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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11
12 INTERNATIONAL FRANCHISE)
13 ASSOCIATION, INC.; CHARLES)
14 STEMLER; KATHERINE LYONS;)
15 MARK LYONS; MICHAEL PARK; and)
16 RONALD OH,)

17 *Plaintiffs,*)

18 v.)

19 CITY OF SEATTLE, a municipal)
20 corporation; and FRED PODESTA,)
21 Director of the Department of Finance)
22 and Administrative Services,)

23 *Defendants.*)
24)
25)
26)
27)
28)
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30)
31)
32)

No.

COMPLAINT

Plaintiffs, the International Franchise Association, Inc., Charles Stempler, Katherine Lyons, Mark Lyons, Michael Park, and Ronald Oh, by and through their undersigned counsel, hereby allege as follows:

INTRODUCTION

1. This is a civil action for declaratory, injunctive, and other appropriate relief

COMPLAINT - 1

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1 challenging Seattle City Ordinance No. 124490 (“the Ordinance”). As explained herein, the
2 Ordinance violates the U.S. Constitution, the Washington State Constitution, federal statutes,
3 and state law. Accordingly, this Court should hold that the Ordinance is unlawful and prevent
4 it from taking effect.
5

6 2. The Ordinance raises Seattle’s minimum wage to the highest in the country. In
7 doing so, the Ordinance disfavors “large” employers—defined as those with more than 500
8 employees—over “small” employers—those with 500 or fewer employees. As just one
9 example, the Ordinance phases in a \$15.00 per hour minimum wage much faster for “large”
10 employers than for “small” employers. “Large” employers must start paying \$15.00 per hour
11 in 2017 whereas “small” employers must start doing so four years later, in 2021. The annual
12 minimum wage increases that start in 2015 are also greater for “large” employers than for
13 “small” employers.
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16 3. Plaintiffs bring this challenge because the Ordinance unfairly and irrationally
17 discriminates against interstate commerce generally, and small businesses that operate under
18 the franchise business model specifically. The Ordinance treats a small, independently owned
19 and operated franchisee as a “large” employer—no matter how few workers the small
20 franchisee actually employs in Seattle—if the franchisees in the relevant national franchise
21 network collectively employ more than 500 workers.
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24 4. Thus, under the Ordinance, a non-franchise business that has 500 employees is
25 treated as a “small” employer whereas a small franchisee with only 5 employees is treated as a
26 “large” employer if, as is usually the case, the franchisee is part of a network that employs
27 more than 500 workers. As a result, until as late as 2025, the Ordinance will impose
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1 jurisdiction over Plaintiffs' claims arising under the laws of the State of Washington because
2 those claims are so closely related to Plaintiffs' federal claims that they form part of the same
3 case or controversy for purposes of Article III of the U.S. Constitution. This Court may grant
4 declaratory and related relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a)
5 and 2202.
6

7
8 7. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2) because
9 the Defendants are located in this District, private property affected by the Ordinance is
10 situated in this District, and the events giving rise to Plaintiffs' claims occurred in this District.
11

12 **PARTIES**

13 8. Plaintiff the International Franchise Association, Inc. ("IFA") is a membership
14 organization of franchisors, franchisees, and suppliers. Founded in 1960, the IFA is the
15 world's oldest and largest organization representing the use of the franchise business model.
16 The IFA's membership includes more than 1,350 franchisor companies and more than 12,000
17 franchisees nationwide, including in Seattle. The IFA is incorporated under the laws of the
18 State of Illinois.
19

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21 9. Plaintiff Charles Stempler owns Alphaprint, Inc., which does business as
22 AlphaGraphics, a printing and marketing services business. AlphaGraphics operates pursuant
23 to a franchise agreement. Alphaprint, Inc. owns, and Mr. Stempler operates, six
24 AlphaGraphics business centers—two in Seattle, three elsewhere in Washington State, and one
25 in California. Mr. Stempler's six AlphaGraphics franchise locations employ a total of 90
26 employees. The two Seattle locations employ 69 employees in total. Although Mr. Stempler's
27 AlphaGraphics franchise locations employ far less than 500 employees, the AlphaGraphics
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1 franchise network with which it is associated collectively employs more than 500 employees
2 throughout the United States. The Ordinance therefore treats Mr. Stempler’s small business as
3 a large employer.
4

