UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
(ELECTRONICALLY FILED)

JOHN H. SCHNATTER, Plaintiff vs. 247 GROUP, LLC d/b/a LAUNDRY SERVICE and WASSERMAN MEDIA GROUP, LLC Defendants	Civil Action No.: 3:20-cv-00003-BJB-CHL Judge BENJAMIN BEATON Magistrate Judge COLIN H. LINDSAY

MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT

Plaintiff John H. Schnatter ("Schnatter"), by counsel, pursuant to Fed. R. Civ. P. 15(a)(2), respectfully moves for an order granting leave to file his Second Amended Complaint, which is attached hereto as Exhibit A, against Defendants 247 Group, LLC d/b/a Laundry Service ("Laundry Service") and Wasserman Media Group, LLC ("Wasserman") (together, "Defendants").

Schnatter should be given leave to amend his complaint because new facts and claims arising from and related to the allegations in Schnatter's original and First Amended Complaints have come to light during the discovery process; and Defendants will not be prejudiced because the operative facts supporting the proposed Second Amended Complaint have been previously pled. Further, because the claims proposed are viable under Kentucky law and the facts of this case, allowing amendment would not be futile.

BACKGROUND

Schnatter commenced this action with the filing of his original complaint against Defendants on December 5, 2019 in Jefferson County Circuit Court [DN 1-1]. Defendants removed the action to this Court on January 2, 2020, [DN 1], and filed a motion to dismiss on

February 7, 2020. [DN 18]. Before a ruling on the motion to dismiss, Schnatter filed a Motion to Amend his Complaint on October 1, 2020 [DN 49], which the Court granted on July 21, 2021 [DN 110]. Schnatter thereafter filed his amended complaint on July 21, 2021 [DN 111]. On August 11, 2021, Defendants filed another motion to dismiss the amended complaint [DN 119]. The Court held a hearing on the motion to dismiss the amended complaint on September 21, 2022 [DN 218]. That same day, the Court granted, in part, and denied, in part, the pending motion to dismiss. [DN 219].

While the parties have engaged in discovery, discovery is not yet complete. Defendants have not taken the depositions of Schnatter, as well as his agent. Schnatter has not yet taken a 30(b)(6) deposition of Defendants, and Defendants have petitioned the Court to take a 30(b)(6) of Papa John's. No experts have been disclosed, and no trial date set.

Schnatter's claims in his initial and First Amended Complaints centered around Defendants improperly leaking the contents of a May 22, 2018 conference call in violation of confidentiality obligations as "payback" for the termination of their media and advertising services. Discovery has yielded a secret recording of the May 22, 2018 conference call, done without Schnatter's knowledge or consent, including conversations between Laundry Service's employees during (while muted) and after Schnatter exited the call, in which those Laundry Service employees make clear their malicious intentions to use comments made on the call to damage Schnatter. Specifically, as set forth in the Second Amended Complaint, discovery has yielded the following facts that give rise to the claims brought by Schnatter in his proposed Second Amended Complaint:

- Laundry Service executed a Confidentiality, Non-Disparagement and Dispute Resolution Agreement with Schnatter;
- Defendants knew in the spring of 2018 that they were about to lose the Papa John's account, and were "pitching" to save the business;
- On or before May 22, 2018, Defendants learned they did lose the most substantial part of the Papa John's account (the media buying);

- Schnatter was asked to participate in a May 22, 2018 conference call, and believed it was to discuss new marketing initiatives for Papa John's; however, at the beginning of the May 22 call, he was provided "talking points" and asked about his view on race;
- Laundry Service recorded the May 22 call, and did not inform Schnatter (or anyone else at Papa John's) that it was being recorded, demonstrating that this was a 'setup';
- During the May 22 call, without informing Schnatter, Defendants muted the line to discuss how Schnatter would "not be working by Sunday" and that they hoped to send Schnatter "to pasture on this shit";
- Immediately after the May 22 call, the then Director of Strategy for Laundry Service was concerned that Laundry Service's plan was to harm Schnatter, the person it was ostensibly trying to help, and went to the Laundry Service Human Resources department;
- Shortly after the May 22 call, Casey Wasserman (Wasserman Media) and Jason Stein (Laundry Service) had a call with Papa John's and threatened to "bury the founder" if Papa John's did not pay Defendants significantly more than contractually owed;
- Following that threat, Defendants leaked information about the confidential May 22 conference call to Forbes, which resulted in an article published July 11, 2018 that destroyed Schnatter's reputation and career and knowingly and falsely portrayed him as a racist;
- Laundry Service had been hired, in part, to help enhance Schnatter's image, but instead acted with malice towards him as evidenced by their comments caught in the recording of May 22, 2018 conference call. Nothing in their conduct showed any intent to enhance Schnatter's image either before or after the conference call;
- A mere four days after the publication of the article, Casey Wasserman laughed with NBA Commissioner Adam Silver about having a copy of the secret recording of the May 22 call, relishing in the harm that resulted to Schnatter from the leak to Forbes; and
- Multiple Laundry Service employees have confirmed that Jason Stein, the then CEO of Laundry Service, was the cause of the leak to Forbes.

These facts have been known to Defendants throughout discovery. The reasons why the Court should allow amendment are set forth below.

ARGUMENT

Schnatter should be given leave to amend its complaint because the new claims and facts asserted therein arise from those asserted in the original and First Amended Complaint. Indeed, Defendants will not be prejudiced by amendment because the operative facts have been pled from day one and/or were revealed during discovery, and there is no unfair surprise.

FED. R. CIV. P. 15(a)(2) provides that leave to amend a complaint should be freely given "when justice so requires." Generally, Rule 15 reflects a "liberal amendment policy" and whether to grant a motion to amend is within the discretion of the district court. *Nautilus Ins. Co. v.*

SOCAYR SFH, LLC, 2020 WL 265207 at *2 (W.D. Ky. Jan. 17, 2020) citing *Brown v. Chapman*, 814 F.3d 436, 442-43 (6th Cir. 2016). When determining whether to grant a Rule 15 motion to amend, the court "should consider undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment." *Nautilus*, 2020 WL 265207 at * 2 citing *Brumbalough v. Camelot Care Ctrs., Inc.*, 427 F.3d 996, 1001 (6th Cir. 2005) (citation omitted).

This rule reflects a judicial policy which strongly favors deciding cases on their merits as opposed to technical pleading requirements. *See Foman v. Davis*, 371 U.S. 178, 181-82 (1962). Consistent with this policy, federal district courts have been instructed to "permit amendments freely to cure defective or imperfect pleadings." *McHenry v. Ford Motor Co.*, 269 F.2d 18, 24 (6th Cir. 1959). Justice is further served by granting leave to file an Amended Complaint because it will allow the parties to correct technical mistakes and otherwise clarify the relevant legal issues. *See Nautilus*, 2020 WL 265207 at * 2 citing *Jet, Inc. v. Sewage Aeration Sys.*, 165 F.3d 419, 425 (6th Cir. 1999) (stating that "the thrust of Rule 15 is ... that cases should be tried on their merits rather than the technicalities of pleadings)." Citation omitted. Accordingly, leave to amend should be "freely given" and denied only when a court finds at least "some significant showing of prejudice to the opponent." *Moore v. City of Paducah*, 790 F.2d 557, 562 (6th Cir. 1986). *See also Phelps v. McClellan*, 30 F.3d 658, 662–63 (6th Cir. 1994).

A. There is No Prejudice to Defendants in Allowing the Filing of the Second Amended Complaint

Schnatter's claims in the Second Amended Complaint arise out of the same occurrence set forth in the original complaint and the First Amended Complaint. *See Hageman v. Signal L.P. Gas, Inc.*, 486 F.2d 479, 484 (6th Cir. 1973). For instance, in the First Amended Complaint [DN 119], Schnatter pled:

- Laundry Service executed a Confidentiality, Non-Disparagement and Dispute Resolution Agreement with Schnatter (*see* First Amended Complaint, DN 48-2, ¶ 3);
- Defendants knew in the spring of 2018 that they were about to lose the Papa John's account, and were "pitching" to save the business (*id*., ¶¶ 4; 29);
- Schnatter was asked to participate in a May 22, 2018 conference call, and believed it was to discuss new marketing initiatives for Papa John's; however, at the beginning of the May 22 call, he was provided "talking points" and asked about his view on race (*id*., ¶¶ 5; 31);
- Laundry Service secretly recorded the May 22 call, and did not inform Schnatter (or anyone else at Papa John's) that it was being recorded (*id*.);
- During the May 22 call, without informing Schnatter, Defendants muted the line to discuss how Schnatter would "not be working by Sunday" and that they hoped to send Schnatter "to pasture on this shit" (*id*., ¶¶ 34-35);
- Shortly after the May 22 call, Casey Wasserman (Wasserman Media) and Jason Stein (Laundry Service) had a call with Papa John's and threatened to "bury the founder" if Papa John's did not pay Defendants significantly more than contractually owed (*id*., ¶ 36); and
- Following that threat, Defendants leaked information about the confidential May 22 conference call to Forbes, which resulted in an article published July 11, 2018 that destroyed Schnatter's reputation and career (*id*., ¶¶ 38-43).

Defendants, therefore, are "aware of the fact situation upon which the amended complaint [is] based." *Hageman*, 486 F.2d at 484. Here, Schnatter has added detail to the facts previously pled that have been revealed in discovery and added two claims for Invasion of Privacy, but they arise out of the same occurrence, i.e., Defendants' breach of their contractual agreements through the secret recording of the May 22, 2018 call and their malicious attempts to destroy Schnatter's reputation and terminate his contractual relationships with Papa John's through the leaking of the May 22, 2018 meeting discussion in a misleading manner to Forbes without full context thereby creating the false impression that Schnatter had spoken in a racist manner.

Because the newly asserted claims and facts are based on allegations previously set forth in Schnatter's prior complaints, Defendants will not be prejudiced by the filing of the Second Amended Complaint. This Court has previously held that examples of prejudice include "insufficient time to conduct discovery," being "unfairly surprised by the change in theories," or otherwise showing an inability to now "rebut the plaintiff's new theory." *USA Serv. Fin., LLC v. Barrett,* 2019 WL 1320516 at *3 (W.D. Ky. Mar. 22, 2019) c*iting Roth Steel Products v. Sharon Steel Corp.*, 705 F.2d 134, 155 (6th Cir. 1983). *See also Moore v. Paducah*, 790 F.2d 557 (6th

Cir. 1986) (reversing district court's denial of amendment when the same set of facts supported both the original and amended complaint); *Duracore Pty Ltd. v. Applied Concrete Tech., Inc.*, 2015 WL 362518 at *2 (W.D. Ky. Jan. 27, 2015). None of those circumstances exist here. In fact, there is currently no discovery cut-off, and Defendants have not yet taken the key depositions they have indicated they will take in the case. As such, there is no prejudice to Defendants in allowing the filing of the Second Amended Complaint.

B. The Filing of the Second Amended Complaint will not be Futile

In the Second Amended Complaint, Schnatter brings a claim for Breach of Contract (*see* proposed Second Amended Complaint, Exh. A, ¶¶ 167-177)(brought in the First Amended Complaint, DN 48-2, ¶¶ 58-63), as well as Invasion of Privacy (Intrusion Upon Seclusion)(*see* proposed Second Amended Complaint, Exh. A, ¶¶ 178-192), and Invasion of Privacy (False Light) (*id.,* ¶¶ 193-208). As discussed below, each is supported by applicable law and facts and, therefore, allowing the amendment is not futile.

