

money and other consideration owed to Brinker for the harm it suffered from the conduct alleged in the Broiler Chicken Litigation.

2. The defendants in the Broiler Chicken Litigation are largely suppliers of broiler chicken, and are hereinafter referred to as the “Broiler Defendants.” The basic allegation in the Broiler Chicken Litigation is that the Broiler Defendants conspired to raise the price of chicken by agreeing to restrict supply, manipulate price indices, and fix bids, among other conduct. The claims at issue in the Broiler Chicken Litigation—including those which USF and SGA are currently pursuing in violation of Brinker’s rights—are mostly, but not exclusively, antitrust claims.

3. Most food service distribution contracts are designed to be cost-plus contracts whereby prices are negotiated and set between the restaurants—like those operated by Brinker—and their suppliers. Distributors—like USF and SGA—are then typically compensated by a flat fee or percentage for their logistical services. Distributors have no role in negotiating bids, prices, product specifications, or contracts with suppliers and, with the exception of the flat fee or percentage that serves as the “plus,” are usually prohibited by contract from accepting any form of compensation from suppliers that is not expressly disclosed to and approved by the restaurant. This ensures that both the agreed-upon pricing and any benefits provided by the supplier are passed through to the restaurant retaining the distributor’s services.

4. One significant reason why distributors are now required to pass through such benefits and are prohibited by contract from accepting monies or compensation from suppliers without approval is the long history of abuses that permeated the industry in the past, whereby distributors attempted to generate or capture such monies from suppliers as “hidden” or “sheltered” income. These abuses resulted in widespread litigation against foodservice distributors, including

high-profile cases against the Fleming Companies in the 1990s and USF in the 2000s, amongst others. Indeed, the scheme employed here by USF and SGA seemingly represents the latest variation on practices used to generate “hidden” or “sheltered” income, which, for USF, previously resulted in one of the largest civil RICO class action settlements in history at \$297 million.

5. As is the case with most distributor agreements in the restaurant industry, Brinker’s distribution agreements with USF, SGA, and others are specifically designed to prevent this type of abuse. They expressly provide that the distributor’s only compensation for services rendered is the agreed-upon “plus” and prohibit the distributor from accepting any other unapproved benefit or compensation from suppliers or from seeking or recovering any type of compensation from suppliers as a result of the overcharges or otherwise. Indeed, pursuant to the terms of the distribution agreements, the distributor is prohibited from accepting or receiving any rebate or concession for the overcharges caused by the supplier. The distribution agreements specifically state that the distributor “shall pass through” any benefit received from the supplier that relates to Brinker’s purchases.

6. Brinker’s distribution agreements further contemplate what happens with respect to any legal claims against Brinker’s suppliers. In the event there is any doubt about who had either standing or the right to assert legal claims against Brinker’s suppliers, Brinker’s distribution agreements mandate that the distributor must assign any claims to Brinker upon request and require that the distributor cooperate with Brinker in the prosecution of its claims.

7. As one of the world’s leading casual dining restaurant companies, with restaurants including Chili’s and Maggiano’s Little Italy among others, Brinker has been significantly harmed by the antitrust conspiracy perpetrated by the Broiler Defendants. Indeed, during the relevant time period alleged in the Broiler Chicken Litigation, Brinker purchased significantly more than \$1

billion worth of broiler chickens from the Broiler Defendants for use in its restaurants. Even a small overcharge caused by the alleged conspiracy would result in significant damage to Brinker when applied to its volume of purchases. For that reason, almost all of Brinker's distributors have assigned their claims to and are cooperating with Brinker to ensure that it will be made whole for the damage caused by the Broiler Defendants.

8. Unlike Brinker's other distributors, USF and SGA have refused to honor their contractual commitments and have instead attempted to litigate Brinker's claims in the Broiler Chicken Litigation for their own benefit.

9. By improperly acting as the owners of Brinker's antitrust claims in the Broiler Chicken Litigation, USF and SGA have attempted to generate an undeserved windfall for themselves, even though neither has suffered any harm with respect to purchases made by Brinker. This conduct is especially egregious in light of USF's history and at a time when the restaurant industry continues to suffer from the crippling effects of a global pandemic.

DISCOVERY CONTROL PLAN

10. Plaintiffs intend that discovery be conducted under Discovery Level 3 in accordance with Texas Rule of Civil Procedure 190.4 and request that the court enter a discovery control plan order tailored to the circumstances of this suit.

PARTIES

11. Plaintiff Brinker International, Inc. is a Delaware corporation with its principal place of business in Dallas, Texas. It may be served in this matter through its counsel Eric R. Hail, Hunton Andrews Kurth LLP, 1445 Ross Ave., Ste. 2900, Dallas, Texas, 75202.

12. Plaintiff Brinker International Payroll Company, L.P. is a Delaware limited partnership and subsidiary of Brinker International, Inc. It may be served in this matter through

its counsel Eric R. Hail, Hunton Andrews Kurth LLP, 1445 Ross Ave., Ste. 2900, Dallas, Texas, 75202.

13. Defendant USF is a Delaware corporation with its principal place of business in Rosemont, Illinois. USF may be served through its registered agent in Texas, Corporation Service Company d/b/a CSC-Lawyers Inc., 211 E. 7th Street Suite 620, Austin, Texas, 78701.

14. Defendant SGA is a Delaware corporation with its principal place of business in Scottsdale, Arizona. SGA may be served through the Texas Secretary of State at the address Service of Process, Secretary of State, James E. Rudder Building 1019 Brazos, Room 105, Austin, Texas 78701, as it has failed to appoint or maintain a registered agent in this state.

T.R.C.P. 47 STATEMENT OF RELIEF SOUGHT

15. Plaintiffs seek monetary relief in excess of \$1 million against Defendants; a declaratory judgment declaring that SSA's assignment of the antitrust claims in the Broiler Chicken Litigation that relate to Brinker's purchases from the Broiler Defendants was not valid and is null and void pursuant to the terms of one or both of the Distribution Agreements; and all other relief requested herein and to which Plaintiffs are entitled.

JURISDICTION AND VENUE

16. The subject matter in controversy is within the jurisdictional limits of this court, as this suit is a civil matter in which the amount in controversy exceeds \$500, exclusive of interest. Jurisdiction also exists because this action is brought pursuant to Chapter 37 of the Texas Uniform Declaratory Judgments Act.

17. This Court has personal jurisdiction pursuant to Tex. Civ. Prac. & Rem. § 17.042 over USF and SGA because the Defendants contracted and transacted business with Brinker in

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