EFiled: Sep 05 2018 05:02PM EDT
Transaction ID 62412728
Case No. 2018-0646-AGB

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN H. SCHNATTER, Plaintiff, v. MARK S. SHAPIRO, SONYA E. MEDINA, OLIVIA F. KIRTLEY, CHRISTOPHER L. COLEMAN, LAURETTE T. KOELLNER, STEVE RITCHIE, and PAPA JOHN'S INTERNATIONAL, INC. Defendants.	)	C.A. No. 2018-0646-AGB **PUBLIC VERSION**

VERIFIED COMPLAINT
FOR VIOLATIONS OF THE DUTIES OF LOYALTY
AND CARE CAUSING IRREPARABLE HARM

John H. Schnatter, by and through his undersigned attorneys, for his Verified Complaint, alleges as follows:

Introduction

1. Almost 35 years ago, John Schnatter founded what would become Papa John's International, Inc. ("Papa John's" or the "Company"). After graduating from college, Mr. Schnatter returned to his hometown of Jeffersonville, Indiana, replaced a broom closet in his father's tavern with a pizza oven, and began delivering pizza out of the back of the bar. From those beginnings, Papa John's went public in 1993 and now has more than 5,000 locations throughout the world.

2. Recent events have made it clear to Mr. Schnatter that he has no choice but to file this action against the Company he founded and its directors because the Company is at severe risk and faces irreparable harm without immediate intervention from the Court.

3. Previously, on July 26, 2018, Mr. Schnatter filed an action pursuant to 8 *Del. C.* § 220(d) seeking documents from the Company – documents to which he is entitled as a director of the Company. Mr. Schnatter believes those documents will expose the malicious and pre-planned manner in which certain Company insiders have acted since the publication of a story that falsely accused him of making insulting comments, and will demonstrate significant breaches of fiduciary duties committed by one or more of the Company's independent directors and officers.

4. That initial lawsuit reflected Mr. Schnatter's attempt to get documents and obtain the true facts, and to do this in a manner that is wholly beneficial to, and in the best interests of the Company and its many employees, franchisees and shareholders.

5. Even though that lawsuit is proceeding on an expedited basis – it is currently set for trial on October 1 – *after* Mr. Schnatter began that action the Company experienced extraordinary and ongoing damage at the hands of the Company's senior leadership and the Special Committee formed to investigate

these matters. Simply put, the ability of the Company to repair itself and properly function may not last until October 1.

6. Accordingly, Mr. Schnatter seeks the Court's urgent assistance in enjoining certain conduct in an effort to save the Company that provides the livelihood for more than 120,000 individuals and their families.

7. In the absence of Court intervention, the Company, and its employees, franchisees and stockholders will be subject to continuing and irreparable harm. Through this action, Mr. Schnatter seeks, among other things, to:

a. enjoin the Special Committee and the Company from retaliating against employees for reporting allegations of inappropriate behavior and other wrongdoing;

b. enjoin the Special Committee as currently composed from investigating the allegations of inappropriate behavior that relate to members of the Special Committee itself;

c. enjoin Mr. Steve Ritchie from issuing any public statement that relates to Mr. Schnatter, in violation of the resolutions passed by the Board on July 15 and July 26;

d. invalidate the Rights Plan as a whole, or, at a minimum, invalidate the "Acting in Concert" provision of the Rights Plan; and

e. enjoin the Special Committee from effectuating the termination of agreements between the Company and Mr. Schnatter and his affiliates.

The Parties

8. Mr. Schnatter is the founder of Papa John's and served as the Chairman of the Board from the Company's inception in 1984 until mid-2018

when he voluntarily resigned as Chairman. Mr. Schnatter served as Chief Executive Officer, co-Chief Executive Officer or Interim Chief Executive Officer of the Company on five separate occasions. During those periods, the Company performed materially better than when others served in the same role.

9. Defendant Mark S. Shapiro was appointed to the Board in February 2011. He has served as Co-President of WME | IMG, a subsidiary of Endeavor, since November 2016 and Chief Content Officer since September 2014. Mr. Shapiro serves as a director of Live Nation Entertainment, Inc., Frontier Communications Corporation, and as a trustee of Equity Residential. Mr. Shapiro is also Chairman of Captivate Network, a privately held company.