1. The Breach of Contract (NDA)

The Breach of Contract (NDA) was pled in the First Amended Complaint, and the Court denied Defendants' Motion to Dismiss that claim. [DN 219]. Therefore, the Second Amended Complaint retains the Breach of Contract (NDA) claim. Under Kentucky law, the elements for a breach of contract claim are: (1) the existence of a contract, (2) breach of that contract, and (3) the breach caused damages. *EQT Prod. Co. v. Big Sandy Co., L.P.*, 590 S.W.3d 275, 293 (Ky. App. 2019). Each of these elements is satisfied.

First, the NDA was a contract between Laundry Service and Schnatter. As set forth fully in the proposed Second Amended Complaint, Mike Mikho, Laundry Service's CFO, executed the NDA on behalf of Laundry Service. *See* proposed Second Amended Complaint, ¶¶ 44-50. Moreover, Schnatter has alleged and the record demonstrates a breach of the NDA by Defendants.

The NDA specifically prohibited the disclosure of confidential information obtained during Defendants' work for Papa John's and the use of any such information to disparage Schnatter. *Id.,* ¶ 52. Defendants' disclosure of the contents of the May 22, 2018 meeting breached these obligations and resulted in significant damages to Schnatter satisfying the second and third elements of a breach of contract claim under Kentucky law.

2. Invasion of Privacy (Intrusion Upon Seclusion)

As previously indicated in the First Amended Complaint (DN 119, ¶¶ 5; 31), the May 22, 2018 call was secretly recorded by Defendants, who also muted the line during the call to disparage Schnatter. Kentucky recognizes the tort of Invasion of Privacy, Intrusion upon Seclusion, and follows the Restatement (Second) of Torts. *McKenzie v. Allconnect, Inc.,* 369 F. Supp. 3d 810, 819 (E.D. Ky. 2019) *citing* Restatement (Second) of Torts: Privacy § 652B (Am. Law Inst. 1977). *See also Smith v. Bob Smith Chevrolet, Inc.*, 275 F.Supp.2d 808, 822 (W.D. Ky. 2003)(J. Heyburn)(recognizing the intrusion upon seclusion claim and relying on the Restatement of Torts); *Bowen v. Paxton Media Grp., LLC,* 2022 WL 4110319 at *8 (W.D. Ky. Sept. 8, 2022)(Judge Stivers)(allowing an intrusion upon seclusion claim); *Virnig v. TD Bank USA,* 2020 WL 9720199 at *3 (W.D. Ky. Aug. 14, 2020)(Judge Jennings); *Barnett v. First Nat'l Bank of Omaha,* 2022 WL 627028 at *9 (W.D. Ky. Mar. 3, 2022)(Judge Boom)(denying summary judgment and stating that Kentucky follows the Restatement of Torts for the elements of intrusion upon seclusion).

Indeed, the elements for a claim of intrusion upon seclusion are (1) an intentional intrusion by the defendant, (2) into a matter that the plaintiff has a right to keep private, and (3) which is highly offensive to a reasonable person. *Pearce v. Whitenack*, 440 S.W.3d 392, 400-01 (Ky. App. 2014). A defendant's actions may be intentional when the defendant acts with such reckless disregard for the privacy of the plaintiff that the actions rise to the level of being an intentional tort. *McKenzie,* 369 F.Supp.3d at 819. Citations omitted.

As stated in Comment A to the Restatement Second, Torts § 652B:

> **Comment A**: a claim does not depend on any publicity, only "an intentional interference with his interest in solitude or seclusion, either as to his person or as to his private affairs or concerns, of a kind that would be highly offensive to a reasonable man."

Moreover, Comment C to the Restatement Second, Torts § 652B provides that an intrusion upon seclusion claim may lie even where the "intrusion" occurs in a public place.

> **Comment C:** "The defendant is subject to liability under the rule stated in this Section only when he has intruded into a private place, or has otherwise invaded a private seclusion that the plaintiff has thrown about his person or affairs." Nevertheless, "[e]ven in a public place, however, there may be some matters about the plaintiff, such as his underwear or lack of it, that are not exhibited to the public gaze; and there may still be invasion of privacy when there is intrusion upon these matters."

Courts from other jurisdictions have found that where a defendant "secretly recorded" a conversation, it can give rise to an intrusion upon seclusion claim. For instance, in *Safari Club International v. Rudolph*, the defendant Rudolph secretly recorded a conversation he had with Whipple, the president of the plaintiff Safari Club, while at lunch. 862 F.3d 1113, 1117 (9th Cir. 2017). Rudolph and Safari Club were involved in litigation as adversaries when Rudolph arranged the lunch meeting with Whipple and encouraged Whipple to talk because of their long-standing friendship. *Id*. The federal district court denied the motion to strike, and the Ninth Circuit affirmed, concluding that Safari/Whipple had a reasonably probability of prevailing on their claims, including the common law intrusion claim. *Id*. at 1118.

Moreover, in *WVIT, Inc. v. Gray*, 1996 WL 649334 at *1 (Conn. Super. Oct. 25, 1996), the court applied the Restatement (Second) of Torts, Section 652B also to a claim that an employee secretly recorded a conversation with one of his co-workers, and concluded that the plaintiffs had plausibly pleaded a claim. *Id*. at *3. The court held it was not the content of the conversation (i.e., it did not have to be about a private matter), nor that the conversations occurred at work where the defendant argued less privacy was impacted. *Id*. Instead, the court held that the conduct alleged

– secretly recording conversations with your co-workers – would be offensive to a reasonable person. *Id*. "It is the fact of surreptitiously monitoring a fellow employee in and of itself that constitutes the intrusion on that employee's privacy under the circumstances of this case." *Id*. While an employee may not reasonably expect business-related conversations to be free from monitoring by the employer, an employee does reasonably expect to be free from monitoring from fellow employees. *Id*. at *4. *See also Vasyliv v. Adesta, LLC*, 2010 WL 5610901 at *3 (Conn. Super. Dec. 20, 2010) (holding that an employee stated a claim upon which relief could be granted for intrusion upon seclusion by alleging a fellow employee secretly video recorded conversations with him).

Here, Defendants intentionally and secretly recorded the May 22, 2018 call with Schnatter. *See* proposed Second Amended Complaint, ¶¶ 5-6; 10; 110; 157-158. Schnatter had a reasonable expectation of privacy and to be told when a private and highly confidential conversation was being recorded. *Id*., ¶¶ 181-182; 189; 195. The secret recording of such a sensitive and confidential call between a PR company and its client is "is highly offensive to a reasonable person", and was highly offensive to Schnatter. *Id*., ¶¶ 189; 205. Indeed, many have testified that they would have wanted to know such a call was being recorded. *Id*., ¶ 102. Accordingly, Schnatter has pled a claim of intrusion upon seclusion and the proposed amendment to include such a claim is not futile.

3. Invasion of Privacy (False Impression)

Schnatter has also pled a claim for invasion of privacy: false light. "The essence of a false light claim is that it results in creation of a false public image of the plaintiff." *Warinner v. N. Am. Sec. Sols., Inc.,* 2008 WL 2355727 at *3 (W.D. Ky. June 5, 2008) quoting *Stewart v. Pantry, Inc.,* 715 F.Supp. 1361, 1369 (W.D. Ky. 1988). The two basic requirements to sustain a false light action are: (1) the false light in which the other was placed would be highly offensive to a

reasonable person, and (2) the publisher had knowledge of, or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other was placed. Restatement (Second) of Torts, Sec. 652E (1976). *See also McCall v. Courier-J. & Louisville Times Co*., 623 S.W.2d 882, 888 (Ky. 1981); *Jones v. Lexington H-L Servs., Inc.,* 2004 WL 2914880 at *7 (Ky. App. Dec. 17, 2004). According to the Kentucky Supreme Court in *McCall*, "[t]he basis of the tort, while not subject to precise definition, may be best described as the right of every citizen to be 'let' alone." *McCall* at 887 *citing Brents v. Morgan*, 299 S.W. 967 (Ky. 1927).

In the seminal Kentucky case, *McCall*, the Kentucky Supreme Court analyzed that "[t]he purpose of a false light action is to protect the individual in not being made to appear before the public in an unreasonably objectionable false light and otherwise than as he is." *McCall,* 623 S.W.2d at 888. As held by the Kentucky Supreme Court, "[t]o sustain this action, the person need not be defamed. It is sufficient that the publicity attribute to him characteristics, conduct or beliefs that are false, and that he is placed before the public in a false position." *Id. citing* Comment B to Restatement (Second) of Torts, Sec. 652E (1976).

A statement or portrayal which is technically true in and of itself may lead to an actionably false impression in the mind of a member of the public when it is published without explanatory facts and circumstances which, when added to the bald individual fact, would naturally tend to create a less objectionable public impression. 6 Am. Jur. Proof of Facts 3d 585 (Originally published in 1989). Specifically, in *Stewart*, 715 F.Supp. at 1370, the court found that a false light claim lies where the defendant created a "false impression."

Here, by leaking information to Forbes, Defendants created the false impression that Schnatter is racist, which he is not. *See* Second Amended Complaint, Exh. A, ¶¶ 10; 108; 143; 194. Being painted as a racist is "highly offensive" to a reasonable person. *Id*., ¶¶ 189; 205. As evidenced by Polder expressing his concerns immediately after the May 22, 2018 call was secretly

recorded, Defendants knew that the substance of the May 22 call, if published in a false light, would have devastating consequences to Schnatter. *Id.*, ¶¶ 114-116; 119-120. As unanimously agreed by the deposed Papa John's employees, Schnatter is not a racist, but the information as leaked to Forbes creates the false impression that Schnatter is a racist. *Id.*, ¶¶ 8-10; 144; 157; 162; 194; 198-208. Such misleading leaked information has painted a false impression of Schnatter and places him in a false light. *Id.* Therefore, allowing amendment of the Second Amended Complaint to include a "false light" claim is not futile.

4. The Anti-SLAPP Statute Does Not Apply

The Defendants have indicated their intention to argue Kentucky's Anti-SLAPP statute would result in dismissal of Schnatter's claims, thereby making the proposed amendment futile. Pursuant to KRS 454.472, dismissal of a cause of action under the Anti-SLAPP statute is a high bar. First, the moving party, i.e., the Defendants, must prove that the activity giving rise to the cause of action implicates either the right to petition the government or the right of free speech. If the Defendants establish the activity implicates the right to petition the government or the right of free speech, dismissal is nevertheless improper if the cause of action falls within those delineated in KRS 454.462(2)(a). Finally, even if the cause of action is not within the those found in KRS 454.462(2)(a), dismissal is only proper if the plaintiff fails to state a prima facie case as to each element of the cause of action or there is no genuine issue of material fact as to the cause of action.

Even if the Defendants could establish their activity arose from the right of free speech (which it does not), their pursuit of a dismissal under the Anti-SLAPP statute would fail under the second prong. One of the causes of action the statute expressly removes from the reach of the Anti-SLAPP statute are causes of action "[a]gainst a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication or lack of communication related to the person's sale or lease of the goods or services." KRS

454.462(2)(a)(3). Here, Schnatter's causes of action against the Defendants arise from the provision of services under contractual agreements. The communications and recording of the communications were done in furtherance of the provision of those services. Therefore, Kentucky's Anti-SLAPP statute does not render the amendment futile.