5 10. Plaintiffs Katherine Lyons and Mark Lyons own and operate BrightStar Care of
6 North Seattle (“BrightStar Care”), a small business that provides skilled and unskilled private
7 duty home care and home services in the City of Seattle and surrounding areas. BrightStar
8 Care operates pursuant to a franchise agreement. Mr. and Mrs. Lyons’ BrightStar Care
9 franchise is incorporated under the laws of the State of Washington as MKL Services LLC.
10 Their BrightStar Care franchise is located in the City of Seattle and employs 22 employees.
11 Although the BrightStar Care franchise owned and operated by Mr. and Mrs. Lyons employs
12 far less than 500 employees, the BrightStar Care franchise network with which it is associated
13 collectively employs more than 500 employees throughout the United States. The Ordinance
14 therefore treats Mr. and Mrs. Lyons’ small business as a large employer.
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19 11. Plaintiff Michael Park is the General Manager of a Comfort Inn hotel (“Comfort
20 Inn”) located in the City of Seattle. The Comfort Inn operates pursuant to a franchise
21 agreement. The Comfort Inn managed by Mr. Park is owned by SEP LLC, a corporation
22 incorporated under the laws of the State of Washington. Mr. Park is an owner of SEP LLC.
23 The Comfort Inn managed by Mr. Park employs 19 employees. Although the Comfort Inn
24 employs far less than 500 employees, the franchise network with which it is associated
25 collectively employs more than 500 employees throughout the United States. The Ordinance
26 therefore treats Mr. Park’s small business as a large employer. Mr. Park is the President of the
27 Korean American Hotel Owners Association of Washington (“KAHOA”).
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1 12. Plaintiff Ronald Oh is the General Manager of a Holiday Inn Express (“Holiday
2 Inn”) hotel located in the City of Seattle. The Holiday Inn operates pursuant to a franchise
3 agreement. The Holiday Inn managed by Mr. Oh is owned by Advance Holdings, LLC, a
4 corporation incorporated under the laws of the State of Washington. The Holiday Inn that Mr.
5 Oh manages is a family owned business and he has an ownership interest in it. The Holiday
6 Inn managed by Mr. Oh employs 28 employees. Although the Holiday Inn employs far less
7 than 500 employees, franchise network with which it is associated collectively employs more
8 than 500 employees throughout the United States. The Ordinance therefore treats Mr. Oh’s
9 small business as a large employer. Mr. Oh is a KAHOA member.
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12 13. The Plaintiffs, and the effect of the Ordinance on them, are further described
13 *infra* at paragraphs 60-122.
14
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16 14. Defendant the City of Seattle is a municipal corporation incorporated under the
17 laws of the State of Washington and located in King County, Washington. As a municipal
18 corporation, the City of Seattle may “be sued in its corporate capacity in all courts and in all
19 proceedings.” Wash. Rev. Code § 35.58.180.
20

21 15. Defendant Fred Podesta is the Director of the Department of Finance and
22 Administrative Service (“the Department”), an agency of the City of Seattle established under
23 Seattle Municipal Code § 3.39.010. The Department and its Director are responsible for
24 implementing and enforcing the Ordinance. Defendant Podesta is sued herein in his official
25 capacity as Director of the Department.
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2 **FACTUAL ALLEGATIONS**

3 The Franchise Business Model

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5 16. Franchisees are like other small business owners. Each franchisee is an
6 independently owned and operated business. Franchisees manage and operate all of the day-
7 to-day aspects of their business, including making their own human resource decisions on
8 which workers to hire, how many people to hire, the benefits they offer, and how much each of
9 them can afford to pay their staff—just like any other small independent business owner.
10

11
12 17. Franchisees independently invest in their businesses and pay the operating costs
13 of their businesses—as would any other small business owner—including but not limited to
14 rent, wages, taxes, and debt service. No other party shares in these small business obligations.
15

16 18. Franchisees are merely licensees of the franchisor’s brands and methods of
17 doing business and that is their sole difference from other independently owned small
18 businesses. As licensees, franchisees generally pay a continuing licensing fee for the use of the
19 franchisor’s brand and intellectual property, as well as certain services. Even though
20 franchisors share a common brand with their franchisees, franchisors are not owners of their
21 franchisee’s independent businesses and do not necessarily share in their profits or their losses.
22

23
24 19. Franchisors and franchisees are separate corporations. A franchisee is not the
25 employee of the franchisor. And the employees of a franchisee are not employees of the
26 franchisor.
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29 20. In its regulations, the U.S. Small Business Administration recognizes that a
30 franchisee and its franchisor generally are separate and independent corporate entities provided

1 that the franchisee “has the right to profit from its efforts and bears the risk of loss
2 commensurate with ownership.” 13 C.F.R. § 121.103(i).

3
4 21. Franchising benefits consumers by ensuring that they have access to products
5 and services with which they are familiar at a level of quality and safety that they expect
6 because of the reputation of the franchise brand.

7
8 22. Franchising also benefits the economy more broadly. The franchise business
9 model has served as an engine for growth and job creation since it was first conceived. It has a
10 proven track record as one the nation’s most prolific resources for job and management
11 training. And franchisees are frequently the first employer of the young and disadvantaged
12 when they enter the labor market.

13
14 Minimum Wage Laws in the United States

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16 23. Under federal law, the minimum wage is \$7.25 per hour. In his State of the
17 Union address in 2013, President Obama proposed raising the federal minimum wage to \$9.00
18 per hour. Congress did not adopt the proposal. In his 2014 address, the President proposed a
19 federal minimum wage of \$10.10 per hour. Congress has not adopted this proposal.

20
21 24. The statewide minimum wage in the State of Washington is \$9.32 per hour—
22 higher than the minimum wage of any other State, the District of Columbia, or any U.S.
23 territory.

