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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED JULY 28, 2026

United States Court of Appeals
For the Eighth Circuit

No. 25-2306

Matthew Goforth, an individual; Malinda Goforth, an individual; MG Management Co., LLC, a Missouri Limited Liability Company; Malinda's Sugar and Spice, LLC, a Missouri Limited Liability Company
Plaintiffs - Appellants
v.
Transform Holdco, LLC, a Delaware limited liability company; Hometown Midco, LLC, a Delaware limited liability company; ESL Investments, Inc., a Delaware corporation; ESL Partners, L.P., a Delaware limited partnership
Defendants - Appellees

Appeal from United States District Court
for the Western District of Missouri - Springfield

Submitted: April 16, 2026
Filed: July 28, 2026

Before L.R. SMITH, BENTON, and ERICKSON, Circuit Judges.

L.R. SMITH, Circuit Judge.

Matthew Goforth (Matt), through his company, MG Management Co., LLC (MG Management),

entered into a dealer agreement with Sears Authorized Home Stores (Sears) that included a non-compete provision extending to Matt's spouse, Malinda Goforth (Malinda). As the agreement expired, Matt stated his intention to not renew the agreement. Suspecting that the Goforths were going to open a competing business, Sears initiated arbitration and sought an emergency order enforcing the non-compete provision. Believing the provision unreasonable and unenforceable, the Goforths responded to prevent enforcement of the non-complete provision. They did not counterclaim for any affirmative relief. The arbitrator ultimately granted Sears's emergency motion and enforced the non-compete provision.

Later, the Goforths initiated their own arbitration against Sears, alleging antitrust violations based on the non-compete provision of the agreement. The arbitrator concluded that the claims were compulsory counterclaims that the Goforths should have brought in the initial arbitration. Due to Sears's bankruptcy, the Goforths brought this action in the Western District of Missouri against its owners Transform Holdco, LLC and its affiliates (collectively, "Transform"). They assert the same antitrust violation that would have been filed against Sears, challenging the enforceability of the non-compete provision. The district court[1] granted summary judgment for Transform, holding that the claim against Transform was a compulsory counterclaim

[1] The Honorable M. Douglas Harpool, United States District Court for the Western District of Missouri.

that the Goforths should have brought in the initial arbitration. The Goforths appeal. We affirm.

I. *Background*

Around early 2016, Sears entered into a dealer agreement with Matt, then unmarried, through his company MG Management. The agreement allowed Matt to operate a Sears facility in Bolivar, Missouri. The agreement contained a non-compete provision prohibiting "Owner, Controlling Owner, Owner's Affiliate," and "any member of Owner's immediate family" from controlling, owning, or associating with any "Competing Business that operates at or within fifty miles of the Location or within 50 miles of any Sears Authorized Hometown Stores sales facility." R. Doc. 67-1, at 17. The agreement also included an arbitration provision governing "controversies, disputes, and claims arising between" Sears and Matt. *Id.* at 27. According to its terms, this provision extends to "spouses and immediate family members of" any natural person subject to the arbitration provision. *Id.* In 2017, Matt married Malinda. Malinda was not formally added as a named party to the agreement.

In April 2019, Sears learned that Matt would not be renewing the agreement upon its July expiration. In June 2019, Sears filed an emergency motion to enforce the non-compete provision. In response, Matt submitted an affidavit stating that neither he nor his company, MG Management, nor any entity in which he or MG Management have interest or control had plans to compete with Sears after the expiration of the agreement. Based on this affidavit, the arbitrator denied Sears's emergency motion for injunctive relief.

After the arbitrator denied Sears's motion, Sears learned that Matt and Malinda, through Malinda's

company, Malinda's Sugar and Spice, intended to open Goforth Home & Lawn (GHL), a business that could compete with Sears. Indeed, the Goforths "did not stop or even briefly pause [their] plans to open [GHL]," "[b]ased on" their belief that "the restraint of trade was unreasonable and unenforceable." R. Doc. 83-1 ¶ 56. The Goforths proceeded because "[Sears] had no basis to prevent [them] from opening [their] new store. [Sears] was not a party to [their new] lease agreement, it had no interest in the store property, and [they] were allowed to not renew [their] dealer agreement if [they] did not want to." *Id.* ¶ 54. Thus, both before Sears initiated arbitration and after its initial emergency motion, the Goforths remodeled the store and started advertising "to open [GHL] as soon as the dealer agreement expired." *Id.* ¶ 51.

After seeing an article about GHL, the Goforths' new business, Sears then brought a renewed motion for injunctive relief. Matt responded and included, among other points, an argument that the agreement was not enforceable under Illinois law because it was too broad. Malinda also responded, arguing that she and her company were not subject to the agreement and therefore not subject to the jurisdiction of the arbitration panel. Neither Matt nor Malinda brought any counterclaims or otherwise sought to enjoin the enforcement of the provision. Meanwhile, the Goforths continued renovating and advertising GHL and officially opened on November 8, 2019.

On November 20, 2019, the arbitrator found that Sears had a likelihood of success on the merits; granted its motion for interim relief enforcing the non-compete provision; and added Malinda and her company, Malinda's Sugar and Spice, as parties. The

arbitrator found that Malinda and her business were subject to the agreement between Sears and Matt. The arbitrator also required that the Goforths pay Sears's attorneys' fees for not alerting the prior arbitrator to Malinda's known plans to compete. The Goforths appealed the interim ruling. The award was affirmed on March 16, 2020.

On September 23, 2020, a final arbitration award enforced the non-compete provision and awarded attorneys' fees and arbitration costs to Sears. The Goforths appealed the final arbitration award, and an appellate arbitrator reversed in part. The appellate arbitrator reversed the prior arbitrator's finding upholding the non-compete provision and held that it was not enforceable. It then affirmed the attorneys' fees awarded to Sears.

The Goforths then initiated a second arbitration, alleging that the non-compete provision violated the Sherman Act and the Illinois Antitrust Act. The Goforths sought damages, treble damages, and attorneys' fees and costs. Sears filed a motion to dismiss. The arbitrator denied Sears's motion but acknowledged that this second arbitration "involve[d] the same parties, the same core of operative facts and the same core legal issues as the prior matter and at least three prior interim awards in that prior matter." R. Doc. 67-6, at 2. Subsequently, an arbitrator held that the Goforths' antitrust claims were compulsory counterclaims that the Goforths should have brought in the first arbitration because the facts were known when Matt filed answers to the claims. The arbitrator held:

For the same reasons, [Matt, Malinda, MG Management, and Malinda's Sugar & Spices (collectively "MG") have] demonstrated that [they were] required—and failed—to raise [their] antitrust claims in the prior arbitration. The parties' agreement incorporates Federal Rule of Civil Procedure 13's rule for compulsory counterclaims, in that the instant antitrust claims arose out of the same transaction or occurrence as Sears'[s] original June 7, 2019 demand, and its October 11, 2019 amended demand, both of which were to enforce the noncompetition agreement. *See Patel v. Am. Tel. & Tel., Inc.*, No. 93 C 117, 1993 WL 384569, at *4 (N.D. Ill. Sept. 27, 1993) (finding that "both lawsuits are based on the same contract and the same conduct" and therefore "there can be little doubt that both lawsuits arise out of 'the same transaction or occurrence.'"). MG argues that it was not required to raise an antitrust claim because compulsory counterclaims are only required for claims that could be brought on or before the date that a party serves its pleading, and it had no antitrust claims that had matured by the time it filed its pleadings.

As explained in the above discussion of timeliness, however, MG ignores the impact of its concession that an antitrust claim arises when the plaintiff suffers an injury, and its

> related claim that it suffered attorney's fees as compensatory damages as a result of Sears enforcing the restraint. *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 339 (1971) (antitrust cause of action "immediately accrues" on the "particular date" when "a plaintiff feels the adverse impact of" the violation). Therefore, MG is seeking damages for a claim that it could—and should—have brought by the time it filed responsive pleadings and sought recovery for defense fees on July 15, 2019[,] and October 18, 2019. *MBL (USA) Corp. v. Diekman*, 137 Ill. App. 3d 238, 244 (1985) (where an employer sued to enforce a post-term noncompetition provision, the employee's counterclaim that the attempted enforcement of the noncompetition provision violated antitrust laws was cognizable).

R. Doc. 67-7, at 5 (citation modified). The arbitrator also held that the agreement did not violate antitrust laws. The arbitrator[2] found that the Goforths proof justified damages for lost profits and attorneys' fees, but not for harm to their customers. The arbitrator stated that the Goforths "provided no evidence of a measurable increase in price or reduction in output in a relevant market," and therefore it could not infer anticompetitive effects. *Id.* at 7.