CONCLUSION

In sum, here, Schnatter should be given leave to amend his complaint because the proposed Second Amended Complaint meets the standards under Rule 15(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was e-filed on this the ***18th*** day of November, 2022, via the Court's CM/ECF system, which will give electronic notice to counsel listed below who are registered to receive notifications:

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Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
(ELECTRONICALLY FILED)

JOHN H. SCHNATTER, Plaintiff vs. 247 GROUP, LLC d/b/a LAUNDRY SERVICE and WASSERMAN MEDIA GROUP, LLC Defendants	Civil Action No.: 3:20-cv-00003-BJB-CHL Judge BENJAMIN BEATON Magistrate Judge COLIN H. LINDSAY

SECOND AMENDED COMPLAINT

Plaintiff John H. Schnatter, by and through counsel, for his Second Amended Complaint against Defendants 247 Group, LLC d/b/a Laundry Service ("Laundry Service") and Wasserman Media Group, LLC ("Wasserman Media") (collectively, "Defendants"), alleges as follows:

NATURE OF ACTION

1. This is a case about breach of contract and malicious and intentional invasions of privacy. John Schnatter ("Schnatter") is the founder and visionary behind Papa John's International, Inc. ("Papa John's"), one of the largest pizza delivery restaurants in the world. Schnatter started the company from humble beginnings in a backroom closet in his father's tavern in Jeffersonville, Indiana in 1984. In 1993, Schnatter took the company public and over the following year opened his 500th store. By 2017, Papa John's had more than 5100 locations in the United States and 44 countries around the world.

2. Schnatter was not merely the founder and leader of Papa John's during the period of its meteoric growth. He was also the company's primary spokesman, appearing in numerous successful national advertising campaigns. He was, quite literally, the face of the company.

3. In January 2018, Defendant Laundry Service began work as an advertising agency for Papa John's, tasked with enhancing Papa John's and Schnatter's brand and image. Prior to

beginning this work, Laundry Service signed a Master Services Agreement, dated January 1, 2018, which required, among other items, that Laundry Service abide by certain nondisclosure and confidentiality provisions (the "Services Agreement"). On April 9, 2018, Laundry Service also entered into a Confidentiality, Non-Disparagement and Dispute Resolution Agreement (the "NDA") with Papa John's and Schnatter which similarly required Laundry Service to abide by certain confidentiality provisions and not disparage Schnatter.

4. Early on in the relationship it became apparent that Laundry Service was not equipped to handle a client account as large as Papa John's. By spring of 2018, Defendants were concerned that Laundry Service would soon be fired.

5. On May 22, 2018, Schnatter was asked to attend a call with Laundry Service from his office in Jeffersontown, Kentucky. He was led to believe the call would concern new marketing initiatives for Papa John's, but Laundry Service instead used the call to ask him questions regarding his views on race. Throughout this call—which Laundry Service secretly recorded without his knowledge or consent—Schnatter spoke out against the insidious effects of racism in society and relayed some of his own experiences from growing up in Indiana.

6. At the end of the call, Schnatter criticized a well-known public figure for using a racial slur against African Americans and stated that he himself had "never used that word." He was thus both criticizing the use of the epithet and contrasting that it was something he himself had never done. Nonetheless, immediately after the call—in comments inadvertently captured by Laundry Service's own secret recording—its employees immediately began to discuss how they could get him "fucking sent out to pasture" and use Schnatter's comments *against* him to hurt and destroy the founder.

7. Shortly after the May 22, 2018 call, Laundry Service terminated the engagement. This resulted in a dispute between Laundry Service and Papa John's over payments under the Services Agreement. At this time, in June 2018, Casey Wasserman, the CEO of Laundry Service's

parent company, Wasserman Media, told Papa John's then-CEO Steve Ritchie that he would "bury the founder" (i.e., Schnatter) if Laundry Service was not paid $6 million dollars, an extortion threat by the Wasserman Media founder, who was in possession of the tape of the May 22, 2018 conference call as mentioned in an email with NBA Commissioner Adam Silver on July 15, 2018.

8. Following this threat to "bury the founder"—and in apparent retaliation for Papa John's refusal to pay Laundry Service $6 million—Defendants leaked to Forbes magazine excerpts of their May 22, 2018 call with Schnatter. But rather than provide the true context of what Schnatter actually said, Defendants knowingly provided misleading information out of context intentionally creating a false impression that Schnatter had communicated something opposite to what he said. Defendants carried through with their threat to "bury the founder."

9. On July 11, 2018, Forbes reported that "Papa John's Founder Used N-Word on Conference Call." This press report—which was quickly picked up by other media outlets—that created the false impression that Schnatter had used a racial slur *against* African Americans led to a virtual fire storm around him and the company, ultimately leading to Schnatter resigning as Chairman of Papa John's and to his being disassociated from the company he had built and managed for over thirty years.

10. By disclosing confidential information related to the May 22 call to Forbes and/or other third parties, Defendants breached the NDA. Further, by secretly recording the May 22 call without Schnatter's knowledge or consent, Laundry Service invaded Schnatter's privacy and intruded upon his seclusion. And by providing this misleading information maliciously and out of context, Defendants also invaded Schnatter's privacy and created the false impression that Schnatter is a racist, which he is not. They are liable for the damages that followed from their actions.

THE PARTIES

11. Plaintiff Schnatter is the founder and former Chief Executive Officer and Chairman of Papa John's. Schnatter resides in Naples, Florida. A substantial part of the events or omissions giving rise to Schnatter's claims occurred in Jefferson County, Kentucky.

12. Defendant Laundry Service is a limited liability company organized under the laws of New York with its principal place of business in New York. It is a wholly owned subsidiary of Defendant Wasserman.

13. Defendant Wasserman Media is a limited liability company organized under the laws of Delaware and based in Los Angeles, California. It was founded by Casey Wasserman in 1998 and acquired Laundry Service in 2015. Wasserman Media's sole members are citizens of Arizona, California and Colorado. Casey Wasserman remains the active primary owner of Wasserman Media and their subsidiary Laundry Service.

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because Plaintiff is a citizen of Florida and Defendants are citizens of Arizona, California and Colorado, and the amount in controversy exceeds $75,000.

15. Venue is proper in this District under 28 U.S.C. § 1391(b) because the actions and conduct of Defendants at issue occurred in whole or in part in Jefferson County, Kentucky, and the injuries complained of herein occurred in whole or in part in Jefferson County, Kentucky.

16. This Court has personal jurisdiction over Defendants because they have conducted business in the Commonwealth of Kentucky and caused tortious injury herein. Defendants traveled to the Commonwealth of Kentucky for business related to the Master Services Agreement on numerous occasions and derived substantial revenue from their business activities in this state.

FACTUAL ALLEGATIONS

17. Papa John's, founded by Schnatter, is one of the largest pizza delivery restaurants in the world.

18. In addition to being the founder and visionary behind Papa John's, Schnatter was also Papa John's primary spokesperson, appearing in numerous successful national advertising campaigns.

19. Indeed, Schnatter was (and remains) simply "Papa John" in the eyes of the American public, and his image became inexorably linked with that of the company he founded. Schnatter is viewed as an extension of Papa John's brand image.

20. Schnatter had various contractual agreements with Papa John's that reflected his unique role, including a Founder and Licensing Agreement.

21. After Defendants' wrongful activities described herein, Papa John's terminated all agreements with Schnatter.

22. Schnatter's reputation in the community was also tarnished as two days after the Forbes article, the University of Louisville announced the removal of the Papa John's name from the Stadium.

A. November 2017 Earnings Call

23. Papa John's held a quarterly earnings call on November 1, 2017.

24. During this time, the NFL was the largest media partner of Papa John's, with over 25% of the company's entire annual advertising budget spent on NFL-related marketing and advertising. Papa John's was the brand consumers most closely associated with the league and was the "official pizza" of the NFL.

25. During 2016 and 2017, there was controversy surrounding how the NFL was handling protests by certain players during the national anthem and television viewership of NFL

games sharply declined. Consequently, because there were fewer viewers of NFL games, Papa John's sales had also been negatively impacted.

26. In the November 1, 2017 earnings call, Schnatter made statements suggesting that the NFL should find a resolution to the players' protests during the anthem that was to the players' satisfaction. Schnatter did not criticize the players and their right to protest.

27. Nonetheless, media reports following the earnings call stated that Schnatter was against the players protesting, and Schnatter's comments were misrepresented by the media.

28. For instance, Tim Polder ("Polder"), the then-Director of Strategy for Laundry Service, thought that Schnatter's comments were "taken out of context", and that his reputation was "completely fixable."

29. Randi White ("White"), Laundry Service's Team Lead for the Papa John's account, similarly testified that the "public had a misperception of what Schnatter had actually communicated regarding the NFL protests."

B. <u>The Retention of Laundry Service</u>

30. Defendant Laundry Service is a creative advertising agency that primarily focuses on digital and social media.

31. Casey Wasserman is the Chairman, Chief Executive Officer, and owner of Defendant Wasserman Media Group.

32. Wasserman Media is the sole shareholder of Laundry Service, which it acquired in 2015.

33. In October 2017, Laundry Service pitched Papa John's to handle its marketing needs.

34. Specifically, Jason Stein ("Stein"), the then-CEO of Laundry Service, worked with Brandon Rhoten ("Rhoten"), the then-Chief Marketing Officer of Papa John's, to pitch the account.

35. In describing the potential engagement, Stein described the Papa John's account to Casey Wasserman as a "critical/transformative opportunity" which he called "epic."

36. Recognizing the potential financial upside, Casey Wasserman responded by saying that "anything I can cross I will cross."

37. Notably, Papa John's was significant for Laundry Service because it was the first non-digital, non-social account that Laundry Service had, and was the largest account that Laundry Service had obtained.

38. Specifically, the Papa John's account was the first time Laundry Service had been named an "Agency of Record" meaning it was not doing "one-off" work, but rather, was engaged as a long-term provider of integrated marketing which provided financial stability for Laundry Service.

39. Casey Wasserman has described the Papa John's account as a "key account" and "critical" for Laundry Service.

40. In fact, when Laundry Service became the agency of record for Papa John's, Laundry Service hired between 20-40 people solely to work on this account.

C. The Service Agreement Between Papa John's and Laundry Service and its Confidentiality Provisions

41. On January 1, 2018, Papa John's and Laundry Service executed the Services Agreement.

42. Specifically, the Services Agreement was executed by Mike Mikho ("Mikho"), the Chief Marketing Officer of Laundry Service, and Rhoten of Papa John's.

43. Typical in the industry, the Services Agreement contained a stringent confidentiality provision, under which information relating to Laundry Service's provision of services was not to be disclosed publicly or to third parties.

D. The Confidentiality, Non-Disparagement and Dispute Resolution Agreement Executed by Laundry Service for the Benefit of Schnatter

44. Papa John's also asked Laundry Service to execute another confidentiality agreement specific to Schnatter, a "Confidentiality, Non-Disparagement and Dispute Resolution Agreement" (the "NDA"). A copy of the NDA is attached hereto as Exhibit 1.

45. In the Spring of 2018, Katie Wollrich ("Wollrich"), Vice President of Marketing and Advertising of Papa John's, asked White if she would facilitate having Laundry Service sign the NDA.

46. Wollrich testified that when she sent the NDA to White, she was asking Laundry Service to execute the NDA.

47. On April 9, 2018, Mikho authorized the execution of the NDA on behalf of Laundry Service.

48. As the Chief Marketing Officer of Laundry Service, Mikho testified that he has authority to execute contracts on behalf of Laundry Service, and had authority to execute the NDA on behalf of Laundry Service. Mikho did in fact execute the NDA on behalf of Laundry Service.

49. After Mikho executed the NDA, White sent to Wollrich at Papa John's "our [Laundry Service's] signed agreement" on April 10, 2018.

50. Wollrich understood that the NDA executed by Mikho was made on behalf of Laundry Service.

51. The NDA executed by Laundry Service is made on behalf of "John H. Schnatter … the Founder and Chairman" of Papa John's.