24
25 25. The Seattle Ordinance will raise the minimum wage in the City of Seattle to
26 \$15.00 per hour—the highest minimum wage in the United States—by the year 2017 for
27 “large” employers and 2021 for “small” employers.

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29
30 Seattle City Ordinance No. 124490

1 26. On June 2, 2014, the City Council passed Council Bill No. 118098.

2 27. On June 3, 2014, the Mayor signed Council Bill 118098 into law and it became
3 City Ordinance No. 124490.

4 28. A true and correct copy of City Ordinance No. 124490 is attached to this
5 Complaint as Exhibit A.

6 29. The Ordinance phases in a substantially increased hourly minimum wage over
7 time according to various schedules, and then tethers that wage to inflation—in 2018 for
8 “large” employers and 2025 for “small” employers.
9

10 30. Under the Ordinance, initial minimum wage increases take effect on April 1,
11 2015.

12 31. The Ordinance treats “large” employers and franchisees differently from
13 “small” employers, expressly and substantially favoring “small” non-franchised employers.
14 The Ordinance discriminates against small franchisees that are similarly situated to small
15 employers in all material respects.
16

17 32. The Ordinance finds and declares that “a benchmark of 500 employees is
18 appropriate in distinguishing between larger and smaller employees in recognition that smaller
19 businesses and not-for-profits would face particular challenges in implementing a higher
20 minimum wage.”
21

22 33. The Ordinance defines a “Schedule 1 Employer” as “all employers that employ
23 more than 500 employees in the United States, regardless of where those employees are
24 employed in the United States.”
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26 34. The Ordinance also defines a “Schedule 1 Employer” as “all franchisees
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30 COMPLAINT - 9
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1 associated with a franchisor or network of franchises with franchisees that employ more than
2 500 employees in aggregate in the United States.”

3
4 35. The Ordinance defines a “Schedule 2 Employer” as “all employers that employ
5 500 or fewer employees in the United States regardless of where those employees are
6 employed in the United States.”

7
8 36. The Ordinance also states that “Schedule 2 employers do not include
9 franchisees associated with a franchisor or network of franchises with franchisees that employ
10 more than 500 employees in aggregate in the United States.”

11
12 37. The Ordinance establishes a rubric “for purposes of determining whether a non-
13 franchisee employer is a Schedule 1 employer or a Schedule 2 employer” when that employer
14 is an “integrated enterprise.” The Ordinance requires consideration of the “degree of
15 interrelation between the operations of multiple entities,” the “degree to which the entities
16 share common management,” whether there is “centralized control of labor relations,” and “the
17 degree of common ownership or financial control over the entities.” The Ordinance also
18 adopts a presumption that “separate legal entities, which may share some degree of interrelated
19 operations and common management with one another, shall be considered separate employers
20 for purposes” of ascertaining whether an employer is “large” or “small.”

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24 38. The Ordinance defines any business that is “substantially associated with a
25 trademark, service mark, trade name, advertising, or other commercial symbol; designating,
26 owned by, or licensed by the grantor or its affiliate” as a “Franchise.”

27
28
29 39. The Ordinance defines a “Franchisee” as a “person to whom a franchise is
30 offered or granted.” The Ordinance defines a “Franchisor” as a “person who grants a franchise

1 to another person.”

2 40. The Ordinance phases in per hour minimum wage targets and increases the
3 minimum wage faster for franchisees than for Schedule 2 Employers.
4

5 41. Schedule 1 Employers must pay a minimum wage of \$11.00 per hour as of
6 April 1, 2015. On January 1, 2016, the minimum wage for Schedule 1 Employers raises to
7 \$13.00 per hour. On January 1, 2017, the \$15.00 per hour minimum wage takes effect for
8 Schedule 1 Employers. In 2018 and every year thereafter the Ordinance increases the
9 minimum wage annually based on the rate of inflation.
10
11

12 42. In contrast, the minimum wage increases for Schedule 2 Employers are phased
13 in more slowly according to the following schedule:
14

<u>Year</u>	<u>Min. Wage</u>
2015	\$10.00
2016	\$10.50
2017	\$11.00
2018	\$11.50
2019	\$12.00
2020	\$13.50
2021	\$15.00
2022	\$15.75
2023	\$16.50
2024	\$17.25

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26 In 2025 and every year thereafter the minimum wage shall be increased annually based on the
27 rate of inflation.
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29 43. Under the Ordinance, franchisees must start paying the \$15.00 per hour
30 minimum wage in 2017 while their Schedule 2 competitors get an extra four years, until 2021,
31 COMPLAINT - 11

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1 to start paying that wage.

2 The Ordinance's Unfair, Discriminatory, and Irrational Treatment of Franchises

3
4 44. The Seattle Ordinance unfairly and irrationally discriminates against small,
5 independently owned and operated franchisees.