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[2] The Goforths appealed this order to an appellate arbitrator. The American Arbitration Association suspended that appeal due to Sears's bankruptcy proceedings. The parties ultimately agreed to an indefinite stay of the appeal.

Due to Sears's bankruptcy, the Goforths brought this case against Transform as owners of Sears. The suit alleged the same federal antitrust claim under the Sherman Act based on the non-compete provision. Transform moved for summary judgment arguing that the Goforths' antitrust claim was a compulsory counterclaim that the Goforths should have brought in the first arbitration. Transform similarly argued that *res judicata* foreclosed the claim because it was litigated in the second arbitration. For their part, the Goforths moved for partial summary judgment as to Sears's anticompetitive behavior.

The district court held that the claim was a compulsory counterclaim. The court thus barred the Goforths' antitrust claim. The court, consequently, declined to address Transform's *res judicata* claim or the Goforths' partial motion for summary judgment. It found that the antitrust claim "accrued upon the initiation of the first arbitration by [Sears] on June 7, 2019." R. Doc. 135, at 7. This finding was based on the Goforths' claims of damages in the second arbitration "that started to accrue from the initiation of the first arbitration and noted within the award opinion from the second arbitrator." *Id.* The district court also found that this extended to the Goforths' claims against Transform. The district court then held that Malinda and her company that owned GHL were expressly governed by the dealer agreement and therefore subject to its jurisdiction.

II. *Discussion*

On appeal, the Goforths challenge the district court's grant of summary judgment in favor of Transform. "We review the district court's summary judgment orders de novo, viewing the record in the

light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor." *In re Wholesale Grocery Prods. Antitrust Litig.*, 752 F.3d 728, 732 (8th Cir. 2014) (citation modified).

The Goforths take issue with the district court's holding that their antitrust claim was a compulsory counterclaim that they should have raised in the initial arbitration. The Goforths argue that the antitrust claims were not compulsory counterclaims because Matt's claim did not arise until November 20, 2019, when the arbitrator granted an order enjoining the Goforths from operating GHL. They also assert that because Malinda was not a party to that arbitration, she had no ability to serve a responsive pleading. In addition, the Goforths argue that the district court erred when finding that the antitrust claim arose upon the initiation of the first arbitration based on the Goforths seeking defense costs in the second arbitration. The Goforths now contend that defense costs are not an antitrust injury needed to support an antitrust claim.

In response, Transform argues that the Goforths' claim accrued when Sears initiated the first arbitration proceeding to enforce the agreement. They first argue that the Goforths could have, and should have, sought injunctive relief against the enforcement. *See Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 109, 120 (1986) (allowing injunctive relief in the antitrust context where a plaintiff can "show a threat of antitrust injury"). Transform further argues that Sears's attempted enforcement of the non-compete provision constituted an overt act giving rise to the Goforths' claims, regardless of the arbitration panel's subsequent enforcement of the agreement.

Transform then argues that the district court did not err in holding that the defense costs constituted a cognizable injury.

A. *Compulsory Counterclaim Accrual*

We first address whether the Goforths' claim—that Transform enforced an anticompetitive non-compete provision—accrued when Transform *sought to enforce* the agreement through its initial arbitration proceeding, or only when the arbitration panel issued the injunctive relief *actually enforcing* the provision.

The parties agree that the agreement incorporated the requirements of Federal Rule of Civil Procedure 13. Rule 13(a) requires a party to bring a claim "that—at the time of its service—the pleader has against an opposing party if the claim: (A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim."

Notably, antitrust creates unique considerations. When alleging antitrust violations, "a cause of action accrues and the statute begins to run when *a defendant commits an act* that injures a plaintiff's business." *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 188 (1997) (quoting *Zenith Radio Corp. v. Hazeltine Rsch, Inc.*, 401 U.S. 321, 338 (1971) (emphasis added)). Such cause of action "entitles a plaintiff to recover" damages suffered upon accrual and "those which [the plaintiff] will suffer in the future from the particular invasion." *Zenith Radio Corp.*, 401 U.S. at 338–39. And in certain antitrust contexts, a "plaintiff need not prove an actual lessening of competition in order to recover." *Blue Shield of Va. v. McCready*, 457 U.S. 465, 482 (1982) (citation modified).

While there is no dispute that the claims arose out of the same transaction and occurrence as the initial

arbitration, the parties disagree as to when a cause of action accrues within the antitrust context. The Goforths argue for a last "overt act" analysis similar to an antitrust statute-of-limitations rule. *See, e.g.*, Appellants' Br. 16–20. Transform rejects this suggested rule because it would allow a known claim to survive "based on a later overt act." Appellees' Br. 18. Instead, Transform relies on the "Rule 13(a) require[ment] that a 'pleading must state as a counterclaim *any* claim that—at the time of its service—the pleader has against an opposing party.'" *Id.* (quoting Fed. R. Civ. P. 13(a)).

Overt acts by a defendant can be sufficient for an antitrust claim to accrue, triggering Rule 13(a). "[E]ven when a plaintiff alleges a continuing violation, an overt act *by the defendant* is required to restart the statute of limitations and the statute runs from the last overt act." *Pace Indus., Inc. v. Three Phoenix Co.*, 813 F.2d 234, 237 (9th Cir. 1987) (emphasis added). But "unabated inertial consequences of previous acts" do not reset the statute of limitations. *Midwestern Mach. Co. v. Nw. Airlines, Inc.*, 392 F.3d 265, 271 (8th Cir. 2004) (declining to apply the continuing-violation theory to a monopolistic merger because "[o]nly where the monopolist actively reinitiates the anti-competitive policy and enjoys benefits from that action can the continuing violation theory apply"); *see also Varner v. Peterson Farms*, 371 F.3d 1011, 1019 (8th Cir. 2004) ("Acts that are merely 'unabated inertial consequences' of a single act do not restart the statute of limitations." (footnote omitted)). And indeed, in *Pace*, the Ninth Circuit stated that "[t]he initiation of

a lawsuit is the final, immutable act of enforcement of an allegedly illegal contract." *Pace*, 813 F.2d at 238.[3]

Sears's first arbitration filing constituted an overt act that allowed the "cause of action [to] accrue[]," *see Klehr*, 521 U.S. at 188, triggering Rule 13.[4] Therefore, any claim related to the same transaction or occurrence—i.e., the enforcement of the non-compete provision—was a compulsory counterclaim and should have been stated. Further, the arbitrator's later grant of interim relief enforcing the agreement was not a subsequent act of Sears. Thus, the subsequent action relied on by the Goforths was not "an overt act by the defendant" intended to disrupt or injure the Goforths' business. *See Pace*, 813 F.2d at 237.

The Goforths could have, and should have, brought the claim during the first arbitration. Even if the subsequent enforcement did constitute an overt act, *see e.g.*, *Weber v. Consumers Dig., Inc.*, 440 F.2d 729, 731 (7th Cir. 1971) (finding that the obtaining of a preliminary injunction was the "last overt act"), the initial seeking of the preliminary injunction was the

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[3] The Goforths contend that the Ninth Circuit backed away from this holding in *Samsung Elecs. Co. v. Panasonic Corp.*, 747 F.3d 1199, 1203 (9th Cir. 2014). Even so, the Ninth Circuit affirmed in *Samsung* that "a lawsuit constituted an overt act." *Id.* Thus, even with this narrower rule, the overt act initiating the arbitration can cause a claim to accrue for the purposes of Rule 13.

[4] While Sears's action here sufficiently triggered Rule 13(a), we need not decide whether the last overt act rule typically used in the statute-of-limitations context could ever apply in certain Rule 13 contexts.

necessary act that gave rise to the claim under Federal Rule of Civil Procedure 13. The Goforths argue that Sears's arbitration "did *not* in any conceivable way put 'the aggrieved party on notice that there is a possible antitrust violation.'" Appellants' Reply Br. 7 (quoting *Pace*, 813 F.2d at 238). The record belies this assertion. In Matt's response to Sears's motion for interim relief in the initial arbitration, he argued that the agreement was not enforceable under Illinois law and that the agreement was overly oppressive. This knowledge enabled him to allege that Sears violated any applicable antitrust provisions. Additionally, even after Sears first sought emergency relief in the first arbitration and prior to filing their responses, the Goforths believed "the restraint of trade was unreasonable and unenforceable" and continued their plans to open GHL. R. Doc. 83-1 ¶ 56.