52. The NDA provides that Laundry Service would not "convey, divulge, make available or communicate such information to any third party or assist other is in using, copying, duplicating, posting or disclosing any of the foregoing."

53. Laundry Service employees have described their understanding of the confidentiality obligations of the NDA.

54. For instance, White described the obligation as "what it means to me is that we cannot talk about, you know, like – that we're to keep this confidential unless it's related to, you know, the work that we're doing."

55. Polder testified that in addition to the contractual agreements, it is industry standard that an ad agency not "disparage its clients."

56. Papa John's employees have also described the importance of having a confidentiality agreement with Schnatter specifically because "when a founder is so closely linked to the brand, so any disparaging the founder could negatively impact the brand from a public perception perspective."

E. Laundry Service's Directives to Help Schnatter Improve his Image

57. The scope of the Services Agreement is for "any Services which Client desires to be performed by Laundry Service."

58. The Laundry Service employees have testified that they understood that Laundry Service was trying to help Papa John's address the public perception of Schnatter and his comments regarding the NFL.

59. As part of that effort, Laundry Service was tasked with rebuilding Schnatter's reputation and image.

60. Thus, in the spring of 2018, Papa John's directed that Laundry Service work to improve Schnatter's image in order to use Schnatter in commercials as part of the effort to rebrand the company.

61. According to Steve Ritchie, the then-CEO of Papa John's, there was never an intent to take Schnatter out of the Papa John's advertising; rather, during the spring of 2018, it was the goal to reintroduce Schnatter to be "front and center" and serve as the spokesperson of the brand.

In fact, in March 2018 Papa John's approached Schnatter offering to pay him an additional $500,000 per year in a talent fee to compensate him for advertising appearances as the face of the company.

62. In April 2018, Laundry Service learned that Rhoten would be severing from Papa John's.

63. Laundry Service provided Casey Wasserman and Wasserman Media with weekly updates about its work and business.

64. In one of these weekly updates, the CEO of Laundry Service's holding company, Jordan Fox, reported to Casey Wasserman that "Papa John's [was] having key board meeting this coming week to determine fate of new CMO vs. John Schnatter."

65. This led Laundry Service to have "significant" concerns about losing the Papa John's account because when a CMO leaves a company, usually the agency that they brought in is usually then let go as well.

66. Wollrich, who at that time worked in Papa John's marketing department, told Laundry Service that it was "pitching to save the [Papa John's] business" at a meeting scheduled for May 14, 2018.

F. Schnatter is Unanimously Re-elected as Board Chairman on May 2, 2018

67. On May 2, 2018, at a regularly scheduled Board of Directors meeting, Schnatter was unanimously re-elected by the Board as the Chairman of the Board, garnering the vote of every board member.

68. Specifically, in May 2018, Schnatter had been elected as a Director of Papa John's with 28,185,139 votes for, and 63,999 votes against, meaning over 99% of the Shareholders re-elected Schnatter as a Director of Papa John's.

G. The May 14, 2018 meeting between Laundry Service and Schnatter

69. During early May 2018, Papa John's wanted to bring Schnatter back into the advertising as a "focal point" and spokesperson for the brand.

70. Because of Laundry Service's concerns, and knowing Schnatter's importance as a decision maker, Laundry Service suggested that it have a meeting in the Laundry Service offices with Schnatter and other key Papa John's employees.

71. At the meeting, Laundry Service gave a presentation about bringing Schnatter back into advertising.

72. For instance, at the May 14, 2018 meeting, Stein, on behalf of Laundry Service, suggested that Kanye West be part of the "creative content" for Papa John's going forward.

73. Ritchie testified that he was not "particularly impressed" with the presentation or the work Laundry Service was doing, and were considering other agencies at this time.

H. Laundry Service also Ignores Directives Relating to Interviews of Schnatter

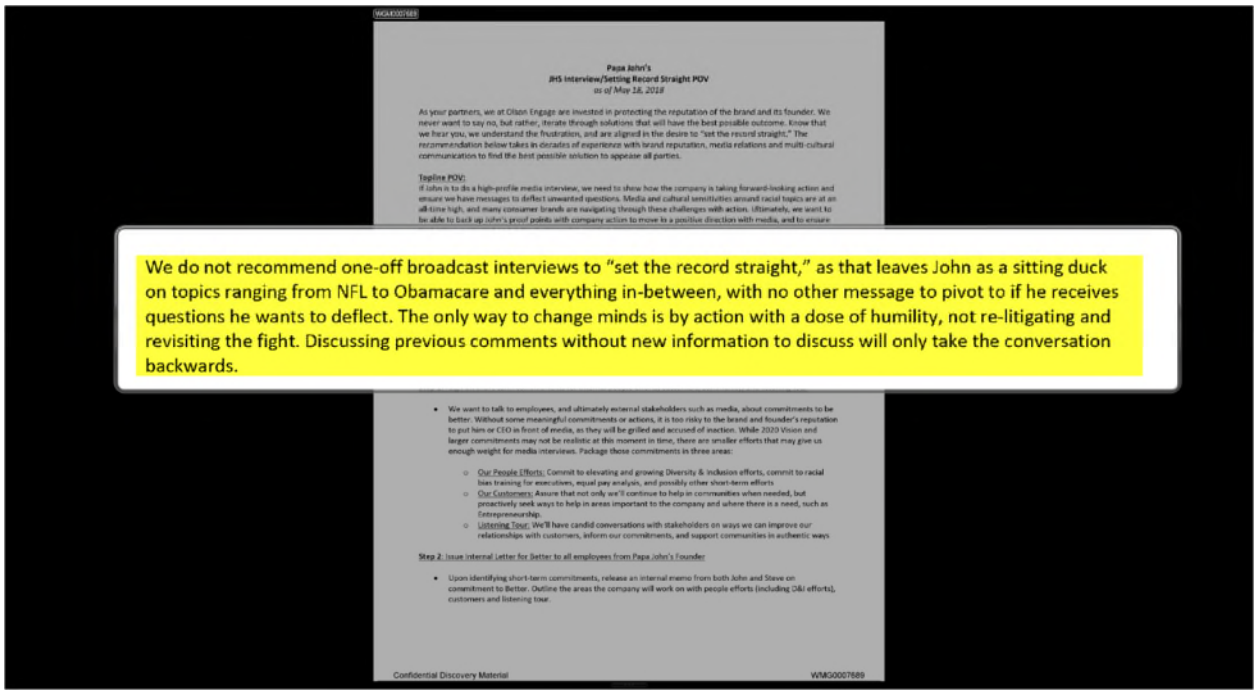
74. Because Laundry Service was not a Public Relations ("PR") company, in May 2018, Papa John's hired a PR company, Olson Engage, to assist with the PR aspects of improving Schnatter's image to bring him back into the advertising.

75. Olson Engage prepared a "Point of View" analysis on whether and how Schnatter should conduct interviews from the PR perspective.

76. On May 19, 2018, Ritchie forwarded the Olson Engage recommendations to Stein at Laundry Service.

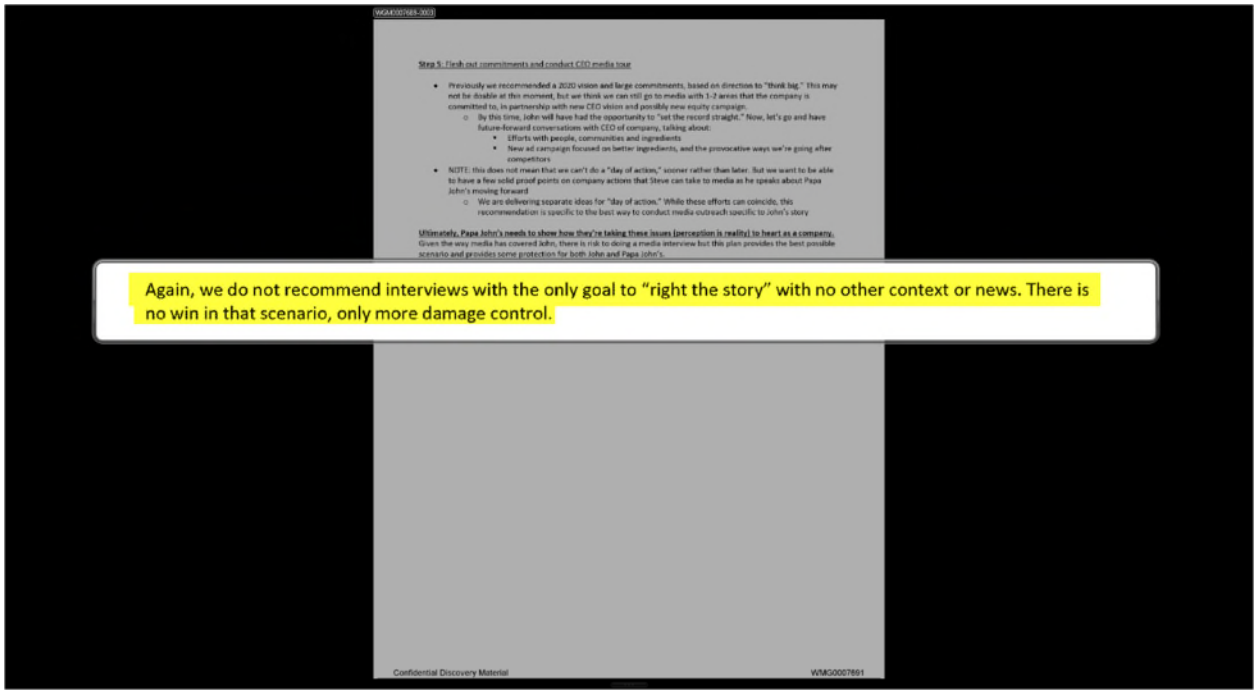
77. Olson Engage vehemently advised **against** setting up interviews for Schnatter to "set the record straight."

78. Specifically, Olson Engage recommended that:



79. Olson Engage suggested that Schnatter do an interview with a "respected journalist and outlet that would be neutral and conversational for an interview" like Lester Holt of NBC.

80. Olson Engage further recommended that:



81. Laundry Service did not follow Olson Engage's advice.

82. In fact, directly contrary to Olson Engage's advice, at the May 22 meeting, Laundry Service suggested that Schnatter do an interview with Stephen A. Smith ("Smith") and Darren Rovell ("Rovell").

83. Baker explained that Laundry Service recommended Smith because he would ask the "tough questions."

84. Rovell was a friend of Stein's.

85. White testified that she knew that if Schnatter had done an interview similar to the May 22 call, it would have a negative impact on his public perception.

86. Nevertheless, in direct contravention to Olson Engage's "strong" recommendations, at the May 22 meeting, Laundry Service directed that Schnatter would be interviewed by Smith and Rovell on a "live" social media broadcast.

I. The Termination Of Laundry Service's Media Services Before The May 22 Call

87. As previously stated, by early May 2018, Laundry Service knew that it was potentially losing a significant client, and its concerns were well-founded.

88. Indeed, Papa John's was discussing that while Laundry Service was strong on digital platforms, it was "challenged on TV buying." Papa John's was also not happy with Laundry Service's creative work.

89. Ritchie called Stein to tell him that Papa John's was terminating Laundry Service's TV media buying. In the advertising industry, the creative work is important, but ad buys are where ad agencies earn the greatest revenues.

90. The same day as the May 22 call, Laundry Service confirmed that it understood its media services were being limited to "exclude TV." This was crushing to Laundry Service.

91. In fact, Polder described the significance of losing the account because "Papa John's kept a significant part of the lights on, so to speak."

92. Other Laundry Service employees described the termination of the Papa John's account stating "its a hard pill to swallow after all the other accounts we've lost this year feel like PJ's was the only one keeping the lights on but lets see."

