were not intended or limited to simply protecting Jackson Hewitt's investment in training its employees at corporate-owned offices. After all, the franchise offices' employees were required to meet the same training requirements. Indeed, the No-Poach Clause

and No-Poach Penalty were part of a larger No-Poach Culture wherein Jackson Hewitt stores, whether corporate or franchise, would not recruit, solicit, or hire employees from other Jackson Hewitt stores.

ANSWER: Defendants deny the allegations of Paragraph 62.

63. The restriction placed on franchisees from poaching employees from other franchisees further underscores the true purpose and value of the No-Poach Clause, the No-Poach Penalty, and surrounding policies to Jackson Hewitt: restricting competition for employees in the market and artificially suppressing wages among competing firms in a highly specialized sector.

ANSWER: Defendants deny the allegations of Paragraph 63.

64. While the No-Poach Clause and the No-Poach Penalty in the standard franchise license agreement ostensibly placed an obligation only upon franchisees, Jackson Hewitt operated under the same policy to effectuate and enforce the Conspiracy. The purpose and effect of this provision is to enforce and perpetuate the Conspiracy, in particular, by identifying, preventing, discouraging, and punishing violations of the anticompetitive agreements.

ANSWER: Defendants deny the allegations of Paragraph 64.

65. As the second largest provider of tax preparation services in the United States, Jackson Hewitt needs workers trained not only in tax preparation and assistance but also in Jackson Hewitt's System. The same is true for Jackson Hewitt franchisees.

ANSWER: Defendants deny the allegations of Paragraph 65.

66. At the height of the 2018 tax season, Jackson Hewitt's corporate and franchise owned locations employed over 25,000 individuals, including tax professionals, most of whom were seasonal.

ANSWER: In response to Paragraph 66, Defendants lack sufficient knowledge or

information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations.

67. Due to the seasonal nature of tax preparation and related services, Jackson Hewitt and its franchisees recruit and hire a large number of new or returning employees every year. As Jackson Hewitt highlights in its 2010 Form 10- K disclosure to the Securities and Exchange Commission, "[w]e generate substantially all our revenues during the period from January 1 through April 30," which "presents a number of operational challenges for us and our franchisees" such as the ability to maintain "flexible staffing" to meet its seasonal staffing needs "because the number of employees at our network's offices during the peak of the tax season is exponentially higher than at any other time[.]"

ANSWER: In response to Paragraph 67, Defendants admit that the quotations in Paragraph 67 appear in Jackson Hewitt Tax Service, Inc.'s 2010 Form 10-K, but otherwise deny the allegations about them and deny that the out-of-context statements communicate the totality of the statement from which they are taken.

68. Jackson Hewitt's 10-K further underscores the importance of recruiting and hiring large numbers of qualified tax preparers each tax season in disclosing that, if "we were to experience significant business interruptions during the tax season, which may be caused by labor shortages" or other significant events, "we could experience a loss of business, which could have a material adverse effect on our business, financial condition and results ofoperations."

ANSWER: In response to Paragraph 68, Defendants admit that the quotations in Paragraph 68 appear Jackson Hewitt Tax Service, Inc.'s 2010 Form 10-K, but otherwise deny the allegations about them and deny that the out-of-context statements communicate the totality of the statement from which they are taken.

69. Moreover, Jackson Hewitt states that its "[a]ctual results may differ materially from those contemplated (expressed or implied) by [its] forward-looking statements" in its 10-K due to "potential risks and uncertainties" such as "our ability to successfully attract and retain key personnel," and that "[c]ompetition for executive, managerial and skilled personnel in our industry remains intense."

ANSWER: In response to Paragraph 69 Defendants admit that the quotations in Paragraph 69 appear in Jackson Hewitt Tax Service, Inc.'s 2010 Form 10-K, but otherwise deny the allegations about them and deny that the out-of-context statements communicate the totality of the statement from which they are taken.

70. As Jackson Hewitt recognized in its Form 10-K filing, the regular need each tax season for qualified tax preparation workers would otherwise lead to healthy competition between Jackson Hewitt, its franchise locations, and other companies providing tax preparation services, and thus, higher wages, benefits, compensation, and other terms of employment. Instead, as part of its efforts to avoid "significant business interruptions during the tax season, which may be caused by labor shortages," in a labor market with "intense" competition, Jackson Hewitt conspired with its franchisees and other co-conspirators to restrict employee mobility and competition in the market, with the purpose and effect of reducing and restricting mobility and limiting and reducing wages, benefits, compensation, and other terms of employment.