6 45. The Ordinance draws a distinction between large employers and small
7 employers, finding and declaring that “a benchmark of 500 employees is appropriate in
8 distinguishing between larger and smaller employees in recognition that smaller businesses and
9 not-for-profits would face particular challenges in implementing a higher minimum wage.”
10 But the Ordinance does not apply that “appropriate” benchmark to small, independently owned
11 and operated franchisees, which face the same “challenges in implementing a higher minimum
12 wage.”
13
14
15

16 46. Under the Ordinance, a small franchisee, no matter how few workers it actually
17 employs, is deemed a large employer if the franchise network collectively employs more than
18 500 workers in the United States.
19

20 47. The Ordinance therefore leads to absurd results: A non-franchise company with
21 500 workers in Seattle is treated as a Schedule 2 Employer, whereas a small franchise owner
22 with only 5 workers is treated as a Schedule 1 Employer if the franchise network employs
23 more than 500 workers in total.
24

25 48. As the *Seattle Times* observed in a May 30, 2014 editorial, “the Seattle
26 minimum wage proposal, as it now stands, defines nearly all franchises as big businesses,
27 giving them only three to four years to raise all workers['] wages to \$15 an hour. Small
28 businesses (defined as fewer than 500 employees) get up to seven years, cushioning [the]
29
30

1 financial blow and offering them a temporary advantage over competitors.... It effectively
2 discriminates against a business model—franchises—by giving non-franchises a slower phase-
3 in.” *Redefine franchises under Seattle’s minimum-wage proposal*, Seattle Times (May 30,
4 2014), <http://bit.ly/1oNHplF>. It also “punishes locally-owned franchises in a wrongheaded
5 pursuit” of franchisors. *Id.*

6
7
8 49. The Ordinance aggregates employees of different franchisee companies as if
9 they all worked for a single corporation—contrary to state law recognizing that separate
10 corporations are distinct legal entities and must be treated as such.

11
12 50. The Ordinance provides that, for purposes of determining whether an employer
13 is a Schedule 1 or Schedule 2 employer, “separate entities that form an integrated enterprise
14 shall be considered a single employer ... where a separate entity controls the operation of
15 another entity,” but this test applies only to a “non-franchisee employer.” Under the
16 Ordinance, if a small franchisee is associated with a franchise network that employs more than
17 500 workers, the small franchisee is deemed a Schedule 1 Employer even if it is not part of an
18 “integrated enterprise” as so defined.

19
20
21 51. The Ordinance also discriminates against small franchisees by putting them at a
22 competitive disadvantage relative to Schedule 2 Employers until as late as 2025. During that
23 time period, small franchisees will face greater labor costs than their similarly situated non-
24 franchised competitors.

25
26
27 52. In 2015, those franchisees that are treated as Schedule 1 Employers must pay
28 \$11.00 per hour while Schedule 2 Employers must pay \$10.00 per hour, a difference of \$1.00
29 per hour. In 2016, such franchisees must pay \$13.00 per hour while Schedule 2 Employers

1 must pay \$10.50, a difference of \$2.50 per hour. In 2017, such franchisees must pay \$15.00
2 per hour while Schedule 2 Employers must pay \$11.00, a \$4.00 per hour differential. Such
3 franchisees also face wage differentials through 2025 so long as inflation outstrips the City's
4 Schedule 2 employer wage increase schedule (as it surely will).
5

6 Legislative History of the Ordinance
7

8 53. On information and belief, the provisions of the Ordinance that treat small
9 franchise businesses as large employers were inserted in the draft legislation proposed by the
10 Mayor at the insistence of union officials who oppose the franchise business model. The
11 Mayor and the City Council acceded to the union's demand even though such provisions are
12 unfair and bad for small franchise businesses.
13

14 54. Some of the legislative debate over the franchise provisions reflected a lack of
15 understanding of franchising. At a City Council hearing, one member of the Council stated
16 that "In order to be a franchisee, you have to be very, very wealthy." That statement is false.
17 Franchisees often must take out large loans in order to start their businesses. Profit margins in
18 many sectors are small.
19
20

21 Provisions of the Ordinance Relating to Employee Benefits Plans
22

23 55. The Ordinance includes provisions that relate to employee medical benefits
24 plans.
25

26 56. The Ordinance's minimum wage increases are phased in more slowly for
27 "Schedule 1 Employers that pay toward an individual employee's medical benefits plan." The
28 Ordinance defines a "medical benefits plan" as "a silver or higher level essential health
29 benefits package as defined in 42 U.S.C. § 18022, or an equivalent plan that is designed to
30

1 provide benefits that are actuarially equivalent to 70 percent of the full actuarial value of the
2 benefits provided under the plan, whichever is greater.”

3
4 57. Schedule 1 Employers that pay toward a silver, gold, or platinum plan receive
5 an extra year, until 2018, to start paying the \$15.00 per hour minimum wage and are subject to
6 smaller minimum wage increases in 2016 and 2017.

7
8 58. Schedule 1 Employers, including franchisees, that pay toward a bronze plan or
9 do not pay toward a medical benefits plan do not get the benefit of the extra year or the smaller
10 increases.