93. Ultimately, when Laundry Service lost the Papa John's account, there were between 40 and 80 Laundry Service employees laid off.

J. <u>The May 22, 2018 Call</u>

94. At the May 14 meeting, Schnatter and Laundry Service employees discussed scheduling a follow-up meeting ostensibly to discuss marketing initiatives.

95. The follow-up meeting was scheduled for May 22, 2018 by telephone.

96. Unbeknownst to Schnatter, the real purpose of the May 22 call for Laundry Service was to discuss Schnatter's views on race, and to prepare him for "interviews" so he could "set the record straight" on the NFL comments. Stein had changed the meeting topic and purpose without alerting Schnatter or Papa John's beforehand. In fact, Schnatter expressed his surprise at the start of the meeting that the topic had changed from creative ad strategies to race.

97. To that end, the plan, according to Laundry Service, was to arrange for Schnatter to have an hour-long interview with a hostile media personality and prompt Schnatter to make damaging statements to go viral.

98. Schnatter was ambushed on the May 22 call with no knowledge of the true purpose of the call. No media training or coaching was actually done on the May 22 call, and Laundry Service would not have been qualified to perform such media training or coaching.

99. According to Polder, the purpose of the call was to "talk [Schnatter] through a list of questions and give him talking points and give him a – give him an environment where he could speak freely and in order for us to get a better understanding of him."

100. Accordingly, shortly after the May 14, 2018 meeting, and before the May 22 call, Laundry Service prepared "talking points."

101. However, despite its purpose, and despite the known protocol to provide Schnatter with any meeting materials in advance for preparation, the talking points were not provided to Schnatter (or other Papa John's executives such as Ritchie and Christy Johnson) before the call, which concerned Polder since preparation was so important.

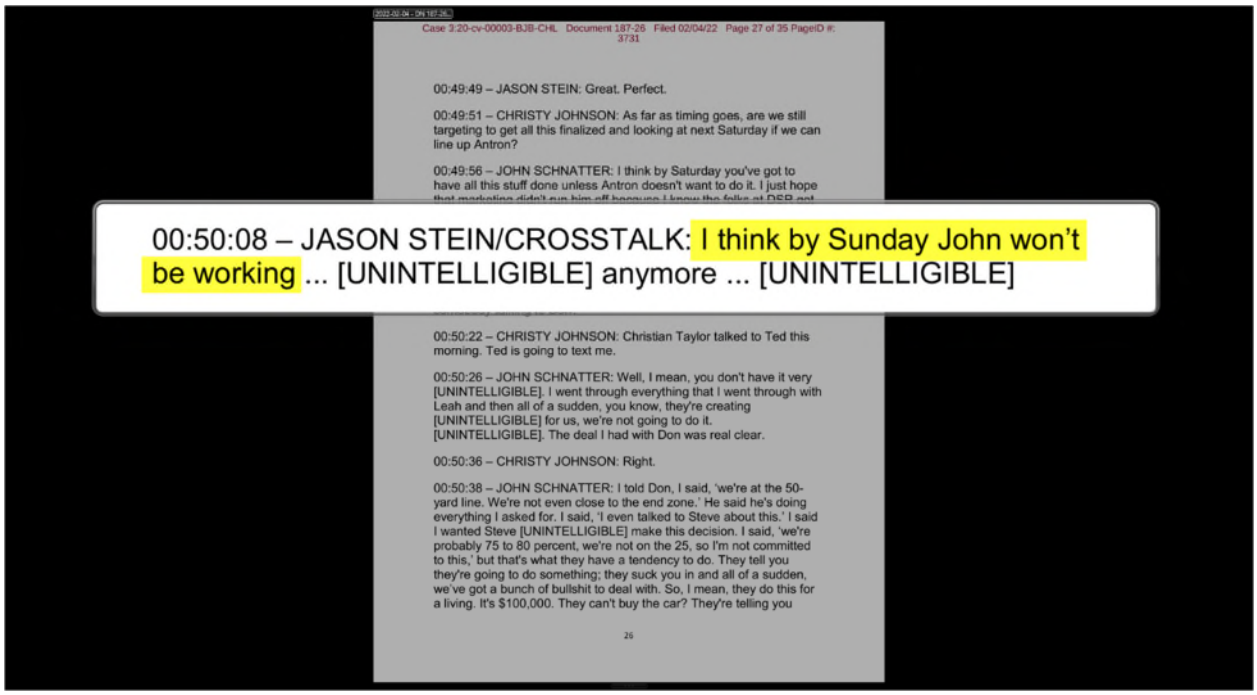
102. Without Schnatter's knowledge or consent, Laundry Service recorded the May 22 call. Other Papa John's executives, including its then CEO Ritchie, Christy Johnson, and Katie Wollrich, similarly did not know the call was being recorded and would have expected to have been told that the confidential meeting was being recorded.

103. Laundry Service employees knew that the May 22 call had been recorded. In fact, during post hang-up comments, an unidentified female Laundry Service employee stated, "I want whatever we recorded to be like the actual interview."

104. At the beginning of the call, Stein continually tried to disarm Schnatter by repeating the narrative that the call was private, that Laundry Service wanted to help Schnatter.

105. Specifically, Stein told Schnatter that he should not "be defensive" and should "tell them how you really feel." Schnatter trusted Laundry Service given his relationship with the agency.

106. Also during the call, in a transparent demonstration of its true purpose, Stein muted himself and, to the other senior employees of Laundry Service on the call, and said:



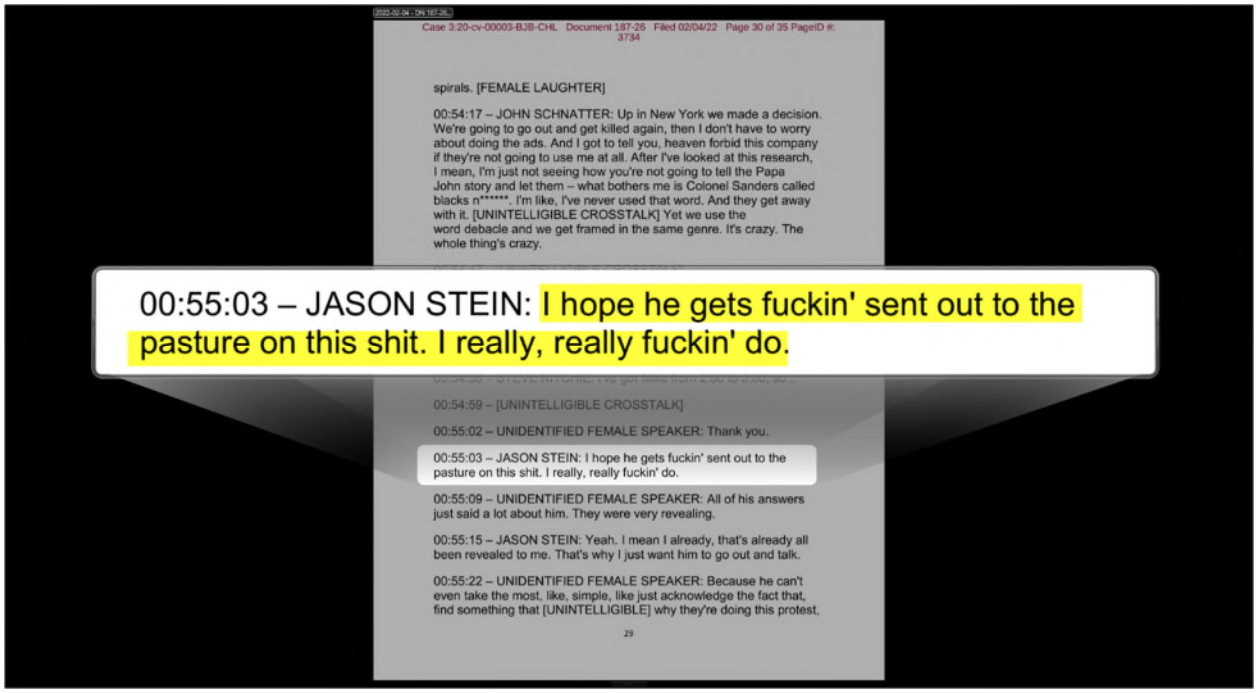
107. In reality, throughout the conversation, Schnatter expressed his wholesale rejection of racism and how he saw its inherent, insidious effects as a young person in Indiana.

108. Those who worked closely with Schnatter for years, such as then Papa John's CEO Ritchie, testified that they had never seen any indication that Schnatter was a racist. Schnatter is not a racist.

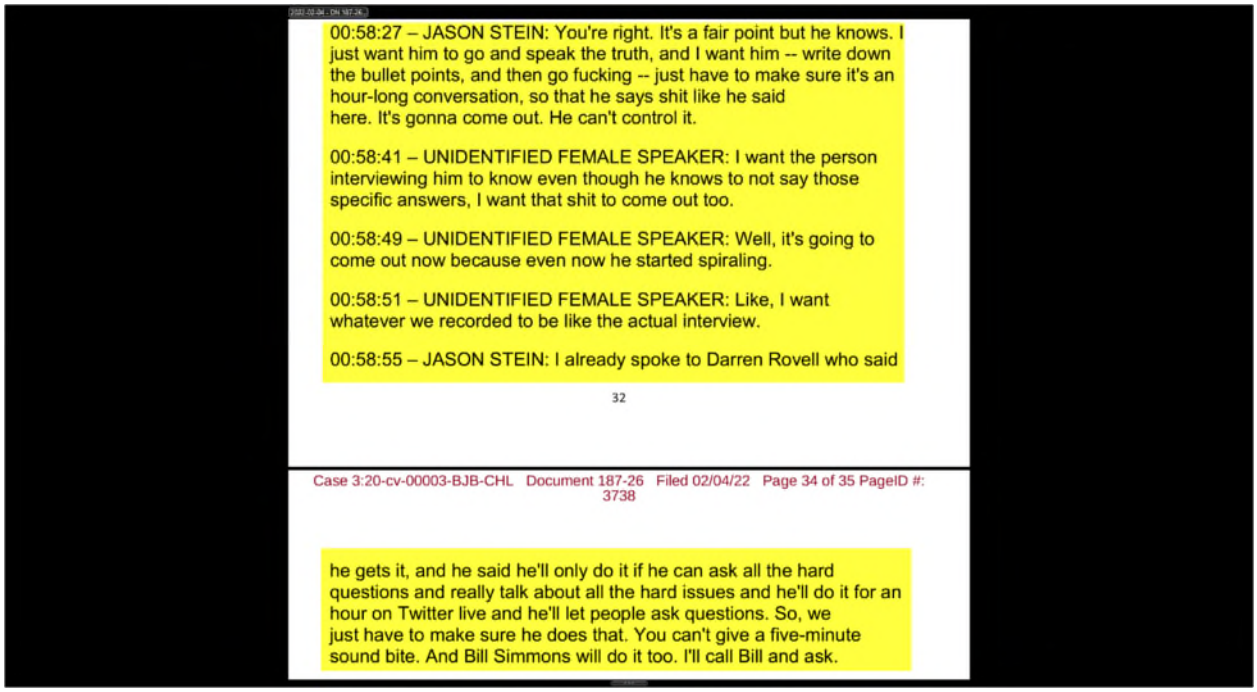
109. At the end of the call, Schnatter expressed how his comments regarding the NFL were improperly reported and used to paint him as someone he was not. To distance himself from what he considered truly racist, Schnatter criticized the use of the "N" word by Colonel Sanders and made clear that he himself never used it.