ANSWER: In response to Paragraph 70, Defendants admit that there is a need each tax season for tax preparation employees. Defendants deny the remaining allegations of Paragraph 70.

71. To qualify for employment at Jackson Hewitt or its franchisees, each tax professional, as defined herein, must complete the entry level tax course, the Jackson Hewitt Basic

Tax Preparation Course, or demonstrate equivalent knowledge by passing an internal exam.

ANSWER: In response to Paragraph 71, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation regarding the requirements for employment at Jackson Hewitt franchise locations, and therefore Defendants deny this allegation. Defendants deny the remaining allegations of Paragraph 71.

72. Jackson Hewitt's Basic Tax Preparation Course takes approximately 70 hours to complete.

ANSWER: Defendants deny the allegations of Paragraph 72.

73. Upon completion, tax professionals obtain a Jackson Hewitt Certification. This Certification is a prerequisite for most, if not all, tax preparation jobs at Jackson Hewitt corporate or franchise locations.

ANSWER: In response to Paragraph 73, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation regarding the requirements for employment at Jackson Hewitt franchise locations, and therefore Defendants deny this allegation. Defendants deny the remaining allegations of Paragraph 73.

74. Jackson Hewitt and its franchisees require tax professionals to pass their internal exam every year.

ANSWER: In response to Paragraph 74, Defendants admit that tax professionals employed at TSA locations and franchisee locations are required to pass an internal exam every year prior to gaining access to ProFiler and preparing tax returns. Defendants deny the remaining allegations of Paragraph 74.

75. While Jackson Hewitt's Basic Tax Preparation Course covers general basic tax preparation skills, enrollees spend significant time learning skills specific to employment at

Jackson Hewitt and its franchisees. For example, tax professionals at Jackson Hewitt must master working with ProFiler, Jackson Hewitt's proprietary interview-based tax preparation software. Because ProFiler is interview-based, it is designed and intended to be used by tax professionals servicing clients rather than by an individual preparing his/her own tax returns. And, because ProFiler is proprietary, it can be used only by Jackson Hewitt tax professionals. Thus, the knowledge and skills associated with use of ProFiler is specific to employment as a tax professional at Jackson Hewitt.

ANSWER: In response to Paragraph 75, Defendants admit that ProFiler is proprietary, that it is interview-based, and that it is used by tax professionals at locations operated by TSA and by franchisees. Defendants deny the remaining allegations of Paragraph 75.

76. Tax professionals may further enroll in Intermediate and Advanced Tax Courses at Jackson Hewitt.

ANSWER: Defendants admit the allegations of Paragraph 76.

77. Jackson Hewitt's website makes clear that completion of Jackson Hewitt's 70-hour Basic Tax Preparation Course "is neither an offer nor a guarantee of employment" at Jackson Hewitt or its franchisees, and "[a]dditional training, experience or skills may be required" for employment at Jackson Hewitt or its franchisees.

ANSWER: In response to Paragraph 77, Defendants admit that the Jackson Hewitt website contains the quoted language, but otherwise deny the allegations about them and deny that the out-of-context statements communicate the totality of the statement from which they are taken.

78. Jackson Hewitt and its franchisees do not require tax professionals to have obtained degrees or general education levels. Rather, tax professionals must possess familiarity with Jackson Hewitt's products, services, and selling techniques and be able to "[p]resent[] the

Company's value proposition to clients concerning various company products and services and use[] prescribed selling techniques."

ANSWER: Defendants deny the allegations of Paragraph 78.

79. These Jackson Hewitt tax courses and certifications, as well as familiarity with Jackson Hewitt's products, services, and selling techniques, are the primary qualifications for open tax professional positions at corporate-owned and franchise offices.

ANSWER: In response to Paragraph 79, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation regarding the requirements for employment at Jackson Hewitt franchise locations, and therefore Defendants deny this allegation. Defendants deny the remaining allegations of Paragraph 79.