Further supporting that the Goforths could have brought this claim during the first arbitration, the Goforths sought defense costs from the first arbitration as an antitrust injury when they initiated the second arbitration. The Goforths now attempt to argue that the defense costs are not an antitrust injury and therefore cannot give rise to a claim. Relying on *Lovett v. General Motors Corp.*, the Goforths suggest that defense costs cannot be antitrust injuries because they are too consequential. 975 F.2d 518, 521 (8th Cir. 1992) ("[C]onsequential injury is not an antitrust injury."). In *Lovett*, evaluating antitrust standing, we held that "causal connection between an antitrust violation and harm to [a plaintiff] cannot be the basis for antitrust compensation" but rather it must relate to the harm

the laws intended to protect and the plaintiff "must have been the target of the anticompetitive activity, not one who has merely suffered indirect, secondary, or remote injury." *Id.* at 520 (citation modified).

In this case, there is no dispute that the Goforths allege that Sears targeted them and that the Goforths did not believe their alleged injuries were "indirect, secondary, or remote." *Id.* Litigation costs, in some circumstances, connected with antitrust violations can constitute antitrust injury. *See, e.g.*, *Handgards, Inc. v. Ethicon, Inc.*, 601 F.2d 986, 997 (9th Cir. 1979) ("In a suit alleging antitrust injury based upon a bad faith prosecution theory it is obvious that the costs incurred in defense of the prior patent infringement suit are an injury which 'flows' from the antitrust wrong."). For instance, courts have allowed litigation costs to constitute antitrust injury if a plaintiff could demonstrate that the initial suit was "part of a conspiracy that violated the antitrust laws." *Carter v. Variflex, Inc.*, 101 F. Supp. 2d 1261, 1270 (C.D. Cal. 2000).

The Goforths' own filings in both the second arbitration and this case sought litigation costs from the first arbitration as part of their antitrust injury. Their pleadings show that they believed that the defense costs—which began accruing as soon as Sears initiated the first arbitration to enforce the non-compete provision—were a part of the damages relevant to the alleged antitrust violations—the sole focus of the second arbitration. Additionally, prior to the enforcement of the agreement, the Goforths believed the agreement was "unreasonable and unenforceable." R. Doc. 83-1 ¶ 56. Its unenforceability was their stated reason for undertaking lease renewal

expenses for the GHL location, renovating the inside and outside of the location, and advertising for its new business. *See id.* This, in combination with its filings, demonstrates the Goforths' belief that Sears initiated arbitration as part of its "overarching conspiracy to unlawfully restrain trade by enforcing the post-expiration agreement." R. Doc. 30, at 37. This suggests that the Goforths viewed their litigation costs from the first arbitration as an antitrust injury because they sought such recovery as damages, suggesting that they believed it was "part of a conspiracy that violated the antitrust laws." *Carter*, 101 F. Supp. 2d at 1270.

In sum, we hold that the Goforths' antirust claims accrued when Sears initiated the first arbitration and were, therefore, compulsory counterclaims.[5] This is true whether, as the Goforths sought in the second arbitration, the damages were the defenses costs; the Goforths should have sought a preliminary injunction preventing the enforcement; or the initiation of the first arbitration was an overt act that caused the antitrust violation to accrue.

B. *Initial Arbitration Application to Non-Signee Spouse*

Lastly, the Goforths argue that Malinda's claim was not compulsory because she and her company "had no opportunity to serve a responsive pleading because they objected to the arbitrator's jurisdiction and were not parties to the arbitration agreement." Appellants' Br. 21. However, the dealer agreement explicitly extended to "spouses," which includes

[5] Because we affirm on the compulsory-counterclaim grounds, we need not address Transform's alternative grounds.

Malinda. R. Doc. 67-1, at 27. Further, the Goforths offer no explanation or caselaw as to why they could not have filed a counterclaim in the alternative interpretation. Malinda could have, without damage to the jurisdictional claim, objected to jurisdiction while simultaneously bringing the compulsory counterclaim. *See, e.g.*, *Neifeld v. Steinberg*, 438 F.2d 423, 428 (3d Cir. 1971) (allowing, under Federal Rule of Civil Procedure 12(b), "a defendant to join [jurisdictional] defenses with a counterclaim without waiving these defenses"). Thus, Malinda's antitrust claim was also a compulsory counterclaim and should have been brought in the first arbitration.

III. *Conclusion*

For the reasons discussed above, we affirm.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI GRANTING SUMMARY JUDGMENT, FILED JUNE 12, 2025

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF MISSOURI

SOUTHERN DIVISION

MATTHEW GOFORTH, an individual, MALINDA GOFORTH, an individual, MG MANGAEMENT CO., LLC, a Missouri Limited liability company, and MALINDA'S SUGAR AND SPICE LLC, a Missouri limited liability company,

Plaintiffs,

vs.

Case No. 6:23-cv-03167-MDH

TRANSFORM HOLDCO LLC, a Delaware Limited liability company, HOMETOWN MIDCO, LLC, a Delaware limited liability Company, ESL INVESTMENTS, INC., a Delaware Corporation, and ESL PARTNERS, L.P., a Delaware limited Partnership,

Defendants.

ORDER

Before the Court is Defendants' Motion for Summary Judgment. (Doc. 66). Defendants have filed their suggestions in support (Doc. 67), Plaintiffs has filed their suggestions in opposition (Doc. 90), and Defendants have filed their reply. (Doc. 106). The

motion is now ripe for adjudication on the merits. For the reasons stated herein, Defendants' Motion for Summary Judgment is **GRANTED**.

BACKGROUND

This case arises out of an alleged violation of Section One of the Sherman Antitrust Act based upon a non-compete provision restricting Plaintiffs from operating Goforth Home and Lawn, a home and lawn store in Bolivar, Missouri. Plaintiffs Matthew and Malinda Goforth are citizens and residents of Bolivar, Missouri and the owners of MG Management Co., LLC ("MG"). Malinda Goforth is the owner of Malinda's Sugar and Spice LLC a Missouri limited lability company that owns and operates Goforth Home and Lawn. MG is a Missouri limited liability company that operated a Sears Hometown Store in Bolivar, Missouri until July of 2019. Defendant Hometown Midco LLC is a Delaware limited lability company wholly owned and controlled by Transform Holdco LLC. Defendant Transform Holdco LLC is a Delaware limited liability company that is wholly owned and controlled by Defendant ESL Investments, Inc. Defendant ESL Investment, Inc. is a Delaware corporation and Defendant ESL Partners, L.P. is a Delaware limited partnership (collectedly, "ESL"). ESL is wholly owned and controlled by Edward Lampert.

On or around December 30, 2015, Sears Authorized Home Stores ("SAHS") and MG entered into a Dealer Agreement, granting MG a limited license to operate an existing SAHS merchandise facility in Bolivar, Missouri until July 6, 2019. The Dealer Agreement contained an arbitration provision

covering "all controversies, disputes, and claims" involving "Sears Hometown or any of its Affiliates, or any of their respective shareholders, officers, directors, agents, employees, legal representatives … successors and assigns." The Dealer Agreement also contained a non-compete provision that prohibited MG, its affiliates, and its immediate family members from having any direct or indirect controlling ownership interest in any competing business that operates within fifty miles of MG's business. The non-compete provision was to last two years after the expiration of the Dealer Agreement, expiring on July 6, 2021.

On or around April 9, 2019, SAHS learned that Matthew Goforth would not be renewing his Dealer Agreement with SAHS when it expired in July of 2019. SAHS then filed an emergency motion for interim relief on June 7, 2019, to enforce the non-compete provision of the Dealer Agreement. Matthew Goforth submitted an affidavit stating that neither MG, himself, nor any entity in which he or MG have interest or control have made any plans to compete with SAHS following the expiration of the Dealer Agreement on July 6, 2019. The arbitrator denied SAHS's emergency motion for injunctive relief based upon the declaration of Matthew Goforth stating he had no intention to complete with SAHS following the expiration of the Dealer Agreement on July 6, 2019.

SAHS brought a renewed motion for injunctive relief based on a local news article published on July 20, 2019, highlighting Malinda Goforth's remodeling of the former SAHS business to house her new business, Goforth Home and Lawn. SAHS also attached a Facebook post by Malinda Goforth on July

20, 2019, which also announced her plans to open Goforth Home and Lawn, as well as the Registration of Fictious Name from the Missouri Secretary of State website for Goforth Home and Lawn that was filed June 5, 2019. SAHS requested an order enjoining Plaintiffs from operating Goforth Home and Lawn. SAHS also requested attorneys' fees because Malinda's intentions to set up a competing business on the same location should have been revealed during the prior hearing for emergency relief.