11
12 59. The employee benefits plans to which the Ordinance refers are covered and
13 regulated by the Employee Retirement Income Security Act (“ERISA”).

14
15 The IFA and the Individual Plaintiffs

16 60. The Ordinance applies to and adversely affects members of the IFA that employ
17 workers in Seattle. The Ordinance directly applies to and adversely affects Plaintiffs Charles
18 Stempler, Katherine Lyons, Mark Lyons, Michael Park, and Ronald Oh (“the Individual
19 Plaintiffs”).

20
21 *The International Franchise Association*

22
23 61. The International Franchise Association is a membership organization of
24 franchisors, franchisees, and suppliers.

25
26 62. In the City of Seattle, there are approximately 600 franchisees that own 1,700
27 locations employing 19,000 workers.

28
29 63. Some of IFA’s members are franchisors or franchisees that do business and
30 employ workers in Seattle. These members are subject to and adversely affected by the Seattle

1 Ordinance, which raises the minimum wage they must pay to their employees in Seattle.

2 64. Some of IFA's members are franchisors whose corporate headquarters are
3 located in Seattle and who have employees in Seattle. These IFA members must comply with
4 the Ordinance and must pay their employees in Seattle no less than the minimum wage
5 prescribed by the Ordinance.
6

7 65. Some of IFA's members are franchisees that own and operate franchise
8 locations in Seattle. Some of those IFA members employ 500 or fewer employees in Seattle
9 but are associated with a franchise network that employs more than 500 employees in
10 aggregate in the United States. These IFA members are treated as Schedule 1 Employers under
11 the Ordinance and therefore are disadvantaged vis-à-vis their non-franchised competitors.
12

13 66. Some of IFA's members are franchisors that have franchise agreements with
14 franchisees in Seattle. Some of those franchisees employ 500 or fewer employees but are
15 associated with a franchise network that employs more than 500 employees in aggregate in the
16 United States. These Seattle franchisees of IFA members are treated as Schedule 1 Employers
17 under the Ordinance and therefore are disadvantaged vis-à-vis their non-franchised
18 competitors.
19

20 67. Some IFA members and some franchisees of IFA members pay toward
21 employee medical benefits plans and others do not. Those that do pay toward plans at the
22 bronze or higher levels.
23

24
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26
27 *Charles Stempler*

28 68. Charles Stempler is a resident of the City of Seattle. He and his family have
29 lived in Seattle for 20 years.
30

31 COMPLAINT - 16

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1 69. Mr. Stempler is a small business owner. Mr. Stempler owns Alphaprint, Inc.,
2 which does business as AlphaGraphics, a printing and marketing services business.

3 70. AlphaGraphics operates pursuant to a franchise agreement.

4 71. Mr. Stempler operates six AlphaGraphics business centers, five in Washington
5 State and one in California. Of AlphaGraphics' five Washington locations, two are located in
6 Seattle.
7

8 72. Mr. Stempler purchased an existing AlphaGraphics store in May 2001. To
9 finance the purchase, he invested \$100,000 of his personal savings and took out Small
10 Business Administration ("SBA") loans.
11

12 73. In connection with his purchase of that store, Mr. Stempler executed a Franchise
13 Agreement with the franchisor, AlphaGraphics, Inc.
14

15 74. AlphaGraphics, Inc.'s world headquarters are located in Salt Lake City, Utah.
16

17 75. AlphaGraphics, Inc. has franchise agreements with 216 franchisees that own
18 and operate 245 business centers in the United States, the vast majority of which are located
19 outside of Seattle and Washington State. These 245 business centers collectively employ about
20 2,000 people in the United States.
21

22 76. Alphaprint, Inc. is incorporated under the laws of the State of Washington.
23

24 77. Alphaprint, Inc. is not owned in any part by the franchisor.
25

26 78. Mr. Stempler's five AlphaGraphics stores in Washington employ a total of 85
27 employees, all of whom are paid more than the current state minimum wage.

28 79. Mr. Stempler's two AlphaGraphics locations in Seattle employ 69 workers, of
29 whom 58 are paid by the hour. Mr. Stempler's 58 hourly employees in Seattle are now paid
30

1 between \$11.50 per hour and \$28.00 per hour. Thirteen of those 58 hourly employees are now
2 paid less than \$15.00 per hour.

3
4 80. Mr. Stempler provides health care, dental care, vision care, life insurance, long
5 term disability insurance, and 401K benefits for all his employees. The franchisor does not
6 contribute to these benefits.