80. With limited educational qualifications apart from dozens of hours invested in Jackson Hewitt-courses and familiarity with Jackson Hewitt's products, services, and selling techniques, many tax professionals at Jackson Hewitt's corporate-owned and franchise locations are uniquely suited to working at Jackson Hewitt or one of its franchise locations. Thus, employees should generally be highly mobile between and among Jackson Hewitt's corporate-owned and franchise offices.

ANSWER: Defendants deny the allegations of Paragraph 80.

81. In the absence of Defendants' anticompetitive conduct, competition between and among Defendants and co-conspirators for Jackson Hewitt-trained workers in the highly specialized and technical tax preparation services industry, particularly within the Jackson Hewitt System, would be robust and would have increased and enhanced the workers' compensation and mobility.

ANSWER: Defendants deny the allegations of Paragraph 81.

82. In addition to the Jackson Hewitt courses, certifications, products, services, and selling techniques discussed above, all tax professionals at Jackson Hewitt and its franchisees must gain familiarity with Jackson Hewitt's proprietary Operating System.

ANSWER: Defendants deny the allegations of Paragraph 82.

83. Each Jackson Hewitt corporate and franchise location must operate in accordance with Jackson Hewitt's "plan and system for preparing, checking and electronically filing income tax returns using our software, accounting methods, merchandising, equipment selection, advertising, promotional techniques, personnel training and quality standards that feature the Marks (the 'Operating System')." The Jackson Hewitt Operating System includes the Jackson Hewitt Operating Standards, Marks Standards, and Technology Standards.

ANSWER: In response to Paragraph 83, because Plaintiffs do not attach or identify the document purportedly containing the quoted language in Paragraph 83, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore Defendants deny those allegations. Defendants admit that Jackson Hewitt franchisees are required to operate in accordance with the Jackson Hewitt Operating System, which includes the Jackson Hewitt Operating Standards, Marks Standards, and Technology Standards.

84. A Jackson Hewitt affiliate, Jackson Hewitt Technology Services LLC, provides various technology services specifically for the Jackson Hewitt Operating System.

ANSWER: In response to Paragraph 84, Defendants admit that Jackson Hewitt Technology Services LLC is an affiliate of JHI and that Jackson Hewitt Technology Services LLC provides various technology services for locations operated by TSA and by franchisees. Defendants deny the remaining allegations of Paragraph 84.

85. As a result of completing Jackson Hewitt tax courses, certifications, and internal

exams, and acquiring specialized knowledge as to the Jackson Hewitt proprietary Operating System, including Operating Standards, Marks Standards, and Technology Standards, as well as Jackson Hewitt's proprietary ProFiler tax return preparation software, employment with a non-Jackson Hewitt tax preparation company or business is not a reasonable substitute for the employees of Jackson Hewitt and its franchisees.

ANSWER: Defendants deny the allegations of Paragraph 85.

86. Defendants' Conspiracy has restricted and reduced mobility between Jackson Hewitt corporate-owned and franchise locations.

ANSWER: Defendants deny the allegations of Paragraph 86.

87. The Conspiracy restricted employees' mobility by decreasing the pool of potential employers and eliminating competition. This, in turn, has led to suppressed wages, compensation, and other benefits, compounded over the long term of the Conspiracy.

ANSWER: Defendants deny the allegations of Paragraph 87.

88. The Conspiracy and its harmful effects were not limited to tax professionals but extended to managers, executives, and other employees of Defendants.

ANSWER: Defendants deny the allegations of Paragraph 88.

89. Jackson Hewitt and franchisee employees have roles in tax preparation, customer service, and administrative or management positions. For each of these roles, employees of Jackson Hewitt and its franchisees are paid below the national salary for similar job titles.

ANSWER: Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 89, and therefore Defendants deny the allegations therein.

90. For example, Jackson Hewitt Senior Tax Preparers have an average base pay of approximately $11.00 per hour, which annualizes to a yearly salary of $22,963, while the national

mean annual salary for a senior tax preparer is $76,795. Jackson Hewitt Tax Preparers reportedly earn approximately $10.90 per hour, which annualizes to $22,714, while the national mean annual salary for tax preparers is $28,205.

ANSWER: Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 90, and therefore Defendants deny the allegations therein.

91. Figure 1 below shows approximate average earnings at Jackson Hewitt compared to national figures for comparable positions.

ANSWER: Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 91, and therefore Defendants deny the allegations therein.