On November 20, 2019, SAHS was granted an interim order enjoining Plaintiff's from operating Goforth Home and Lawn and attorneys' fees. SAHS posted bond for interim injunctive relief of $150,000.00. The arbitrator found that Malinda Goforth, and by extension Malinda's Sugar and Spice, LLC, was subject to the Dealer Agreement based upon the plain language of the section 15.8 which states that competition may not be undertaken by any member of Owner's immediate family. The Arbitrator additionally found that the conduct by Matthew Goforth and MG at the previous emergency hearing justifies entry of an award of attorneys' fees incurred by SAHS in this matter for not alerting the prior arbitrator of Malinda's plans to compete. The arbitrator's ruling was appealed and was affirmed in its entirety on March 16, 2020.

On September 23, 2020, a final arbitration award was entered in the first arbitration enforcing as lawful the noncompete provision of the Dealer Agreement, awarding attorneys' fees to SAHS in the amount of $74,952.00 and non-American Arbitration Association costs of $34,194.69. Plaintiffs then appealed the arbitration award and on January 14, 2021, an

appellate arbitrator reversed and held the non-compete provision was unenforceable while affirming the amount of attorneys' fees. The award was silent as to the bond for injunctive relief.

Plaintiffs initiated the second arbitration alleging that SAHS's enforcement of the non-compete provision in the Dealer Agreement violated the Sherman Act and the Illinois Antitrust Act. Plaintiffs asked the second arbitrator for damages, treble damages, attorneys' fees and costs for violation of the Federal Sherman Act and the Illinois Antitrust Act and, alternatively, an action on the bond posted in the prior interim award in the first arbitration. On June 4, 2021, the arbitrator in the second arbitration denied SAHS's Motion to Dismiss the second arbitration but acknowledged that the "new arbitration … involve[ed] the same parties, the same core of operative facts, and the same core legal issues as the prior matter and at least three prior interim awards in the prior matter." The second arbitrator also found that the first arbitrator's final award on appeal is a final judgment under Illinois law. On May 3, 2022, the arbitrator issued an award "in full settlement of all claims submitted" in the second arbitration. The arbitrator found Plaintiffs alternative action on the bond as denied for being abandoned. The arbitrator additionally found that Plaintiff's antitrust claims were compulsory counterclaims in the first arbitration because they arose by the time MG filed its answers. The arbitrator ultimately found in favor of SAHS and against Plaintiffs under the Sherman Act and the Illinois Antitrust Act.

On May 20, 2022, Plaintiffs filed a notice of appeal in the second arbitration. On December 14, 2022, the American Arbitration Association suspended the arbitral appeal pending SAHS's bankruptcy proceedings. On March 29, 2023, Plaintiffs sought relief from the Bankruptcy Court to permit them to continue the appeal in the second arbitration. On May 25, 2023, Plaintiffs, along with SAHS, stipulated to an indefinite stay of the appeal in the second arbitration. Plaintiffs then brought this case alleging a federal antitrust claim under Section One of the Sherman Act arising out of SAHS's enforcement of the noncompete restriction as an illegal restraint on trade through Defendants.

Defendants bring their Summary Judgment Motion arguing Plaintiffs' claim is barred because it was a compulsory counterclaim that should have been raised in the first arbitration. Defendants also argue that Plaintiffs' Antitrust claim is foreclosed by *res judicata* because it was litigated in the second arbitration. The Court will take each argument in turn.

STANDARD

Summary judgment is proper where, viewing the evidence in the light most favorable to the non-moving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Reich v. ConAgra, Inc.*, 987 F.2d 1357, 1359 (8th Cir. 1993). "Where there is no dispute of material fact and reasonable fact finders could not find in favor of the nonmoving party, summary judgment is appropriate." *Quinn v. St. Louis County*, 653 F.3d 745, 750 (8th Cir. 2011). Initially,

the moving party bears the burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the movant meets the initial step, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby*, Inc., 477 U.S. 242, 248 (1986). To satisfy this burden, the nonmoving party must "do more than simply show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

ANALYSIS

I. Compulsory Counterclaim

Defendants first argue that Plaintiffs were required to assert the antitrust claim they have alleged in this case as a counterclaim during the first arbitration and are therefore barred from pursuing it here. Specifically, Defendants state that Plaintiffs could have brought an antitrust counterclaim as soon as SAHS initiated the arbitration, even though the non-compete had not yet been enforced as Plaintiffs were seeking damages related to their defense of the emergency motion for interim relief in the first arbitration that were incurred on June 7, 2019. Plaintiffs argue that their claim in this case was not a compulsory counterclaim in the first arbitration because the claim did not arise until November 20, 2019, when the emergency interim award was entered.

An antitrust cause of action generally "accures and the statue begins to run when a defendant commits an act that injures a plaintiff's business." *Concord Boat*

Corp. v. Brunswick Corp., 207 F.3d 1039, 1050 (8th Cir. 2000) (quoting *Zenith Radio corp. v. Hazeltine research, Inc.*, 401 U.S. 321 338, 91 S.Ct. 795, 28 L.Ed.2d 77 (1971)). A plaintiff need not "prove an actual lessening of competition in order to recover. Competitors may be able to prove antitrust injury before they actually are driven from the market and competition is thereby lessened." *Blue Shield of Virginia v. McCready*, 457 U.S. 465, 482, 102 S.Ct. 2540, 2550, 73 L.Ed. 2d 149 (1982) (citing *Brunswick Corp v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977)). Federal Rule of Civil Procedure 13 states:

> (1) *In General*. A pleading must state as a counterclaim any claim that–at the time of its service–the pleader has against an opposing party if the claim:
>
> (A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and
>
> (B) does not require adding another party over whom the court cannot acquire jurisdiction.

Fed. R. Civ. P. 13(a).

Here the second arbitrator specifically took up the issue the parties now present to the Court. The second arbitrator's award stated, "MG sought attorneys' fees in both of its responsive pleadings, taking the position that Sears' alleged antitrust violation started damaging it as soon as it began incurring defense fees." (Doc. 67-7, page 4). The award further states "MG is seeking damages for a claim that it could–and should–have brought by the time it filed responsive

pleadings and sought recovery for defense fees on July 15, 2019, and October 18, 2019." (Doc.67-7, page 5). The Court finds that Plaintiff's antitrust claim accrued upon the initiation of the first arbitration by SAHS on June 7, 2019. This is evident from Plaintiff's claims in the second arbitration of damages that started to accrue from the initiation of the first arbitration and noted within the award opinion from the second arbitrator. As Plaintiff could have brought the antitrust cause of action at this time, the Court additionally finds that Plaintiff failed to raise it as a compulsory counterclaim pursuant to Federal Rule of Civil Procedure 13.

Plaintiffs also make the argument that Defendants were not a part of the Dealer Agreement and thus Plaintiffs claim was not a compulsory counterclaim pursuant to Federal Rule of Civil Procedure 13(a)(1)(B). However, Plaintiffs has alleged that Defendants "Transform, Lampert and ESL, through SAHS, enforced a post-expiration noncompete restriction against Goforth starting on March 16, 2020." (Complaint ¶ 63).

The Eighth Circuit has held "[a] willing signatory seeking to arbitrate with a non-signatory that is unwilling must establish at least one of the five theories described in *Thomson–CSF, S.A. v. Am. Arb. Ass'n*, 64 F.3d 773, 76 (2d Cir. 1995)." *Haarslev, Inc. v. Nissen*, No. 5:19-CV-06128-BCW, 2023 WL 2782313, at *3 (W.D. Mo. Jan. 30, 2023) (quoting *Reid v. Doe Run Res. Corp.*, 701 F.3d 840, 846 (8th Cir. 2016)). The five theories are: (1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; and (5) direct benefits estoppel. *Id.* Under the direct benefits estoppel theory, a

nonsignatory can be bound to an arbitration agreement "(1) by knowingly seeking and obtaining 'direct benefits' from the contract; or (2) by seeking to enforce the terms of the contract or asserting claims that must be determined by reference to that contact." *Reid v. Doe Run Res. Corp*., 701 F.3d 840, 846 (8th Cir. 2016) (citing *Novel Drilling Servs. v. Certex USA, Inc.*, 620 F.3d 469, 473 (5th Cir. 2010)).