110. After Schnatter hung up, the secret recording continued to capture internal discussions amongst senior Laundry Service (including Stein, its CEO at the time) that again reflects the true motives of Laundry Service at the May 22 call.

111. Specifically, almost immediately after Schnatter hung up, Laundry Service began to discuss how Schnatter's statements on the call could be used against him to damage his image and said:



112. In this part of the call after Schnatter left the call, Laundry Service employees, including Stein, made it very clear that their desire was to set up Schnatter to harm his reputation:



113. Stein confirmed that the "plan" was for the Rovell interview "to be viral."

114. During the call, Polder became concerned that Laundry Service's "plan" was actually to harm Schnatter.

115. Polder explained his concerns about the May 22 call arose because the comments "did not seem part of the efforts to maintain – to help John [Schnatter]'s reputation to do the job that we were paid for to help and general, good business ethics" as it seemed to be the "opposite of helping John."

116. Polder testified that "in hindsight, it didn't add up" and that he was concerned that "Mr. Stein was not trying to help Mr. Schnatter and Papa John's with these issues." Unfortunately, the other employees of Laundry Service did not share these same concerns which has led to disastrous consequences for Schnatter.

K. Laundry Service Directs Polder To Delete His Recording Of The May 22 Call, Which Included The Post-Hang-Up Comments

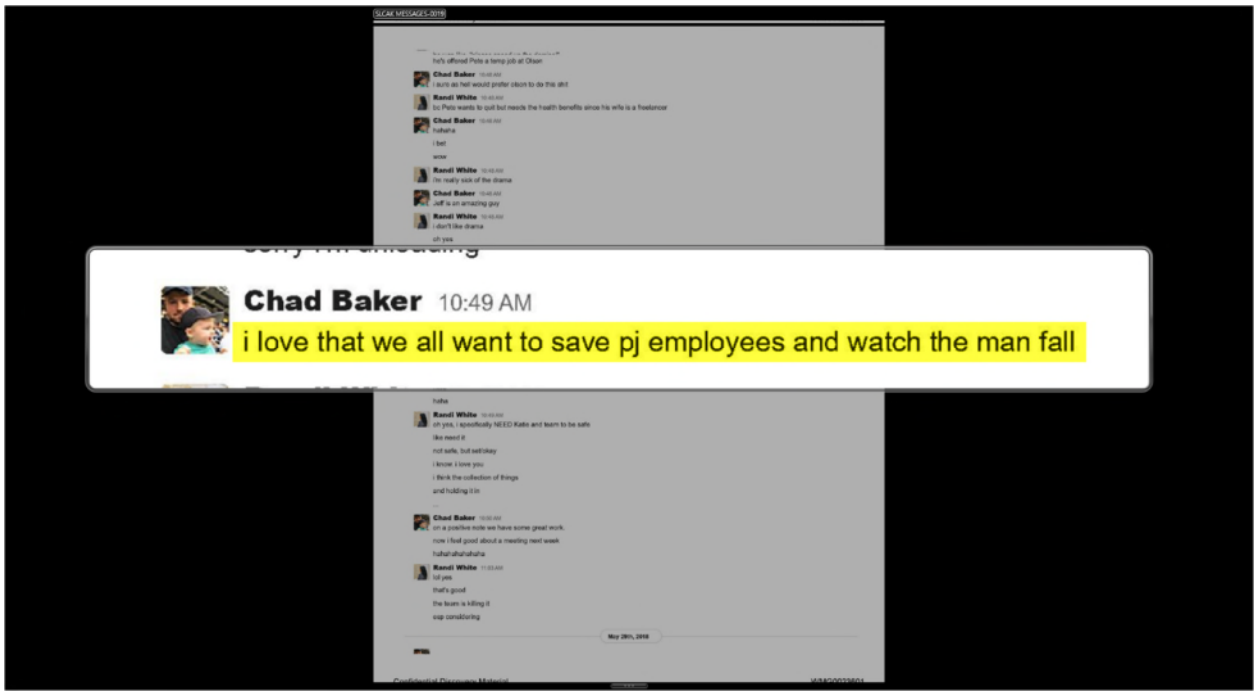
117. After the call, because he was bothered by what he heard from Laundry Service senior executives and their apparent desire to send Schnatter "out to the pasture on this shit," Polder went to Laundry Service's Vice-President of Human Resources and Operations, Jamil Salim.

118. Polder knew that Laundry Service's job was to "help John" and "help the Papa John's business."

119. Polder also told Salim that he had a recording of the May 22 call, and that "we need to get on top of this" because the "[the conversation] could leak" and could "irreparably do harm to John and the Papa John's business" and have "massive implications."

120. Polder stated that "[l]et's manage this crisis before something leaks out of this agency, because then we'll – then it's completely utterly done. Then it's over."

121. Polder notwithstanding, the Laundry Service employees seemed to relish in the harm that would befall Schnatter. On May 25, 2018, Baker sent White a slack message that said:



122. Baker explained in his deposition that the "man" he hoped would "fall" was Schnatter, and he assumed other Laundry Service employees shared his desire.

123. Similarly, in response to a text message from a former Laundry Service employee that said "Wow, Papa John implodes", Salim responded "good riddance."

124. On May 24, 2018, White revealed to Baker in a Slack message that she wished she could "get rid of john."

125. White had previously provided commentary on certain Papa John's employees to her Laundry Service team, and said that Ritchie noted that he's "giving John 'rope' to hang himself as he feels that's the only way he'll get it."

L. <u>The Negotiation and Termination of the MSA</u>

126. On May 24, 2018, Stein (on behalf of Laundry Service) and Casey Wasserman (on behalf of Wasserman Media), along with their legal counsel, began discussing Laundry Service's termination of the Papa John's account.

127. On May 29, 2018, Stein emailed Ritchie and stated that he and Casey Wasserman wanted to have a call the next day to discuss "feedback and next steps."

128. On this call (May 30), Casey Wasserman told Ritchie that because "we would not be able to continue working with Papa John's in any capacity . . . ."

129. Even though it was undisputed that Papa John's owed no more than $2.4 Million Dollars under any calculation, Casey Wasserman demanded significantly more.

130. In addition to the earned compensation, Laundry Service demanded an "equitable separation and settlement fee."

131. Casey Wasserman has explained the discrepancy as he was "solely looking to protect my employees…."

132. According to Ritchie, in a call with him, Casey Wasserman was "aggressive" and his tone was "quite volatile." Casey Wasserman was an integral part of the negotiations with Papa John's.

133. Specifically, according to Ritchie, Casey Wasserman told Ritchie that "This is your founder's doing. He did this. He's offended all of my employees. We can't work on your account. We need to settle this and move on. If you guys don't want to settle this now it's likely to be litigated, and it's going to be severely damaging to your founder for the actions he had taken if this became public in litigation."

134. The General Counsel of Wasserman Media, Mike Pickles ("Pickles"), sent Caroline Oyler ("Oyler"), the General Counsel of Papa John's, an email dated June 1, 2018.

135. On behalf of Defendants, Pickles stated that (i) Casey Wasserman and Stein did not resign the account on their call with Ritchie; (ii) it is in "both parties' best interest to conclude the engagement;" and (iii) Laundry Service is owed certain compensation.

M. Laundry Service Leaks The Contents Of The May 22 Call To Forbes and Places Schnatter in a False Light

136. In June 2018, Laundry Service and Papa John's became involved in a commercial dispute over payments under the Services Agreement.

137. As previously stated, during the course of the dispute, Casey Wasserman (on behalf of Wasserman Media) told Ritchie that he would "bury the founder" if Laundry Service was not paid monies in excess of what was owed for services.

138. Likewise, after Schnatter had left the meeting, Stein had expressed his hope that such discussion would "put Schnatter out to pasture."

139. Laundry Service and Wasserman Media ensured this occurred.

140. On July 10, 2018, Noah Kirsch contacted Wasserman Media's media contact, Melissa Zukerman, and stated that he "heard from a reliable source that Casey [Waserman] resigned his contract with Papa John's after an incident in May, in which John Schnatter used the n-word and made other racially offensive remarks on a conference call. Seeking comment."

141. That same day, Pickles sent an email to Papa John's that said "[u]nfortunately, we have another pressing matter. A Laundry Service employee just informed us that they received a call from someone who identified himself as Noah Kirsch from Forbes."

142. On July 11, 2018, Forbes published an article titled "Papa John's Founder Used N-Word on Conference Call" about the private May 22, 2018 conference call.

143. Indeed, Noah Kirsch, a reporter at Forbes, had learned from Defendants specific details about the May 22 call. The contents of the May 22 call were misreported to Forbes to portray Schnatter as a racist, which he is not.

144. Defendants had reported the confidential details of the May 22 training call held solely between then Papa John's employees and Laundry Service employees. The confidential information leaked to Forbes was knowingly false and/or done with reckless disregard as to the falsity in that it deliberately created the false impression that Schnatter is a racist, which he is not.

145. This report that Schnatter was a racist was quickly picked up by other media outlets and led to a media firestorm.

146. When Polder learned about the Forbes article, he asked Randi White "was this Forbes article us?"

147. White suggested they have lunch, where White told Polder that "Jason Stein sent it."

148. Salim also confirmed the internal rumor was that Stein leaked the information to Forbes.

149. In fact, Stein told Salim that Mikho, the Chief Marketing Officer of Laundry Service, was telling people that Stein was the source of the leak to Forbes.

150. Other Laundry Service employees agree that the contents of the May 22, 2018 call should not have been leaked.

151. For instance, Mikho explained that he agrees that the call should have been "kept confidential" and not "leaked" because "[g]enerally speaking, any conversation that we have with any of our clients are part of our business and not public unless the client chooses to make it public."

152. Baker agreed that the duty of confidentiality is an "important component" of the client relationship and that Laundry Service had a duty to keep client information confidential.

153. Papa John's executives also expected the May 22, 2018 call to remain confidential. For instance, Ritchie testified that he "totally" expected the people who conduct the media training calls to keep them confidential, and that he "absolutely" did not expect them to share it with anyone outside of their client.

154. Ritchie explained that he was shocked when he heard the muted parts of the conversation because "this is an agency that was there to protect the client."

155. The following week, someone other than Polder, identified as "Laundry Service 1", posted on a social media site (Fishbowl) that they believed that Laundry Service was responsible

for the leak and that "leadership did this. No doubt in my mind." Polder commented on this string and was asked to delete his comments by Mikho.

156. Laundry Service provided Papa John's with a copy of the secret recording that Laundry Service made. However, someone at Laundry Service edited the recording to remove the incriminating conversation that occurred after Schnatter left the call.

N. Consequences to Schnatter because of the Secret Recording and the False Impression Created by Defendants' Leak

157. The secret recording by Laundry Service of Schnatter's comments made in the May 22, 2018 call, and the information leaked to Forbes which knowingly created the false impression that Schnatter is a racist, has had dire consequences to Schnatter.

158. For instance, Laundry Service was hired to help Schnatter and his image and agreed to maintain strict confidentiality about its relationship and communications. By secretly recording the May 22, 2018 call, Schnatter has lost confidence in such trusted relationships and his ability to trust such partners.

159. The economic consequences to Schnatter were also significant: (i) he was forced to resign as Papa John's Chairman the same day; (ii) on July 13, 2018, Papa John's announced that Schnatter would no longer appear in marketing or advertising materials for Papa John's; (iii) the Founder's Agreement was terminated days later (on July 15, 2018); (iv) also on July 15, 2018, Papa John's gave notice of termination of Schnatter's office lease at Papa John's headquarters, which resulted in him eventually being barred from the premises; (v) the Licensing Agreement was ultimately canceled; and (vi) numerous educational institutions publicly severed ties with him, including the University of Louisville who took Schnatter's name off its stadium within days of the July 11, 2018 article.