92. But for the Conspiracy, employee compensation at Jackson Hewitt corporate-owned and franchise offices would be significantly higher.

ANSWER: Defendants deny the allegations of Paragraph 92.

93. On or about July 9, 2018, the Attorneys General of ten states and of the District of Columbia announced an investigation into the anticompetitive hiring and recruiting practices and procedures used by several large franchise companies, and stated that:

> [W]e are concerned about the use of No Poach Agreements among franchisees and the harmful impact that such agreements may have on employees in our States and our state economies generally. By limiting potential job opportunities, these agreements may restrict employees' ability to improve their earning potential and the economic security of their families. These provisions also deprive other franchisees of the opportunity to benefit from the skills of workers covered by a No PoachAgreement whom they would otherwise wish to hire. When taken in the aggregate and replicated across our States, the economic consequences of these restrictions may be significant.

ANSWER: Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 93, and therefore Defendants deny the allegations therein.

94. On or around December 20, 2018, Jackson Hewitt entered into an Assurance of

Discontinuance with the State of Washington through its Attorney General. In particular, Defendant Jackson Hewitt, Inc. agreed, among other things, to remove the No-Poach Clause from its franchise agreement going forward and to cease enforcement of the No-Poach Clause.

ANSWER: In response to Paragraph 94, Defendants admit that JHI entered an Assurance of Discontinuance with the State of Washington through its Attorney General on or about December 20, 2018 and that the terms of the Assurance of Discontinuance speak for themselves. Defendants deny the remaining allegations of Paragraph 94 to the extent they are inconsistent with the terms of the Assurance of Discontinuance.

95. Despite the removal of the No-Poach Clause from Jackson Hewitt's franchise agreements, the Conspiracy and Jackson Hewitt's No-Poach Culture continues and the anticompetitive harms are ongoing.

ANSWER: Defendants deny the allegations of Paragraph 95.

96. The anticompetitive and unlawful acts alleged against Defendants were authorized, ordered or performed by Defendants and their respective directors, officers, agents, employees, or representatives, while actively engaged in the management, direction, or control of Defendants' businesses or affairs.

ANSWER: Defendants deny the allegations of Paragraph 96.

97. Individuals and/or entities not named as Defendants herein may have participated as co-conspirators in the violations alleged herein and may have performed acts and made statements in furtherance thereof.

ANSWER: Defendants deny the allegations of Paragraph 97.

98. Each Defendant acted as the principal, agent, or joint venturer of, or for other Defendants with respect to the acts, violations, and common course of conduct alleged herein. The

agency relationships formed among the Defendants with respect to the acts, violations, and common course of conduct alleged herein were consensually formed between the Defendant principals and agents.

ANSWER: Defendants deny the allegations of Paragraph 98.

99. Accordingly, the Defendant principals are liable for the acts of their agents. Likewise, the Defendant agents are liable for the acts of their principals conducted by the agents within the scope of their explicit, implied, or apparent authority.

ANSWER: Defendants deny the allegations of Paragraph 99.

100. Plaintiffs bring this action on behalf of themselves and all others similarly situated (the "Class"), pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). The Class is defined as follows:

> All persons who worked at any Jackson Hewitt location in the United States, whether owned and operated by Jackson Hewitt or by its franchisee, at any time between December 20, 2014, and the present.

The "United States" includes all fifty states, the District of Columbia, and all U.S. territories.

ANSWER: In response to Paragraph 100, Defendants admit that Plaintiffs purport to bring claims against Defendants on behalf of a putative class. However, Defendants deny that Plaintiffs' allegations are sufficient to plead a plausible class.

101. Excluded from the Class are senior executives and personnel in the human resources and recruiting departments of the Defendants or co-conspirators and their wholly owned subsidiaries, as well as personnel hired outside of the United States to work outside of the United States.

ANSWER: In response to Paragraph 101, Defendants admit that Plaintiffs purports to exclude certain persons from the alleged class, but deny any valid basis for the alleged class, and

deny the remaining allegations of Paragraph 101.

102. Plaintiffs do not yet know the exact size of the Class because such information is in the exclusive control of Defendants and the co-conspirators, but, based upon the nature of trade and commerce involved, as well as the scope and duration of the Conspiracy, Plaintiffs believe that there are at least thousands of Class members, and that Class members are geographically dispersed throughout the United States. Therefore, joinder of all members of the Class is not practicable.