Here, based on Plaintiffs' Complaint, Defendants, acting through SAHS, were seeking to enforce the non-compete provision of the Dealer Agreement. Pursuant to the direct benefits estoppel theory, that act would bind Defendants to the Dealer Agreement. As such, jurisdiction would have been had by the first arbitrator as to Defendants and Plaintiff could have brought their antitrust claim as a counterclaim in the first arbitration.

Lastly, Plaintiffs argue that the owner of Goforth Home and Lawn, Malinda's Sugar & Spice, LLC, was not a party to the arbitration agreement and was not made a party to the arbitration until November 20, 20219. As such, Plaintiffs argue Malinda Goforth and Malinda's Sugar & Spice, LLC had no opportunity to file counterclaims against SAHS before November 20, 2019, as they were not parties and would have waived their objections to jurisdiction.

Section 27.2 of the Dealer Agreement covers the parties and disputes covered. It states in relevant part: "[i]f natural persons are subject to these arbitration requirements, including shareholders, officers, directors, agents, employees, and attorneys and others in representative capacities, these arbitration requirements will also apply to the spouses and immediate family members of these

natural persons." (Doc. 67-1, § 27.1). The Dealer Agreement explicitly stated that this agreement would apply to spouses and immediate family members of any person to the agreement. Additionally, this same argument was brought up on appeal from the first arbitration. The first arbitrator in his award on appeal explicitly stated that the original order properly determined that the arbitrator had jurisdiction over Malinda and Malinda's Sugar & Spice, LLC as a part of Matthew's immediate family and her controlled corporation. (Doc. 67-3, page 2). The appeal also affirmed jurisdiction based on principles of equitable estoppel and agency principles. *Id*. at page 3. For the reasons stated, Defendant's Motion for Summary Judgment based on Plaintiff's claim being a compulsory counterclaim in the first arbitration is **GRANTED**.

II. Res Judicata

The Court, having granted summary judgment based on Plaintiffs having to bring their claim as a compulsory counterclaim in the first arbitration and in the interest of judicial efficiency, need not proceed on the issue of *res judicata*.

CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment is **GRANTED**. Summary Judgment is hereby entered in favor of Defendants.

IT IS SO ORDERED.

DATED: June 12, 2025

/s/ Douglas Harpool
DOUGLAS HARPOOL
UNITED STATES DISTRICT JUDGE

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI DENYING THE MOTION TO DISMISS, FILED JULY 18, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF MISSOURI

SOUTHERN DIVISION

MATTHEW GOFORTH, an individual, MALINDA GOFORTH, an individual, MG MANAGEMENT CO., LLC, a Missouri limited liability company, and MALINDA's SUGAR AND SPICE, LLC, a Missouri limited liability company,

Plaintiffs,

vs.

Case No. 6:23-cv-03167-MDH

TRANSFORM HOLDCO LLC, a Delaware limited liability company, HOMETOWN MIDCO, LLC, a Delaware limited liability company, ESL INVESTMENTS, INC., a Delaware Corporation, and ESL PARTNERS, L.P., a Delaware limited Partnership,

Defendants.

ORDER

Before the Court is Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). For reasons herein, Defendants' Motion is **DENIED**.[1]

BACKGROUND

Plaintiffs' allegations generally concern whether enforcement of a noncompete agreement violates Section One of the Sherman Act.[2] Plaintiffs Malinda and Matthew Goforth own MG Management Co., LLC and Malinda's Sugar and Spice, LLC. Malinda's Sugar and Spice owns and operates a retail business selling home appliances in Bolivar, Missouri under the name of Goforth Home and Lawn. MG Management Co., LLC operated a Sears Hometown Store in Bolivar until 2019. Defendant ESL Investments, Inc. owns approximately forty-seven percent of non-parties Sears Hometown Stores, Inc. and Sears Authorized Hometown Stores, LLC ("SAHS"). ESL also wholly owns Defendant Transform Holdco, LLC, Transform in turn owns Hometown Midco, LLC, who owns approximately forty-five percent of non-party Sears Hometown Stores, Inc. Sears Hometown Stores, Inc.

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[1] Also before this Court are Plaintiffs' unopposed motion for judicial notice of two relevant arbitration awards, which this Court **GRANTS**, and motion for extension of time for amended pleadings, which this court finds as **MOOT**, since Defendants' motion to dismiss is hereby denied.

[2] This background section derives wholly from factual allegations in Plaintiff's Complaint. Nothing herein reflects a finding of fact on the part of this Court.

wholly owns non-party Sears Authorized Hometown Stores, LLC.

Sears Hometown Stores began operating around 1993 with the purpose of selling home appliances to people in rural areas, who often lacked direct access to big-box stores in more populated markets. Sears Hometown Stores were independently owned and operated. The Dealer Agreement was a contract that helped define the relationship between SAHS and those individual owners of Sears Hometown Stores. Pursuant to the Dealer Agreement, SAHS owned and supplied merchandise to the store owner who received a commission for the sales.

Sometime around 2012, SAHS, at the direction of non-party Eddie Lampert, who wholly owns and controls ESL, added a post-expiration noncompete clause to the Dealer Agreement. The specific intent behind the addition of this clause, Plaintiffs allege, was to reduce future competition, in anticipation of an increased rate of closures among Sears Hometown Stores. Defendants wanted to protect their own business interests against the threat of Sears Hometown Store owners closing their Sears-affiliated stores and then reopening their own home appliance stores. The expectation of additional Sears Hometown Store closures was based on Lampert and Defendants' knowledge that Sears Holding Corp. was likely heading for bankruptcy. The noncompete clause at issue appeared in Section 18.5 of the Dealer Agreement and, in effect, prohibited any former store owner and their family members from competing with Sears Hometown Stores and Sears Holding Corp. for a period of at least two years anywhere in the United States.

Plaintiff Matthew Goforth purchased a Sears Hometown Store in Bolivar, Missouri during 2016. The Dealer Agreement between Matthew Goforth and SAHS included the noncompete clause at issue. Mattthew Goforth's Dealer Agreement with SAHS was scheduled to expire July 6, 2019. During the months leading up to that expiration, Matthew Goforth was planning to open his own home appliance business—Goforth Home and Lawn—in Bolivar. On June 7, 2019, SAHS commenced an arbitration proceeding against Matthew Goforth to enforce the post-expiration non-compete agreement and prevent the opening of Goforth Home and Lawn. While arbitration was pending, Goforth Home and Lawn opened on November 8, 2019. On November 20, 2019, SAHS was granted emergency interim relief to enforce the noncompete agreement and Goforth Home and Lawn closed. The interim award was affirmed on March 16, 2020. On September 23, 2020 a final arbitration award was entered, enforcing the noncompete agreement. On January 14, 2021, an appellate arbitrator reversed, finding the noncompete agreement unenforceable. Goforth Home and Lawn reopened in April 2021.

Plaintiffs' Complaint seeks damages corresponding to the time Goforth Home and Lawn was closed, alleging violations of the Sherman Act, Section One.

STANDARD

A complaint must contain factual allegations that, when accepted as true, are sufficient to state a claim of relief that is plausible on its face. *Zutz v. Nelson*, 601 F.3d 842, 848 (8th Cir. 2010) (citing *Ashcroft v.*

Iqbal, 556 U.S. 662, 678 (2009)). The Court "must accept the allegations contained in the complaint as true and draw all reasonable inferences in favor of the nonmoving party." *Coons v. Mineta*, 410 F.3d 1036, 1039 (8th Cir. 2005) (internal citations omitted). The complaint's factual allegations must be sufficient to "raise a right to relief above the speculative level," and the motion to dismiss must be granted if the complaint does not contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 545 (2007). Further, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Further, Eighth Circuit courts are particularly reluctant to dismiss an antitrust suit at the pleadings stage, as "proper market definition can be determined only after a factual inquiry into the commercial realities faced by consumers." *Double D Spotting Serv., Inc. v. Supervalu, Inc.*, 136 F.3d 554, 560 (8th Cir. 1998) (citations omitted).

DISCUSSION

Defendants make six arguments in support of their motion: 1) Plaintiffs failed to allege impact on interstate commerce; 2) Plaintiffs failed to allege harm to competition; 3) no named defendant was party to the noncompete agreement and no named defendant enforced such the noncompete agreement; 4) Plaintiffs fail to allege the existence of an agreement among competitors; 5) Plaintiffs failed to

adequately plead a relevant product and geographic market; and 6) Plaintiffs' claim is barred by the statute of limitations. This Court will address each argument in turn.