7
8 81. Mr. Stempler assists non-profit organizations in the Puget Sound area by
9 providing free and discounted printing services at his AlphaGraphics stores. Mr. Stempler has
10 assisted 163 non-profit organizations in this way, in addition to making direct financial
11 contributions.
12

13 82. In 2013, the Puget Sound Business Journal selected AlphaGraphics as one of its
14 “Top 75 Corporate Philanthropists.” In 2014, the Puget Sound Business Journal included
15 AlphaGraphics on a list of top 25 corporate philanthropists. AlphaGraphics received similar
16 accolades in 2010, 2011, and 2012.
17

18
19 83. From 2004 to 2010, Mr. Stempler served as Chairman of the Board of the
20 Seattle Humane Society. For the past 12 years, Mr. Stempler has served as the President of the
21 Board of the Washington State Holocaust Education Resource Center, a non-profit
22 organization that helps public and private school teachers in Washington educate their students
23 about the Holocaust and genocide.
24

25
26 84. Although Mr. Stempler’s AlphaGraphics franchise locations employ far less
27 than 500 employees, the AlphaGraphics franchise network with which it is associated
28 collectively employs more than 500 employees throughout the United States. The Ordinance
29 therefore treats AlphaGraphics as a Schedule 1 Employer.
30

31 COMPLAINT - 18

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1 SBA. Their SBA loan is secured by a mortgage on their house.

2 93. In February 2012, Mr. and Mrs. Lyons executed a Franchise Agreement with
3 the franchisor, BrightStar Franchising, LLC, an Illinois limited liability company with its
4 principal place of business in Gurnee, Illinois.
5

6 94. BrightStar Franchising, LLC, has franchise agreements with approximately 200
7 franchisees that own and operate 260 franchise locations and employ 16,000 nurses and
8 caregivers in the United States. All but three of the locations franchised by BrightStar
9 Financing, LLC are located outside of the State of Washington.
10

11 95. The BrightStar Care business owned by Mr. and Mrs. Lyons is incorporated
12 under the laws of the State of Washington as MKL Services LLC.
13

14 96. MKL Services LLC is not owned in any part by the franchisor.
15

16 97. Mr. and Mrs. Lyons have never received any salary or taken any profits from
17 BrightStar Care.
18

19 98. BrightStar Care's office is located in the City of Seattle.
20

21 99. BrightStar Care employs Certified Nursing Assistants, Licensed Practical
22 Nurses, and Registered Nurses.
23

24 100. BrightStar Care employs 22 employees in the City of Seattle, of whom 15 are
25 paid by the hour. All of BrightStar Care's hourly employees are paid more the current state
26 minimum wage.
27

28 101. BrightStar Care now pays its 15 hourly employees between \$12.00 per hour and
29 \$35.00 per hour. Fourteen of BrightStar Care's current hourly employees are paid less than
30 \$15.00 per hour.
31

32 COMPLAINT - 20

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1 116. The Holiday Inn is family-owned business. Mr. Oh has an ownership interest in
2 the Holiday Inn.

3 117. Mr. Oh is a member of the Korean American Hotel Owners Association of
4 Washington.
5

6 118. The Holiday Inn has 28 employees. Twenty-two of those employees are paid
7 by the hour.
8

9 119. All of the Holiday Inn's 22 hourly employees are paid more the current state
10 minimum wage. Those 22 employees are paid between \$9.50 and \$12.00 per hour.
11

12 120. Because the Holiday Inn is associated with other franchise businesses that
13 collectively employ more than 500 employees, the vast majority of whom are employed
14 outside of Seattle and Washington State, the Ordinance deems the Holiday Inn a Schedule 1
15 Employer.
16

17 121. The Holiday Inn faces competition, including from independent hotels that the
18 Ordinance classifies as Schedule 2 Employers.
19

20 122. The Ordinance will cause the Holiday Inn to be at a competitive disadvantage
21 relative to its independent hotel competitors because, between April 1, 2015, and January 1,
22 2021, a higher minimum wage will apply to the Holiday Inn than to its independent hotel
23 competitors, and therefore the Holiday Inn will face higher wage costs relative to those non-
24 franchised competitors.
25
26

27 **COUNT I**

28 **(Violation of the Commerce Clause of the U.S. Constitution)**

29 123. Plaintiffs reallege and incorporate by reference the allegations contained in all
30

1 of the preceding paragraphs.

2 124. The Commerce Clause of the U.S. Constitution provides that “Congress shall
3 have Power ... [t]o regulate Commerce ... among the several States.” U.S. Const. art. I, § 8,
4 cl 3. That affirmative grant of power to Congress also limits the power of state and local
5 governments to pass legislation affecting interstate commerce.
6

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8 125. The Commerce Clause prohibits state laws that discriminate against interstate
9 commerce and engage in economic protectionism, *i.e.*, measures designed to benefit local
10 economic interests by burdening out-of-state competitors. *See, e.g., W. Lynn Creamery, Inc. v.*
11 *Healy*, 512 U.S. 186, 201-02 (1994); *Healy v. Beer Inst.*, 491 U.S. 324, 332-33 (1989);
12 *Conservation Force, Inc. v. Manning*, 301 F.3d 985, 992 (9th Cir. 2002); *Nat’l Collegiate*
13 *Athletic Ass’n v. Miller*, 10 F.3d 633, 638 (9th Cir. 1993).
14
15

16 126. The Ordinance discriminates against interstate commerce. It preferences small
17 local employers and prejudices other small employers merely because of their affiliation with
18 out-of-state operations, namely franchise networks.
19

20 127. The Ordinance is a form of protectionist legislation prohibited by the Commerce
21 Clause. It burdens out-of-state economic interests by increasing their labor costs vis-à-vis
22 similarly situated local competitors. The Ordinance classifies an employer as a Schedule 1
23 Employer or a Schedule 2 Employer based on the number of workers it employs. If the
24 employer has more than 500 employees, it is a Schedule 1 Employer and is treated less
25 favorably than a Schedule 2 Employer. But the employee count for franchisees includes out-
26 of-state workers that are employed by separate companies. Thus, the Ordinance punishes
27 franchisees based on their connection to other companies operating outside of Seattle and the
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1 State of Washington. The Ordinance thereby impermissibly discourages such employers from
2 doing business in Seattle and competing against local industry.