ANSWER: Defendants deny the allegations of Paragraph 102.

103. The questions of law or fact common to the Class include, but are not limited to:

a. whether the Conspiracy violated the Sherman Act;
b. whether the Conspiracy and associated agreements, or any one of them, constitute a *per se* violation of the Sherman Act;
c. whether the Conspiracy and associated agreements restrained trade, commerce, or competition for labor;
d. whether Plaintiffs and the Class suffered antitrust injury or were threatened with injury; and
e. the type and measure of damages suffered by Plaintiffs and the Class.

ANSWER: Defendants deny the allegations of Paragraph 103.

104. These and other questions of law and fact are common to the Class, and predominate over any questions affecting only individual Class members.

ANSWER: Defendants deny the allegations of Paragraph 104.

105. Plaintiffs' claims are typical of the claims of the Class.

ANSWER: Defendants deny the allegations of Paragraph 105.

106. Plaintiffs will fairly and adequately represent the interests of the Class and have no conflict with the interests of the Class.

ANSWER: Defendants deny the allegations of Paragraph 106.

107. Plaintiffs have retained competent counsel experienced in antitrust litigation, and specifically with respect to antitrust litigation involving agreements regarding hiring, recruiting, no-poach agreements, and Class action litigation to represent themselves and the Class.

ANSWER: Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 107, and therefore Defendants deny the allegations therein.

108. Defendants and the co-conspirators have acted on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

ANSWER: Defendants deny the allegations of Paragraph 108.

109. This Class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy. Prosecution as a Class action will eliminate the possibility of repetitive litigation. There will be no material difficulty in the management of this action as a Class action. By contrast, prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

ANSWER: Defendants deny the allegations of Paragraph 109.

110. The Conspiracy substantially reduced competition for labor. Defendants and the co-conspirators entered into, implemented, and policed these agreements with the knowledge of the overall Conspiracy, and did so with the intent and effect of fixing, retraining, and stabilizing the compensation paid to their personnel at artificially low levels.

ANSWER: Defendants deny the allegations of Paragraph 110.

111. The harm not only reached individuals who sought to change their employment from one franchise or corporate office location to another, but also extended to those who had no intention of changing from one franchise or corporate office location to another, due to, *inter alia*,

the companies' efforts to maintain internal equity in their compensation structures, as well as the reduction of transparency.

ANSWER: Defendants deny the allegations of Paragraph 111.

112. While the Conspiracy constitutes a *per se* violation of the Sherman Act, Defendants and unnamed co-conspirators also exploited their collective market power in the relevant market, which is the labor market for employees and potential employees of Jackson Hewitt and its franchises, as defined herein, in the United States.

ANSWER: Defendants deny the allegations of Paragraph 112.

113. Through their Conspiracy, Defendants exercised and maintained this power, and did in fact suppress wages, benefits, and other aspects of compensation and eliminate competition.

ANSWER: Defendants deny the allegations of Paragraph 113.

114. The Conspiracy and the conduct of Defendants and their agents and co-conspirators in furtherance thereof did not have procompetitive effects and were not intended to have procompetitive effects.

ANSWER: Defendants deny the allegations of Paragraph 114.

115. In the alternative, any procompetitive effects that may have resulted from the Conspiracy and/or the conduct of Defendants and their agents and co- conspirators in furtherance thereof were and are substantially outweighed by the anticompetitive harm alleged herein, including, but not limited to, restricting employee mobility and suppressing wages, benefits, and other aspects of compensation.

ANSWER: Defendants deny the allegations of Paragraph 115.

116. Defendants are also liable under a "quick look" analysis where one with even a rudimentary understanding of economics could conclude that the arrangements and agreements

alleged would have an anticompetitive effect on Class members and markets.

ANSWER: Defendants deny the allegations of Paragraph 116.

117. Plaintiffs incorporate and re-allege each allegation set forth in the preceding paragraphs of this Complaint, and further allege the following:

ANSWER: Answering Paragraph 117, Defendants incorporate their responses to Paragraphs 1 through 116 above as if full set forth herein.