I. Plaintiffs sufficiently alleged an impact on interstate commerce

Defendants argue that Plaintiffs failed to sufficiently allege the requisite impact on interstate commerce. To establish a violation of Section 1 of the Sherman Act, "a plaintiff must demonstrate (1) that there was a contract, combination, or conspiracy; (2) that the agreement unreasonably restrained trade; and (3) that the restraint affected interstate commerce." *Wholesale All., LLC v. Express Scripts, Inc.*, 366 F. Supp. 3d 1069, 1076 (E.D. Mo. 2019). To establish a nexus with interstate commerce, a plaintiff must "allege the relationship between the activity involved and some aspect of interstate commerce …or, if it is local in nature, that it has an effect on some other appreciable activity demonstrably in interstate commerce. *McLain v. Real Est. Bd. of New Orleans, Inc.*, 444 U.S. 232, 232–33 (1980). To establish such an impact, it is sufficient "for petitioners to demonstrate a substantial effect on interstate commerce generated by [the complained-of activity]. Petitioners need not make the more particularized showing of an effect on interstate commerce caused by the alleged [violations]." *Id.* at 242-43. The Complaint satisfies this element in several ways, notably, and perhaps most directly, because the non-compete agreement at issue allegedly prevented Plaintiffs from selling home appliances anywhere in the United States for a two-year period. (Doc. 1 at ¶¶ 28-31). Additionally, the noncompete clause appeared in boilerplate Dealer

Agreement language that became standard around 2012. (Doc. 1 at ¶¶ 27, 28). This is a sufficient allegation of interstate commerce impact.

II. Plaintiffs have sufficiently pled an antitrust injury

Defendants next contend that Plaintiffs have failed to allege a relevant antitrust injury. To successfully plead a Sherman Act violation, plaintiffs must allege "injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful. The injury should reflect the anticompetitive effect either of the violation or of anticompetitive acts made possible by the violation." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). Put differently, "The antitrust laws…are designed to redress the injuries of consumers when an entire market is unlawfully constrained." *Haines v. VeriMed Healthcare Network, LLC*, 613 F. Supp. 2d 1133, 1139 (E.D. Mo. 2009). Plaintiffs Complaint alleges the following.

> [The] post-expiration noncompete restriction ensured that SAHS could "hold the markets open" and keep them free from competition by former store owners as SAHS' stores began closing because of SHC's future bankruptcy. The restraint of trade was designed to prevent SAHS from losing rural market share until Lampert could reacquire SAHS and combine it with SHC under Transform's ownership. The post-expiration non-compete appeared in Section 15.8 of SAHS's store contracts during the time that Goforth was operating a

> Hometown Store in Bolivar. The post-expiration noncompete restriction effectively prohibited any former store owner along with their family from competing against SHOS or SHC anywhere in the United States for at least two years. (Doc. 1 at ¶¶ 27, 28).

Plaintiffs argue that "a competitor's exclusion from the market 'is a conventional form of antitrust injury', *Brunswick Corp. v. Riegel Textile Corp.*, 752 F.2d 261, 271 (7th Cir. 1984), that would result from a defendant's enforcement of an agreement not to compete on the basis of products and markets." (Doc. 30 at 31). Defendants, on the other hand, contend that Plaintiffs have misunderstood the nature of an antitrust injury, arguing Plaintiff has alleged only a personal injury. This Court agrees that Plaintiffs' allegations in this regard remain thin, but the contention in paragraph twenty-eight of the Complaint makes sufficiently clear that the noncompete agreement at issue appeared in boilerplate language in SAHS's Dealer Agreements starting around 2012, indicating Plaintiffs have pled an anticompetitive injury sufficient to survive at the pleadings stage.

III. Plaintiffs have sufficiently alleged liability on the part of Defendants

Defendants next contend that Plaintiffs have failed to allege any specific acts on the part of Defendants that caused enforcement of the noncompete agreement. More specifically, Defendants argue that the arbitrator, not Defendants, enforced the noncompete agreement, suggesting absence of causation. This Court disagrees. While the arbitrator

may have played a role in enforcement, the parties involved in formation and execution of the noncompete agreement are at least arguably responsible for any antitrust violations. Additionally, Plaintiff's Complaint makes clear SAHS sought enforcement through arbitration.

IV. Plaintiffs adequately pled Defendants restrained trade

Defendants' fourth argument is that none of the four named Defendants is party to the Dealer Agreement, which involves only Plaintiffs and SAHS. Though this Court agrees that Plaintiff's allegations on this issue are general and, at times, cumbersome, the Complaint adequately alleges an agency relationship between SAHS and named Defendants that could conceivably make Defendants liable. The Complaint sufficiently alleges, at least for the 12(b)(6) stage, Defendants' dominion and control over SAHS, an agency relationship between Defendants and SAHS, and Defendants' direct role in the alleged restriction of trade. (Doc. 1 at ¶¶ 17-37). This Court likewise disagrees with Defendants' contention that Plaintiffs failed to allege a constraint on competition within the meaning of Section 1 of the Sherman Act. Plaintiff has adequately pled that the noncompete agreement restricted future competition by preventing Goforth Home and Lawn from competing with Sears and Transform. (Doc. 1 at ¶¶ 46-60).

V. Plaintiffs adequately pled product and geographic market

The parties disagree about whether the alleged restraint on trade—enforcement of the noncompete agreement—should be treated as vertical or horizontal. A vertical restraint typically involves

parties at distinct points in the production process, while horizontal restraint occurs between firms that compete at similar points in production. *New Orleans Ass'n of Cemetery Tour Guides & Companies v. New Orleans Archdiocesan Cemeteries*, 56 F.4th 1026, 1035 (5th Cir. 2023). The distinction is relevant because it impacts the court's analysis and, depending on the circuit, pleading standards.

A horizontal restraint on trade, which creates a plainly-discernable anticompetitive impact and possesses no apparent redeeming quality, commands a *per se* analysis, which "does not allow inquiry into the intent behind the restraint, its pro-competitive justifications, or its actual effect on competition." *Craftsmen Limousine, Inc. v. Ford Motor Co.*, 363 F.3d 761, 773 (8th Cir. 2004) (citations omitted). On the other hand, a vertical restraint has a less clear anticompetitive effect and requires a more searching rule of reason analysis, whereby "the factfinder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition." *Cont'l T. V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 49 (1977). In the middle are those cases that command a "quick look" approach, "in which the restraint is sufficiently threatening to place it presumptively in the *per se* class, but lack of judicial experience requires at least some consideration of proffered defenses or justifications." *Craftsmen Limousine, Inc. v. Ford Motor Co.*, 363 F.3d 761, 773 (8th Cir. 2004).

In the instant case, Plaintiffs advocate for a quick look approach based largely on a Seventh Circuit opinion finding, "a covenant not to compete following employment does not operate any differently from a

horizontal market division among competitors—not at the time the covenant has its bite, anyway." *Polk Bros. v. Forest City Enterprises, Inc.*, 776 F.2d 185, 189 (7th Cir. 1985). At the same time, however, other circuits have declined to apply a *per se* analysis to some noncompetition agreements. *See, e.g., Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 900–01 (9th Cir. 1983); *Lektro-Vend Corp. v. Vendo Co.,* 660 F.2d 255, 264–65 (7th Cir.1981); *Bradford v. New York Times Co.,* 501 F.2d 51, 59–60 (2d Cir.1974).

Plaintiffs contend that "there is no requirement under the rule of reason to define the relevant market when a horizontal restraint of trade has no procompetitive justification." (Doc. 30 at 39). For support, Plaintiffs cite a Supreme Court finding that, "we have never required proof of market power in [cases that involve a naked restraint on price and output]." *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 110 (1984).

Plaintiffs' position, however, appears to conflate "proof of market power" and the need for a plaintiff to "define a market and its participants." *Double D Spotting Serv., Inc. v. Supervalu, Inc.*, 136 F.3d 554, 558–59 (8th Cir. 1998). In the Fifth Circuit at least, it appears plaintiffs who allege a horizontal restraint are not necessarily required to define a relevant market. *New Orleans* at 1036. In contrast, Eighth Circuit courts appear to require all plaintiffs to define a market and its participants, regardless of whether the restraint is vertical or horizontal. *Double D* at 558-59 ("a plaintiff alleging a horizontal restraint must at least define the market and its participants"). A market definition normally includes reference to a specific product and geographic area. *Double D* at 560.