160. Schnatter also incurred significant legal and public relations fees directly related to the harm caused by Defendants.

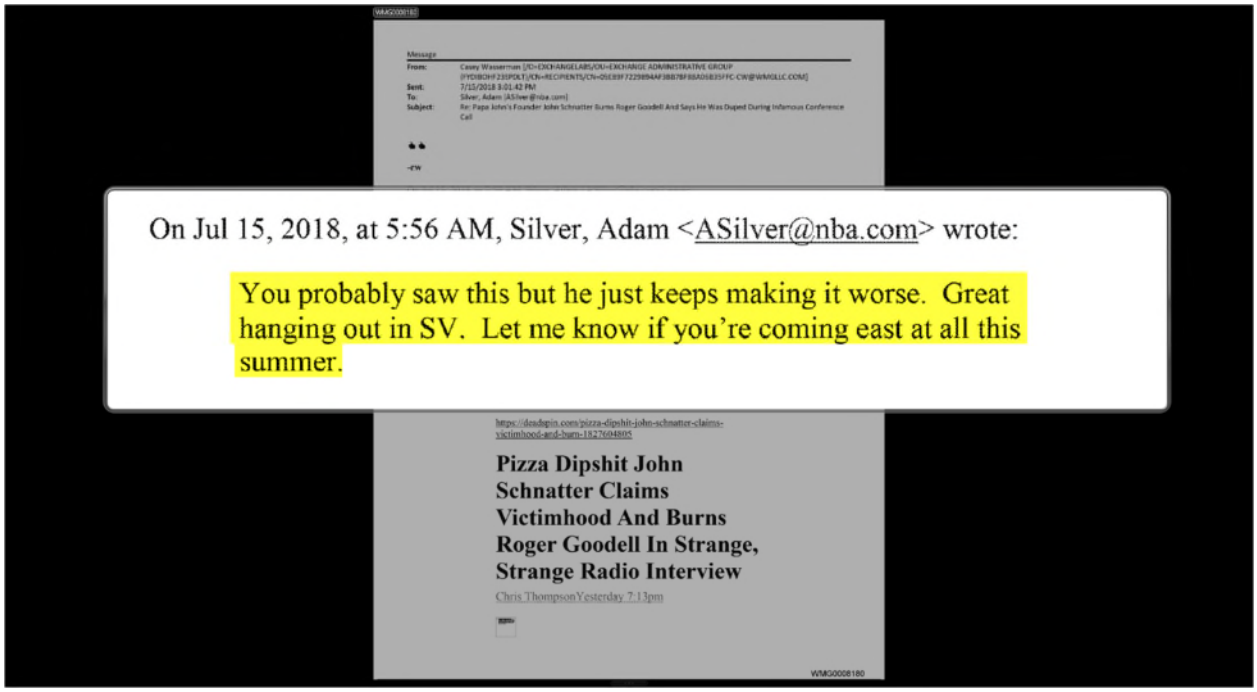
161. Ritchie, the then-CEO of Papa John's, testified that prior to the leak, he was not aware of any discussions or plans by the Board to remove Schnatter as the Chairman.

162. Rather, it was the leaking of confidential information to Forbes, and the false impression it created, that caused Papa John's to terminate its agreements with Schnatter, and caused third parties to sever ties with him.

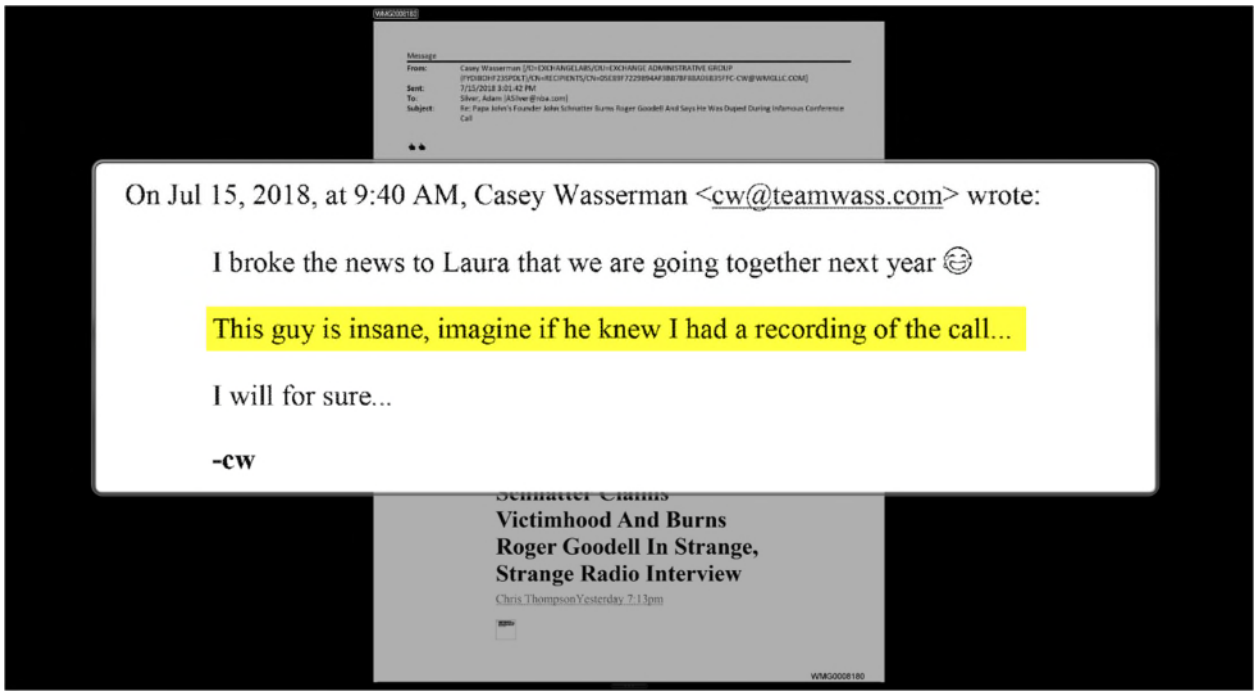
O. <u>Wasserman Relishes the Fact that He has the Secret Recording of the May 22, 2018 call</u>

163. On July 15, 2018, Casey Wasserman had an email exchange with Adam Silver, the Commissioner of the National Basketball Association.

164. In that email, Silver sent Casey Wasserman an article about Schnatter and said:



165. In response, Casey Wasserman said:



166. Casey Wasserman, therefore, knew that Schnatter did not know the May 22, 2018 call had been secretly recorded.

CLAIMS FOR RELIEF

Count I
Breach of Contract: NDA

167. Schnatter restates the preceding paragraphs as if fully restated herein.

168. The NDA is a valid contract between Schnatter and Laundry Service.

169. The NDA was executed by Mikho on behalf of Laundry Service. All parties understood that Laundry Service is a party to the NDA. Laundry Service agreed to the terms of the NDA.

170. The NDA contained provisions prohibiting Laundry Service and its employees from "us[ing], copy[ing], duplicat[ing], post[ing], or disclos[ing] any information … including the substance of conversations or any information whatsoever of a personal or business nature regarding [Schnatter] . . . ."

171. The NDA also required Laundry Service to return any information it obtained about Schnatter to Schnatter upon separation.

172. Laundry Service further agreed "not to disparage or make derogatory comments, verbal or written, regarding … [Schnatter] . . . ."

173. These provisions covered communications between Schnatter and Laundry Service, including the May 22, 2018 call.

174. Between May 22, 2018 and July 11, 2018, Defendants leaked selected contents of conversations that occurred during the call to Forbes magazine.

175. The leak of the May 22 call breached the confidentiality and non-disparagement provisions of the NDA.

176. Defendants did not return a copy of the secret recording of the May 22, 2018 call to Schnatter upon termination.

177. As a direct result of Defendants' breach of the NDA, Schnatter was damaged in an amount to be determined at trial.

Count II
Invasion of Privacy: Intrusion Upon Seclusion

178. Schnatter restates the preceding paragraphs as if fully restated herein.

179. As described above, Laundry Service secretly recorded the May 22, 2018 call with Schnatter.

180. Although Laundry Service and its representatives on the call were aware that the call was being recorded, it did not inform Schnatter (or others at Papa John's) that it was secretly recording the May 22, 2018 call.

181. Schnatter had a reasonable expectation of privacy with respect to his communications with Laundry Service, including the content of the May 22, 2018 call, and a reasonable expectation that the call would not be recorded without his knowledge and consent.

182. Laundry Service knew that Schnatter had a reasonable expectation of privacy with respect to his communications with Laundry Service because information is treated as confidential in the industry, and because Laundry Service executed an NDA with Schnatter and agreed to keep such information confidential.

183. Laundry Service encouraged Schnatter to speak freely and openly with Laundry Service yet did not divulge that it was secretly recording the May 22, 2018 call.

184. Wasserman Media knew that Laundry Service secretly recorded the May 22, 2018 call and condoned its actions, and did not disclose to Schnatter that it had done so.

185. By secretly recording the May 22, 2018 call with Schnatter, Laundry Service has intentionally and unreasonably intruded upon the seclusion of Schnatter.

186. Laundry Service's secret recording of the May 22, 2018 call constitutes an unreasonable intrusion upon the privacy and seclusion of Schnatter which is an invasion of Schnatter's right of privacy and was done by Laundry Service recklessly, maliciously, and/or with the intent to harm Schnatter.

187. Defendants' actions demonstrate a reckless and malicious disregard for Schnatter's privacy.

188. The secret recording of the May 22, 2018 call with Schnatter constitutes a deviation from all reasonable bounds of decency and is the result of the reckless, malicious and/or intentional conduct of Defendants.

189. The secret recording of a media training meeting, especially where Schnatter had a reasonable expectation of privacy, would be highly offensive to a reasonable person.

190. Laundry Service's secret recording of the May 22, 2018 call has caused Schnatter to lose trust in the effectiveness of contracts, such as the NDA, and has caused Schnatter to not be open and trusting of parties who are in confidential relationships with him, such as Laundry Service, for which he is entitled to monetary damages as compensation.

191. All of the compensatory damages to which Schnatter is entitled exceed the minimum jurisdictional requirements of this court.

192. The intentional secret recording of the May 22, 2018 call was done with oppression, fraud, or malice, and/or with a reckless indifference to the rights of Schnatter, and which conduct by Defendants therefore entitles Schnatter to a recovery of punitive damages against Defendants in an amount to be determined by a jury

Count III
Invasion of Privacy: False Light

193. Schnatter restates the preceding paragraphs as if fully restated herein.

194. As described above, Defendants Laundry Service and Wasserman Media invaded Schnatter's privacy by knowingly and intentionally placing Schnatter in a false light and creating a false impression that Schnatter is a racist when he is not.

195. Schnatter had a reasonable expectation of privacy with respect to his communications with Laundry Service, including the content of the May 22, 2018 call. The information in the May 22, 2018 call should not have been leaked to Forbes.

196. Defendants knew that the contents of the communications between Schnatter and Laundry Service should have been kept confidential because such information is treated as confidential in the industry, and because Laundry Service executed an NDA with Schnatter and agreed to keep such information confidential.

197. Defendants knew that the information they leaked to Forbes would be construed in a false light to have devastating consequences to Schnatter. Nevertheless, they intentionally leaked the information to Forbes.

198. By leaking the confidential information to Forbes in a knowingly misleading and/or with reckless disregard for the false impression that would be created, Defendants have

unreasonably placed Schnatter in a false light before the public by creating the false impression to the public that Schnatter is a racist.