118. Beginning no later than December 20, 2014, and continuing to the present, Defendants entered into and engaged in unlawful agreements in restraint of trade and commerce, in violation of Sections 1 and 3 of the Sherman Act,15 U.S.C. §§ 1, 3.

ANSWER: Defendants deny the allegations of Paragraph 118.

119. Defendants' agreements have included concerted actions and undertakings among themselves and their co-conspirators with the purpose and effect of: (a) fixing, reducing, and stabilizing the wages, benefits and other aspects of compensation of Plaintiffs and the Class at artificially low levels; and (b) eliminating, to a substantial degree, competition among Defendants and their co- conspirators for labor.

ANSWER: Defendants deny the allegations of Paragraph 119.

120. As a direct and proximate result of Defendants' combinations and contracts to restrain trade and eliminate competition for labor, members of the Class have suffered injury and have been deprived of the benefits of free and fair competition on themerits.

ANSWER: Defendants deny the allegations of Paragraph 120.

121. The unlawful agreements among Defendants and their co-conspirators have had the following effects, among others:

a. competition among Defendants and their franchisees for labor has been suppressed, restrained, and eliminated; and

b. Plaintiffs and Class members have received lower compensation from Defendants and franchisees than they otherwise would have received in the absence of the Conspiracy and, as a result, have been injured in their property and have suffered damages in an amount subject to proof at trial.

ANSWER: Defendants deny the allegations of Paragraph 121.

122. The acts done by each Defendant as part of, and in furtherance of, their contracts, combinations, and/or conspiracies were authorized, ordered, or committed by their respective officers, directors, agents, employees, or representatives while actively engaged in the management of each Defendant's affairs.

ANSWER: Defendants deny the allegations of Paragraph 122.

123. Defendants' contracts, combinations, and/or conspiracies are *per se* violations of Sections 1 and 3 of the Sherman Act.

ANSWER: Defendants deny the allegations of Paragraph 123.

124. Accordingly, Plaintiffs and Class members are entitled to three times their damages caused by Defendants' violations of Sections 1 and 3 of the Sherman Act, as well as the costs of bringing suit, reasonable attorneys' fees, and a permanent injunction prohibiting Defendants from ever again entering into similar agreements in violation of the antitrust laws.

ANSWER: Defendants deny the allegations of Paragraph 124.

125. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and the Class, demands a jury trial as to all issues triable by a jury.

ANSWER: The statements in Paragraph 125 are not factual allegations and require no response from Defendants. To the extent that a response is required, Defendants deny the allegations of Paragraph 125.

126. WHEREFORE, Plaintiffs pray that this Court enter judgment on their behalf and that of the Class by adjudging and decreeing that:

a. This action may be maintained as a Class action, with Plaintiffs as the designated Class representatives and their counsel as Class counsel;
b. Defendants have engaged in a trust, contract, combination, or conspiracy in violation of Sections 1 and 3 of the Sherman Act, and that Plaintiffs and the Class members have been damaged and injured in their business and property as a result of this violation;
c. The alleged combinations and Conspiracy are *per se* violations of the Sherman Act;
d. Defendants are enjoined from attempting to enter into, entering into, maintaining, or enforcing any no-poach agreement, or other illegal anticompetitive agreement or understanding, as alleged herein;
e. Judgment be entered for Plaintiffs and Class members, and against Defendants, for three times the amount of damages sustained by Plaintiffs and the Class, as allowed by law;
f. Plaintiffs and the Class recover pre-judgment and post-judgment interest as permitted by law;
g. Plaintiffs and the Class recover their costs of suit, including attorneys' fees, as provided by law; and
h. Plaintiffs and the Class are entitled to such other and further relief as is just and proper under the circumstances.

ANSWER: The WHEREFORE clause in Paragraph 126 requires no response from Defendants, but Defendants deny that Plaintiffs are entitled to the relief sought.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The claims of the members of the putative classes are barred by the applicable statutes of limitations to the extent they accrued prior to December 20, 2014, as previously decided by the Court in its Order dated October 31, 2019. *See* Document Nos. 74 (dismissing claims that allegedly accrued prior to December 20, 2014) and 114 (affirming by joint stipulation that claims that allegedly accrued prior to December 20, 2014 are barred).