This Court finds that Plaintiffs' allegations sufficiently define a market in terms of product and geography. Plaintiffs allege the relevant product is "major home appliances," which they claim, "can be categorized into four groups based on the function of each appliance: dishwashers, laundry, cooking, and refrigerators." (Doc. 1 at ¶ 41). Plaintiffs further allege that major home appliances prove distinct from small home appliances, "because a vacuum or toaster is not reasonably interchangeable with a dryer or refrigerator." (Doc. 1 at 41). Importantly, contrary to Defendants' claim, it is not fatal to Plaintiffs' Complaint that Plaintiffs' product market includes several individual products (i.e. dishwasher and oven) that are not interchangeable amongst themselves. Indeed, the relevant concern is whether Plaintiff has sufficiently alleged a product market that accounts for all reasonably interchangeable alternatives. "The boundaries of the product market can be determined by the reasonable interchangeability or cross-elasticity of demand between the product itself and possible substitutes for it." *HDC Med., Inc. v. Minntech Corp.*, 474 F.3d 543, 547 (8th Cir. 2007) (citing *Brown Shoe Co. v. United States,* 370 U.S. 294, 325, 82 S.Ct. 1502, 8 L.Ed.2d 510 (1962). Here, because the product market of major home appliances is, as Plaintiff alleges, not reasonably interchangeable with other products, Plaintiffs' pleadings on the issue are sufficient.

Similarly, Plaintiff's geographic market is satisfactorily pled. Plaintiffs allege, "the relevant geographic market is local and in this case encompasses Bolivar, Missouri…Consumers shopping for major home appliances overwhelmingly prefer

local retailers....This is particularly true for consumers living in smaller rural markets like Bolivar, who value local businesses and prefer to avoid shopping for big ticket items out of town." (Doc. 1 at ¶ 42). Contrary to Defendants' argument, this is not impermissibly narrow and its exclusion of retailers in Springfield appears strategic and adequately reasoned.

VI. Plaintiffs' allegations survive the applicable statute of limitations

The parties appear to agree that the Sherman Act's four-year statute of limitations applies. 15 U.S.C. §15b. The parties disagree, however, as to when the clock started ticking: at the 2016 signing of the Dealer Agreement that includes the noncompete agreement or the earliest moment at which the agreement could have been enforced, namely July 6, 2019, the day on which the dealer agreement expired. The Eighth Circuit does not appear to have addressed this narrow issue directly. The Supreme Court has held, however, that "a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business." *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 338 (1971). Accordingly, this Court finds that Plaintiff's Complaint sufficiently alleges a violation within four years of the earliest date upon which the noncompete agreement could have conceivably been enforced, July 6, 2019, when Plaintiff alleges the dealer agreement expired.

CONCLUSION

For foregoing reasons, Defendants' Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

Dated: July 18, 2024

*/s/ Douglas Harpool*_____
DOUGLAS HARPOOL
United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DENYING REHEARING AND REHEARING EN BANC, FILED AUGUST 28, 2026

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 25-2306

Matthew Goforth, an individual, et al.

Appellants

v.

Transform Holdco, LLC, a Delaware limited liability company, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Springfield
(6:23-cv-03167-MDH)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 28, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

APPENDIX E — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED JULY 28, 2026

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 25-2306

Matthew Goforth, an individual; Malinda Goforth, an individual; MG Management Co., LLC, a Missouri Limited Liability Company; Malinda's Sugar and Spice, LLC, a Missouri Limited Liability Company

Plaintiffs - Appellants

v.

Transform Holdco, LLC, a Delaware limited liability company; Hometown Midco, LLC, a Delaware limited liability company; ESL Investments, Inc., a Delaware corporation; ESL Partners, L.P., a Delaware limited partnership

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Springfield
(6:23-cv-03167-MDH)

JUDGMENT

Before L.R. SMITH, BENTON, and ERICKSON, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

July 28, 2026

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

_____

/s/ Susan E. Bindler

APPENDIX F — STATUTORY, RULE, AND CONTRACTUAL PROVISIONS INVOLVED

Section 1 of the Sherman Act, 15 U.S.C. § 1, provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a), provides in relevant part:

Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. * * *

Section 4B of the Clayton Act, 15 U.S.C. § 15b, provides:

Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred

under existing law on the effective date of this Act shall be revived by this Act.

Section 16 of the Clayton Act, 15 U.S.C. § 26, provides in relevant part:

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue * * * .

Rule 13(a) of the Federal Rules of Civil Procedure provides in relevant part:

(a) Compulsory Counterclaim.

(1) *In General.* A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

Rule 13(e) of the Federal Rules of Civil Procedure provides:

(e) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that

matured or was acquired by the party after serving an earlier pleading.

The Terms and Conditions to the Sears Authorized Hometown Stores Agreement dated December 30, 2015, between Sears Authorized Hometown Stores, LLC and MG Management Co., LLC (C.A. App. 028–057), provide in relevant part:

8.3. *Sears Hometown's Reservation of Rights*

(a) Sears Hometown retains all rights to operate or authorize others to operate facilities or businesses of any kind, anywhere, under any other concept, system, business format, or method of operation. Nothing in this Agreement restricts or limits in any way the rights of Sears Hometown or any other person that has rights to use the "Sears Hometown" name, directly or indirectly and without additional consideration or compensation to Owner or notice to Owner, to open, own, or operate, or authorize one or more unrelated third parties to open, own, or operate, anywhere in the world, including by granting franchises or licenses, one or more Businesses regardless of their proximity to the Store and regardless of whether the Businesses were opened or began existence on or before the date of this Agreement or were opened or began existence after the date of this Agreement. "***Businesses***" means each of the following businesses that offer for sale or sell Merchandise, Services, and Protection Agreements, or any of them, whether existing on, or opened after, the date of this Agreement: (i) Sears Authorized Hometown Stores; (ii) Sears full-line stores, Kmart stores, Sears Hardware Stores and other hardware stores, Sears Home Appliance Showrooms and other appliance stores and showrooms, Sears Auto Centers and other auto

centers, Orchard Supply Hardware stores, The Great Indoors stores, Sears Outlet Stores and other outlet stores, and Lands' End stores and direct-to-customer businesses; (iii) Sears Home Services and other home services businesses; (iv) Sears Commercial Sales, Sears Appliance Select, Sears Commercial Solutions/Sears Parts Direct Commercial, and Appliance Builder Distributor businesses and other commercial sales, parts, builder, and distribution businesses; (v) other Sears and third-party retail stores and wholesale operations; (vi) all other Sears Hometown and third-party distribution channels and methods; and (vii) the successors and assigns of each of these businesses.

15.6. ***Definition of Competing Business.*** The term "Competing Business", as used in this Agreement, means any business located in the United States that offers for sale or rents merchandise or services similar to Merchandise and Services offered for sale at the Store. For the purposes of this Agreement, Lease-to-Own Services that Sears Hometown approves in writing will not constitute Competing Business, however other services and activities operated by such service-providers may constitute Competing Business if they meet the definition provided in the preceding sentence.

15.8. ***Non-Competition After Term.*** For a period of two years after expiration or termination of this Agreement, neither Owner, Controlling Owner, Owner's Affiliate, nor any member of Owner's immediate family will:

(a) Have any direct or indirect controlling ownership interest in any Competing Business that operates at or within fifty miles of the Location or

within 50 miles of any Sears Authorized Hometown Stores sales facility or any Business;

(b) Have any direct or indirect ownership interest in any Competing Business that operates at or within 50 miles of the Location or within 50 miles of any Sears Authorized Hometown Stores sales facility or any Business except for investment in capital stock or other securities of a Competing Business or any of its Affiliates listed on a national securities exchange or actively traded in the over-the-counter market if Owner and the members of Owner's immediate family together do not, directly or indirectly, hold more than one percent of all such shares of the Competing Business's capital stock or other securities issued and outstanding;

(c) Associate, directly or indirectly, as an employee, officer, director, agent, partner, representative, consultant, or vendor with, for, or on behalf of any Competing Business that operates at or within 50 miles of the Location or within 50 miles of any Sears Authorized Hometown Stores sales facility or any Business;

(d) Have any direct or indirect interest in any entity that grants or receives a franchise or license to operate a Competing Business that operates at or within 50 miles of the Location or within 50 miles of any Sears Authorized Hometown Stores sales facility or any Business; or

(e) Perform any servicing, maintenance, or repair for Merchandise or other items except as provided in this Agreement or authorized by Sears Hometown in writing at or within 50 miles of the Location or within 50 miles of any Sears Authorized Hometown Stores sales facility or any Business.