3
4 **COUNT II**
5 **(Violation of the Equal Protection Clause of the U.S. Constitution**
6 **and Article XI, Section 11 of the Washington State Constitution)**

7 128. Plaintiffs reallege and incorporate by reference the allegations contained in all
8 of the preceding paragraphs.

9 129. The Equal Protection Clause of the Fourteenth Amendment to the U.S.
10 Constitution provides that no State shall “deny to any person within its jurisdiction the equal
11 protection of the laws.” U.S. Const. amend. XIV, § 1.

12 130. As the Supreme Court has held, “arbitrary and irrational discrimination violates
13 the Equal Protection Clause under even [the] most deferential standard of review.” *Bankers*
14 *Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 83 (1988). Indeed, providing “a shield against
15 arbitrary classifications” is the “core concern” of the Equal Protection Clause. *Engquist v. Or.*
16 *Dep’t of Agric.*, 553 U.S. 591, 598 (2008).

17 131. The Ordinance arbitrarily and irrationally discriminates against small
18 franchisees, *i.e.*, those that employ 500 or fewer workers but are associated with a franchise
19 network that collectively employs more than 500 workers. The Ordinance treats small
20 franchisees the same as large employers that employ more than 500 workers. The Ordinance
21 leads to absurd results: For example, a small franchisee employing only 5 workers in Seattle is
22 treated as a Schedule 1 Employer if, as is usually the case, the franchise network employs more
23 than 500 workers whereas a non-franchise company employing 500 workers in Seattle is
24 treated more favorably, as a Schedule 2 Employer.

1 shall be passed granting to any citizen, class of citizens, or corporation other than municipal,
2 privileges or immunities which upon the same terms shall not equally belong to all citizens, or
3 corporations.”
4

5 136. The Ordinance violates Article I, Section 12. The Ordinance grants some
6 corporations “an exemption from a regulatory law that has the effect of benefiting certain
7 businesses at the expense of others.” *Ockletree v. Franciscan Health Sys.*, 179 Wash.2d 769,
8 781 (2014) (en banc) (quoting *Am. Legion Post No. 149 v. Dep’t of Health*, 164 Wash.2d 570,
9 607 (2008) (en banc)). The Ordinance grants a non-franchise corporation that employs 500 or
10 fewer employees the privilege or immunity of a slower phase-in of a substantially increased
11 hourly minimum wage. That same privilege or immunity is not extended to a franchisee
12 corporation with an equal number of employees. A franchise corporation qualifies for the
13 privilege or immunity only if the franchise network collectively employs 500 or fewer
14 employees. Under the Ordinance, franchise corporations bear “greater expense or costs” than
15 non-franchise corporations. *Ockletree*, 179 Wash. 2d at 782. The Ordinance “offend[s] the
16 anticompetitive concerns underlying article I, section 12.” *Id.*
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22 **COUNT IV**
23 **(Lanham Act Preemption; Supremacy Clause)**

24 137. Plaintiffs reallege and incorporate by reference the allegations contained in all
25 of the preceding paragraphs.

26 138. The Supremacy Clause of the U.S. Constitution provides that “[t]his
27 Constitution, and the Laws of the United States which shall be made in Pursuance thereof ...
28 shall be the supreme Law of the Land.” U.S. Const., art. VI, cl. 2.
29
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1 139. Under the Supremacy Clause, any state or local law that conflicts with federal
2 law is preempted and is null and void.

3 140. The Lanham Act “includes an unusual, and extraordinarily helpful, detailed
4 statement of the statute’s purposes.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*,
5 134 S. Ct. 1377, 1389 (2014) (quotation marks omitted).

6 141. One of the Lanham Act’s express purposes is “to protect registered marks used
7 in [interstate] commerce from interference by State, or territorial legislation.” 15 U.S.C. §
8 1127.

9 142. Any state law that is inconsistent with or that frustrates the objectives of the
10 Lanham Act is preempted. *See Mobil Oil Corp. v. Va. Gasoline Marketers & Auto Repair*
11 *Ass’n*, 34 F.3d 220, 226 (4th Cir. 1994) (citing *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355,
12 368 (1986)).

13 143. Under the Lanham Act, a trademark holder has the right to control the quality of
14 the goods or the services sold under its trademark. The Lanham Act preempts any state law
15 provision inconsistent with the trademark holder’s right of quality control. When a state law
16 significantly interferes with the trademark holder’s right to maintain the quality of the goods or
17 services sold under its trademark, the state law is preempted.