Third Affirmative Defense

The claims of Plaintiffs and the members of the putative classes are barred, in whole or in part, by the doctrine of laches, waiver, unclean hands, and/or estoppel. Upon information and belief, Plaintiffs and the putative class members were aware of their wages, the alleged hiring practices, and the alleged franchise agreement provisions. Yet, Plaintiffs and the putative class failed to file suit until well after they learned of the hiring practices and alleged franchise agreement provisions. This delay prejudiced Defendants.

Fourth Affirmative Defense

The claims of Plaintiffs and the members of the putative classes are barred, in whole or in part, due to settlement and release. Upon information and belief, members of the putative class may have executed a settlement and release of the claims asserted in the Complaint. Upon information and belief, the terms of those settlements and releases bar, in whole or in part, the claims asserted in the Complaint.

Fifth Affirmative Defense

The claims of Plaintiffs and the members of the putative classes are barred, in whole or in part, because Defendants were not participants in the alleged conspiracy. Defendants had no intent to agree to restrain competition. Instead, Defendants engaged in conduct inconsistent with the purpose of the alleged conspiracy, including, but not limited to, not enforcing or otherwise maintaining use of the alleged "No-Poach" provision. Defendants also compensated their employees in a manner that promoted wage-based and other forms of competition in the properly defined labor markets.

Sixth Affirmative Defense

The claims of Plaintiffs and the members of the putative classes are barred, in whole or in part, because Plaintiffs and the putative class failed to mitigate their alleged damages at or within a reasonable time after the occurrence of the purported violations alleged in the Complaint.

Seventh Affirmative Defense

The relief sought by Plaintiffs and the putative class—including compensatory damages, treble damages, attorneys' fees and expenses—is grossly excessive, inequitable, punitive, duplicative, and arbitrary so as to violate the Due Process Clauses of the Fifth and Fourteenth Amendments and the Eighth Amendment of the United States Constitution.

Eighth Affirmative Defense

Plaintiffs and the putative class members lack standing to bring the present claims because they have not suffered any injury-in-fact.

Ninth Affirmative Defense

The claims of Plaintiffs and the members of the putative class are barred, in whole or in part, because recovery on such claims would result in unjust enrichment to Plaintiffs and/or the members of the putative class.

Tenth Affirmative Defense

The claims of Plaintiffs and the members of the putative class are barred, in whole or in part, because any injuries or damages incurred by the Plaintiffs and/or the members of the putative class were caused solely or proximately by the acts and omissions of others.

Eleventh Affirmative Defense

The claims of Plaintiffs and the members of the putative class for injunctive relief are barred, in whole or in part, because prior to the filing of the Complaint, Defendants had either not engaged in the conduct or ceased any conduct that is within the scope of the injunctive relief sought in the Complaint.

Twelfth Affirmative Defense

The claims of Plaintiffs may not properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure because they have failed to plead sufficiently the prerequisites for a class action, including failing to plead sufficiently numerosity, commonality, typicality, adequacy, and predominance, among others.

Thirteenth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, because the named Plaintiffs are not proper class representatives.

Fourteenth Affirmative Defense

Defendants have insufficient knowledge or information upon which to form a basis as to whether they may have additional, as yet unstated, separate defenses available. Defendants reserve the right to amend this Answer to add, delete, or modify defenses based upon legal theories that may be or will be divulged through clarification of the Complaint, through discovery, or through further legal analysis of Plaintiffs' position in this litigation.

WHEREFORE, Defendants respectfully request that this Court enter judgment against Plaintiffs as follows:

1. For the dismissal of all claims contained in Complaint on the merits and with prejudice;

2. Denying Plaintiffs' request for injunctive relief and for certification of this matter as a class action;

3. For an award of Defendants' costs and reasonable attorneys' fees for defending against the action; and

4. For such other relief as the Court deems just and equitable.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I, James S. Coons, Esquire, certify that to my knowledge, the matter in controversy is not subject to any action or arbitration pending or presently contemplated. I have no knowledge, at this time, of any other parties who should be joined in this action.

Dated: November 15, 2021

/s/ James S. Coons

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2021, a copy of the foregoing document was filed electronically on the Court's Electronic Case Filing (ECF) system. A Notice of Electronic Filing (NEF) will be sent by operation of the Court's ECF system to the filing party, the assigned Judge, and any registered user in the case as indicated on the NEF.

/s/ James S. Coons
James S. Coons