27.4. ***Procedures.*** The arbitration, except as otherwise provided in section 27.6, will be conducted before one arbitrator in accordance with the then-current Commercial Arbitration Rules and Optional Rules for Emergency Measures of Relief of the American Arbitration Association (or successor rules of similar import). All disputes about whether any controversy or party is subject to this arbitration requirement, and all disputes as to the law that the arbitrator should apply to an Arbitrated Claim, will be submitted to and resolved by the arbitrator. Except as provided in section 27.6 and notwithstanding Rule 36 of the Commercial Arbitration Rules (or successor rule of similar import), the filing of a request for provisional remedies (including preliminary injunctions and attachments) before a court of law will be incompatible with this arbitration requirements. The arbitrator will construe, interpret, and enforce this Agreement in accordance with the substantive laws of the State of Illinois applicable to transactions executed and to be wholly performed in the State of Illinois by residents of the State of Illinois, and without regard to (i) choice-of-law and conflict-of-law rules of any jurisdiction that would require the application of the laws of any jurisdiction other than the State of Illinois, and (ii) statutory laws with respect to which jurisdictional requirements have not been met. Each party to the arbitration will file all compulsory counterclaims (as defined by Rule 13 of the Federal Rules of Civil Procedure) within 30 days of the date of the arbitration demand for the claim to which it relates. The provisions of all applicable limitations on the period of time in which claims must be brought will bind the parties to the arbitration. All

arbitrations will be conducted on an individual basis, not as a plaintiff or class member in any purported class or representative proceeding, and all Arbitrated Claims by or against a party to the arbitration will be heard on an individual basis and not consolidated with the Arbitrated Claims of any other parties to the arbitration. AS A RESULT OF THESE ARBITRATION REQUIREMENTS AND EXCEPT AS PROVIDED IN SECTION 27.7 NEITHER SEARS HOMETOWN NOR OWNER WILL HAVE THE RIGHT TO GO TO COURT OR TO HAVE A JURY TRIAL (THE RIGHT TO WHICH SEARS HOMETOWN AND OWNER EACH WAIVE) OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING PERTAINING TO ANY ARBITRATED CLAIM (AS THE TERM "ARBITRATED CLAIM" IS DEFINED IN SECTION 27.2).

27.6. *Appeal.*

(a) Within 20 days of receiving the arbitrator's award, each party to the arbitration may appeal the award to an AAA appellate arbitrator by so notifying the AAA Case Manager. The appeal will follow AAA Expedited Procedures. No record of the appeal will be made, and no documents will be exchanged by the parties to the appeal or submitted to the appellate arbitrator other than briefs supporting or opposing the appeal. Each party's brief will be limited to 10 pages. No other briefs will be permitted. Following exchange of the briefs the appeal will be submitted to the appellate arbitrator. No oral argument will be permitted, but the appellate arbitrator may call for presentation of factual information on a fact issue

being appealed, in which case all parties will be permitted to present factual information on that issue. While the appeal is pending, no party may seek to enforce the award that is the subject of the appeal or seek to enter judgment on it under federal or state law.

(b) The appellate arbitrator may not modify or make any substitution for the initial award except for a manifest error of law or fact. The appellate arbitrator's award may (1) affirm the original award in whole or in part, (2) deny the original award in whole or in part, or (3) vacate the original award in whole or in part and make a new award. The appellate arbitrator must explain in writing the basis for its award.

27.7. ***Conclusive and Binding.*** The initial arbitrator's award, if not appealed in accordance with section 27.6, and the appellate arbitrator's award and related explanation, if the initial arbitrator's award is appealed, will be conclusive and binding on all parties to the arbitration. Each party to the arbitration may enter judgment in any court of competent jurisdiction on the initial arbitrator's award, if not appealed in accordance with section 27.6, and on the appellate arbitrator's award and related explanation, if the initial arbitrator's award is appealed. Each party to the arbitration waives unconditionally all rights to contest the validity and enforceability of all arbitration awards made in accordance with this section 27.

29.12. ***Governing Law.*** The Agreement will be governed by and construed in accordance with the laws of the State of Illinois without reference or regard to conflict of law provisions or other laws of any

jurisdiction that would cause the application of the laws of any jurisdiction other than the State of Illinois, and the rights and obligations of Sears Hometown and Owner in this Agreement will not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

APPENDIX G — DEMAND FOR ARBITRATION (JUNE 7, 2019) AND RESPONSE TO DEMAND (JULY 15, 2019)

AMERICAN ARBITRATION ASSOCIATION®
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION®

COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION

For Consumer or Employment cases, please visit ***www.adr.org*** *for appropriate forms.*

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Name of Respondent: MG Management CO., LLC, Matthew Goforth
Address: 1390 E. San Martin St.
City: Bolivar State: Missouri Zip Code: 65613
Phone No.: Fax No.:
Email Address: store3700@shos.com
Name of Representative (if known): Nathan A. Duncan
Name of Firm (if applicable): Douglas Haun Heidemann PC
Representative's Address: 901 East St. Louis Street, Suite 1200
City: Springfield State: Missouri Zip Code: 65806
Phone No.: 417-326-5261 Fax No.:
Email Address: terra@dhhlawfirm.com

The named claimant, a party to an arbitration agreement which provides for arbitration under the

Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.
Brief Description of the Dispute:
Breach by respondents of a Sears Authorized Hometown Stores Agreement effective January 2, 2016 and related guaranty for the operation of Sears Authorized Hometown Stores sales facility located in Bolivar, MO.
Dollar Amount of Claim: $ 995,000.00
Other Relief Sought: [X] Attorneys Fees [X] Interest [X] Arbitration Costs [ ] Punitive/Exemplary [X] Other: Emergency Relief under AAA Rule 38
Amount enclosed: $ 5,500.00
In accordance with Fee Schedule: [ ] Flexible Fee Schedule [X] Standard Fee Schedule
Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:
Extensive commercial and business law experience and, in particular, experience in distribution law.
Hearing locale: Chicago, Illinois
(check one) [X] Requested by Claimant [ ] Locale provision included in the contract
Estimated time needed for hearings overall: hours or 5 days

Please visit our website at www.adr.org if you would like to file this case online.
AAA Case Filing Services can be reached at 877-495-4185.

Type of Business:
Claimant: Licensor Respondent: Dealer and its owner/guarantor
Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other?

No
Signature (may be signed by a representative): /s/ Fredric A. Cohen Date: June 7, 2019
Name of Claimant: Sears Authorized Hometown Stores, LLC
Address (to be used in connection with this case): 5500 Trillium Boulevard, Suite 501, E5-110A
City: Hoffman Estates State: Illinois Zip Code: 60192
Phone No.: 8847-286-4245 Fax No.: 847-286-7003
Email Address:
Name of Representative: Fredric A. Cohen
Name of Firm (if applicable): Cheng Cohen LLC
Representative's Address: 311 N. Aberdeen St., Suite 400
City: Chicago State: Illinois Zip Code: 60607
Phone No.: 312-243-1717 Fax No.:
Email Address: fredric.cohen@chengcohen.com
To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. At the same time, send the original Demand to the Respondent.

American Arbitration Association and International Centre for Dispute Resolution
Commercial Arbitration Rules

Case Number: 01-19-0001-7845

Answer of MG Management Co., LLC and Matthew Goforth

Sears Authorized Hometown Stores, LLC
-vs-
MG Management CO., LLC; Matthew Goforth

Please answer Claimant's Demand for Arbitration (and describe your counterclaim, if applicable):
RESPONSE: Respondents hereby submit their Response and accompanying Exhibits to Claimant's motion for interim emergency relief, as filed in this action and provided to Claimant and the AAA on June 26, 2019 as their Response to Claimant's general arbitration claim, and Respondents incorporate the same into this Response by reference as if fully set forth herein.
Counterclaim Amount:
Other Relief Sought Attorney's fees, Interest, Arbitration Costs, Punitive/Exemplary, Other):
Attorney's fees, Arbitration Costs
Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:
Consistent with requirements as stated in Claim.
Hearing Locale Requested: As mandated by contract
Estimated time needed for hearings overall: 1 (Hours/Days)

Signed: /s/ Donald M. Brown
Name: Donald M. Brown
Date: 07/15/2019
Kenny Beck, Esq.
Douglas, Haun & Heidemann, PC
901 East St. Louis Street
Suite 1200
Springfield, MO 65806
Donald M. Brown
Douglas Haun & Heidemann
111 West Broadway
Bolivar, MO 65613
Counsel for MG Management CO., LLC; Matthew Goforth

Please send a copy of this Answering Statement to all other case participants and the AAA. If you are filing a counterclaim, please include the appropriate Filing Fee, if any, per the applicable Rules/Fee Schedule.