199. The false impression that Schnatter is a racist tends to expose Schnatter to public ridicule and has impacted his ability to earn an income in the community.

200. Defendants, therefore, had knowledge of, or acted in reckless disregard as to, the falsity of the impression the information leaked to Forbes would be placed.

201. Based on the misleading information provided by Defendants in violation of their obligations to Schnatter, Forbes, as intended by Defendants, published an article dated July 11, 2018 which portrayed Schnatter as a racist. The information from the Forbes article was republished countless times.

202. The false impression that Schnatter is a racist would not have otherwise been publicly created but for Defendants' misleading leak of the confidential information to Forbes.

203. Defendants' misleading leak of the confidential information to Forbes and the false impression it created constituted an unreasonable intrusion upon the privacy of Schnatter and was done by the Defendants intentionally, recklessly, maliciously, and with the intent to harm Schnatter.

204. The false impression caused by the misleading confidential information that was leaked by Defendants to Forbes constitutes a deviation from all reasonable bounds of decency and was disseminated to the public as a result of the reckless, malicious and intentional conduct of Defendants.

205. The false impression created by Defendants' misleading leak of information to Forbes, namely that Schnatter is a racist, would be highly offensive to a reasonable person and was highly offensive to Schnatter.

206. The false impression created by Defendants' misleading leak of information to Forbes as previously described herein was a substantial contributing factor to the permanent impairment of earning capacity, embarrassment, and humiliation, which have been experienced by

Schnatter since the false impression created by the publication of the Forbes article, and for which he is entitled to monetary damages as compensation.

207. All of the compensatory damages to which Schnatter is entitled exceed the minimum jurisdictional requirements of this court.

208. The false impression was created by Defendants through their intentional leaking of misleading confidential information to Forbes with oppression, fraud, or malice, and/or with a reckless indifference to the rights of Schnatter, and which conduct by the Defendants therefore entitles Schnatter to a recovery of punitive damages against Defendants in an amount to be determined by a jury.

PRAYER FOR RELIEF

Plaintiff John H. Schnatter respectfully requests that the Court enter a judgment in his favor and against 247 Group, LLC d/b/a Laundry Service and Wasserman Media Group, LLC, and award him the following relief:

A. A judgment against Laundry Service and Wasserman Media, jointly and severally, for compensatory, expectation, punitive, and all other damages available to him in amounts to be determined at trial;

B. An award of attorneys' fees and costs, as allowed by law;

C. An award of prejudgment and post-judgment interest, as provided by law; and

D. Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Schnatter demands a jury trial as to all issues triable by a jury.

Respectfully submitted,

s/ Elisabeth S. Gray

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was e-filed on this the ***18th*** day of November, 2022, via the Court's CM/ECF system, which will give electronic notice to counsel listed below who are registered to receive notifications:

Michael P. Abate
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and

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Counsel for Defendants 247 Group, LLC d/b/a Laundry Service and Wasserman Media Group, LLC

s/ Elisabeth S. Gray
Counsel for Plaintiff

Exhibit 1

Team Member Name _____

Team Member ID# _____

CONFIDENTIALITY, NON-DISPARAGEMENT AND DISPUTE RESOLUTION AGREEMENT

WHEREAS, John H. Schnatter resides in Louisville, Kentucky, and is the Founder, and Chairman of the Board of Directors ("Founder") of Papa John's International, Inc. (the "Company"); and

WHEREAS, since the Company's inception, the Company has used Founder's name, image, likeness, photographs, voice, signature, biography, public appearances, speeches, interviews and other similar methods and forms related to the image of Founder to promote its products and brand; and

WHEREAS, the nature of Team Member's employment, contact and/or travel with Founder has in the past and will likely in the future allow Team Member access to confidential information regarding Founder personally, his businesses and his family; and

WHEREAS, it is in the best interests of the Company, its employees and other stakeholders, to protect the brand image by ensuring that such information is kept confidential and not used improperly.

THEREFORE, in consideration of the employment or continued employment of Team Member by Company, and as a condition to contact with and work for Founder, Team Member covenants and agrees to be bound by the terms and restrictions of this Confidentiality, Non-Disparagement and Alternative Dispute Resolution Agreement ("Agreement"):

1. **Covenants of Team Member.**

(a) **Covenant Not to Appropriate or Disclose Confidential Information.** Except as required for Team Member to perform job duties, Team Member shall not at any time during employment or after termination of employment for any reason, use, copy, duplicate, post or disclose any information, including photographs, videos, or images of any type or medium or the substance of conversations or any information whatsoever of a personal or business nature regarding Founder or his immediate family members, whether learned during the course of Team Member's employment or otherwise, nor will Team Member convey, divulge, make available or communicate such information to any third party or assist others in using, copying, duplicating, posting or disclosing any of the foregoing. This Agreement applies to all information which Team Member may have learned, observed or had knowledge of prior to this Agreement as well as any information Team Member may learn following the execution of this Agreement. This covenant is not intended to apply to any images taken, captured or sanctioned by the Company, including but not limited to award photographs, Company videos from conferences or meetings, promotional photographs with the Founder or information made publicly available by the Company or Founder.

Team Member Initials _____

(b) **Covenant to Return Property.** Team Member agrees that all records and documents, electronic or otherwise, and other information and materials referenced in Paragraph 1(a), whether prepared by Team Member or which shall be made available to or come into the possession of Team Member during employment, are and shall remain the property of the Company or Founder. Team Member agrees to return all such information or materials, and all copies thereof (including electronic versions), upon the earlier of a request therefore from the Company or Founder, or upon separation of employment for any reason.

(c) **Covenant Not to Disparage.** Team Member agrees not to disparage or make derogatory comments, verbal or written, regarding the Company, Founder or members of Founder's immediate family. This Agreement shall not prevent Team Member from making truthful statements should Team Member be required by law to do so.

2. **Reasonableness of Scope and Duration.** Team Member agrees that the covenants and agreements contained in Section 1 of the Agreement are, taken as a whole, reasonable with respect to the activities covered and their duration, and agrees not to raise any issue of the reasonableness of the activities or duration of any such covenants or agreements in any proceeding to enforce the terms of this Agreement.

3. **Enforceability.** Because Team Member may have access to and become acquainted with confidential information regarding the Company or Founder personally, his businesses and his family, the Company and Founder shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company or Founder may have for a breach of this Agreement. The covenants and agreements contained in this Agreement shall be construed as separate covenants and agreements, and if any court shall finally determine that the restraints provided for in any such covenants and agreements are too broad as to the area, activity or time covered, said area, activity or time covered may be reduced to whatever extent the court deems reasonable, and such covenants and agreements shall be enforced as to such reduced area, activity or time.

4. **Condition of Employment.** Team Member acknowledges that it is a condition to employment or continued employment that he/she execute and deliver this Agreement, and that a portion of Team Member's compensation and continued employment with Company, is in consideration of Team Member's agreement to comply, and actual compliance, with the covenants and agreements contained herein.

5. **Right or Obligation to Report**. This Agreement does not serve as a waiver of Team Member's right or obligation to report under any Company policy or procedure any matters relating to the Company. Team Member acknowledges receipt of the Company's Code of Ethics and Business Conduct (the "Ethics Code"). Team Member agrees to promptly report any violations of the law, the Ethics Code or any of the Company's policies and procedures, as required by the Ethics Code. The restrictions on disclosure in this Agreement do not apply where disclosure is compelled by law.

6. **Dispute Resolution**. The parties agree that to the extent permitted by law, any dispute arising between Team Member and Company or Founder, including whether any provision of this

Agreement has been breached, shall be resolved through confidential mediation or confidential binding arbitration. Any such dispute shall initially be submitted for resolution to a neutral mediator, mutually selected by the parties. If such dispute is not resolved to the satisfaction of the parties, or the parties cannot agree upon a mediator, then it shall be submitted for resolution by a neutral arbitrator, to be mutually selected by the parties from a list provided by the American Arbitration Association, with such resolution to be made pursuant to that organization's then-current Employment (or other applicable) Arbitration Rules and Mediation Procedures. The parties agree that Company shall bear the costs of any mediation or arbitration arising under this Agreement, although each party shall be responsible for its own attorneys' fees. The parties agree to keep confidential both the fact that any mediation/arbitration has or will take place between them, all facts related thereto, and any resolution thereunder. Any resolution reached via mediation or award of an arbitrator shall be final and binding on the parties. The only exception to this mediation/arbitration requirement shall be that, in the event of an actual, threatened or anticipatory breach of the Confidentiality, Non-Disclosure or Non-Disparagement provisions of this Agreement, the Company and Founder shall be entitled to seek injunctive relief from a court of competent jurisdiction to prevent or obtain immediate relief related to such breach.

7. **Miscellaneous.**

(a) **Waiver of Breach.** The waiver by the Company or Founder of a breach of any provision of this Agreement by Team Member shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision by Team Member.

(b) **Amendment.** This Agreement may not be amended orally, but only by an amendment in writing signed by all the parties hereto.

(c) **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of Kentucky; provided, however, that if any provision of this Agreement would not be enforceable under the laws of Kentucky, then such provision shall be interpreted and construed to bind the parties to the maximum extent permitted by law, which is subsumed within the terms of such provision as though it were separately articulated herein and made a part hereof.

(d) **Confidentiality of Proceedings to Enforce Agreement.** If the Company or Founder is required to bring an action or petition a court to enforce any provision of this Agreement, the parties agree to seek confidential treatment of such action or petition, and all pleadings and proceedings relating thereto, with the court. Any such action, suit or proceeding to enforce this Agreement or arising hereunder or concerning the interpretation of this Agreement may be brought in the court of proper subject matter jurisdiction located in Jefferson County, Kentucky or in the United States District Court for the District of Kentucky. With respect to any action, claim suit or proceeding brought by Company in Kentucky, Team Member hereby irrevocably consents and submits to personal jurisdiction and venue in and by the state courts within Jefferson County, Kentucky or in the United States District Court for the District of Kentucky and waives all defenses of personal jurisdiction, venue and forum non conveniens.

(e) **Scope and Survival.** The covenants of this Agreement shall pertain to any and all information of any nature whatsoever learned, observed or known by Team Member regarding the

Company or Founder personally, his businesses or his immediate family members, regardless of whether such information was learned, observed or known by Team Member prior to the execution of this Agreement or learned during the course of the performance of this Agreement. The Agreement shall remain in full force and effect after any termination of employment.

8. **Severability**. The covenants and agreements contained in this Agreement shall be construed as separate covenants and agreements, and if any provision of this Agreement or its application to any person or circumstance is found to be invalid, illegal or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid, illegal or unenforceable, shall not be affected, and the Agreement shall be valid, legal and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day, month and year set forth below.

TEAM MEMBER

By: 

Print Name: Mike Mikho

Date: 4.9.18

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
(ELECTRONICALLY FILED)

JOHN H. SCHNATTER, Plaintiff vs. 247 GROUP, LLC d/b/a LAUNDRY SERVICE and WASSERMAN MEDIA GROUP, LLC Defendants	Civil Action No.: 3:20-cv-00003-BJB-CHL Judge BENJAMIN BEATON Magistrate Judge COLIN H. LINDSAY

ORDER GRANTING LEAVE TO FILE
SECOND AMENDED COMPLAINT

The Court having considered Plaintiff John H. Schnatter's Motion for Leave to File Second Amended Complaint, and for good cause shown,

IT IS HEREBY ORDERED THAT:

The Motion for Leave to File Second Amended Complaint is **GRANTED.**

Tendered by:

s/ Elisabeth S. Gray

Dennis D. Murrell
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Augustus S. Herbert
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