18 144. Franchisees operate under trademarks protected by the Lanham Act. The
19 Ordinance significantly interferes with a franchisor’s right to maintain quality control. The
20 Ordinance exposes small franchisees to unfair competition during the six-year period between
21 2015 and 2021. Their labor costs will be much greater in that period than the labor costs of
22 non-franchise business. As a result, franchisees will face pressure to raise prices, reduce

1 workers, and reduce the quality of their goods and services to a substantially greater degree
2 than their competitors.

3
4 145. The Ordinance specifically makes use of a trademark a factor subjecting a
5 company to unfavorable treatment.

6
7 146. The Ordinance expressly defines any business that is “substantially associated
8 with a trademark, service mark, trade name, advertising, or other commercial symbol;
9 designating, owned by, or licensed by the grantor or its affiliate” as a “Franchise.”

10
11 147. This local effort to attribute unfavorable consequences to the exercise of a
12 federal right is squarely preempted by the Supremacy Clause and the preemptive effect of the
13 Lanham Act.

14
15 **COUNT V**
16 **(ERISA Preemption; Supremacy Clause)**

17
18 148. Plaintiffs reallege and incorporate by reference the allegations contained in all
19 of the preceding paragraphs.

20
21 149. ERISA contains an express preemption provision that “supercede[s] any and all
22 State laws” that “relate to any employee benefit plan.” 29 U.S.C. § 1144(a). ERISA’s
23 preemption provision applies to the laws of any political subdivision of a state. *See id.*
24 § 1144(c)(2).

25
26 150. State or local laws “relate to” an employee benefit plan, and hence are
27 preempted, if the laws have a connection with or reference to such a plan.

28
29 151. The Ordinance relates to employee benefit plans. The Ordinance has a
30 connection with and reference to employee benefit plans.

1 treats different franchisee corporations as if they were a single corporation. The Ordinance
2 aggregates all of the workers employed by the separate corporations that make up a franchise
3 network for purposes of classifying a franchisee corporation as a Schedule 1 or Schedule 2
4 Employer. Even if a franchisee has only 5 employees, the Ordinance treats that corporation as
5 a Schedule 1 Employer if the other corporations in the franchise network collectively employ
6 more than 500 workers.
7

8
9 159. Because the City of Seattle’s Ordinance conflicts with the corporation law of
10 the State of Washington, the Ordinance is null and void.
11

12 **Count VII**
13 **(Violation of the Contracts Clause of the U.S. Constitution**
14 **and the Washington State Constitution)**

15 160. Plaintiffs reallege and incorporate by reference the allegations contained in all
16 of the preceding paragraphs.

17 161. The Contracts Clause of the U.S. Constitution provides: “No State shall ... pass
18 any ... Law impairing the Obligation of Contracts.” U.S. Const. art. I, § 10.
19

20 162. Article I, Section 23 of the Washington State Constitution provides: “No bill of
21 attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed.”
22

23 163. Franchisees and franchisors enter into franchise agreements that establish
24 contractual rights and obligations.

25 164. The Ordinance will “operate[] as a substantial impairment of [the] contractual
26 relationship” between franchisees and franchisors. *Allied Structural Steel Co. v. Spannaus*,
27 438 U.S. 234, 244 (1978). The agreements between franchisees and franchisors
28 comprehensively define the rights and obligations of each party and the Ordinance will make it
29
30

1 difficult—if not impossible—for the franchisees to continue to meet their obligations in terms
2 of operating hours and product quality due to the increased costs imposed by the Ordinance
3 and the Ordinance’s disparate treatment of franchisees and their non-franchised competitors.
4

5 **Count VIII**
6 **(Violation of the Freedom of Speech and Association**
7 **Under the First Amendment to the U.S. Constitution)**

8 165. Plaintiffs reallege and incorporate by reference the allegations contained in all
9 of the preceding paragraphs.

10 166. The First Amendment to the U.S. Constitution provides in part that “Congress
11 shall make no law ... abridging the freedom of speech ... or the right of the people to
12 peaceably assemble”
13

14 167. The First Amendment applies to state action through the Due Process Clause of
15 the Fourteenth Amendment to the U.S. Constitution.
16

17 168. The First Amendment protects commercial speech and freedom of association.
18

19 169. Commercial speech “is a form of expression protected by the Free Speech
20 Clause of the First Amendment,” *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 2659 (2011), and
21 the Ordinance will curtail franchisee commercial speech in at least three important respects.
22 First, by increasing the labor costs of franchisees, the Ordinance will reduce the ability of
23 franchisees to dedicate funding to the promotion of their businesses and brands. Second, the
24 increased labor costs the Ordinance mandates may cause some franchisees to shut their doors,
25 reducing the amount of relevant commercial speech they engage in to zero. Third, and
26 relatedly, the Ordinance will likely cause potential franchisees to forgo purchasing a franchise
27 because of the associated higher operation costs, again eliminating all associated speech.
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