10. Defendant Sonya Medina was appointed to the Board in September 2015. Ms. Medina is a government and public affairs strategist. She has served as a consultant to the City of San Antonio since March 2015, and as a consultant to Silver Eagle Distributors, the nation's largest distributor of Anheuser-Busch products, since July 2013. She is active in community and civic affairs and currently serves on the Next Gen Board Leaders Advisory Council, a joint initiative launched by NASDAQ, Spencer Stuart and Boardroom Resources.

11. Defendant Olivia Kirtley was appointed to the Board in May 2003 and currently serves as Chairman, previously having served as Lead Independent Director from April 2016 until July 2018. Ms. Kirtley, is a former chief financial

officer and former senior manager at a predecessor to the accounting firm Ernst & Young LLP. Ms. Kirtley serves as a director of U.S. Bancorp, ResCare, Inc., and Randgold Resources.

12. Defendant Christopher Coleman was appointed to the Board in October 2012. Mr. Coleman is based in the UK where he is Group Head of Banking at Rothschild & Co. He is a Global Partner of Rothschild & Co, Chairman of Rothschild Bank International and also serves on a number of other boards and committees of the Rothschild & Co Group, which he joined in 1989. He is also non-executive chairman of the board of Randgold Resources, where he has served on the board since 2008.

13. Defendant Laurette Koellner was appointed to the Board in June 2014. Ms. Koellner most recently served as Executive Chairman of International Lease Finance Corporation, a subsidiary of American International Group, Inc. ("AIG") from June 2012 until its May 2014 sale to AerCap Holdings N.V. Ms. Koellner served as President of Boeing International, a division of The Boeing Company, where she served in a variety of financial and business leadership roles from 1997 until 2008, including as a member of the Office of the Chairman and as Boeing's Chief Administration and Human Resources Officer. Ms. Koellner serves as a director of Celestica, Inc., The Goodyear Tire & Rubber Company, and Nucor Corporation.

14. Messrs. Shapiro and Coleman and Mmes. Medina, Kirtley and Koellner were appointed to a "Special Committee" at a meeting of the Board on July 15, 2018.

15. Defendant Steve Ritchie is the President and Chief Executive Officer of the Company.

16. The Company is a Delaware corporation with its headquarters in Louisville, Kentucky. The Company has over 5,000 locations and 120,000 corporate and franchise employees in all 50 states and 44 countries and territories. The Company operates and franchises pizza delivery and carryout restaurants and, in certain international markets, dine-in and delivery restaurants under the trademark, "Papa John's."

Background And Relevant New Facts Since The Filing Of The 220 Demand

Ongoing Harm By The Special Committee

17. On Saturday, July 14, 2018, the Company sent notice of a Board meeting that would occur the next evening, on Sunday July 15. In advance of that meeting, Mr. Schnatter's counsel advised the Board that it did not have authority under Delaware law to remove Mr. Schnatter from the Board. Rather, counsel recommended to the Board that it should conduct a full and independent investigation before taking any action. The Board failed to heed that advice.

18. At the Board meeting on July 15, the Board did form a special committee consisting of all members of the Board except for Mr. Schnatter (the "Special Committee"). It was initially given the "exclusive" authority to "review all existing transactions, proposals, agreements, understandings, arrangement and relationships (collectively, whether now existing or yet to be entered into, the 'Schnatter Group Arrangements') of the Company with John Schnatter and his family members and his and their affiliates."

19. The Special Committee, however, has been exceptionally flawed in both action and composition since its formation.

20. Although formed at approximately 8:30 p.m. (eastern), the Special Committee acted immediately, and by 11:30 p.m. *that same evening* sent termination notices regarding two Schnatter-related contracts. One letter purported to terminate a "Sublease Agreement." The other letter purported to terminate a fundamental agreement between Mr. Schnatter and the Company for services as the Company's founder, the "Founder Agreement."

21. The Special Committee's purported termination of those contracts reflected no meaningful investigation; indeed no committee member even spoke with Mr. Schnatter about these matters before acting. Unsurprisingly, this failure to properly inform themselves also rendered invalid the Special Committee's

attempt to terminate those contracts, including because they did not follow the written termination provisions in the contracts.

22. Then, later that same Sunday evening, the Company issued a press release stating that the Special Committee had retained Akin Gump Strauss Hauer & Feld LLP ("Akin Gump") to "oversee an audit and investigation of the company . . . that will examine all of the existing processes, policies and systems related to diversity and inclusion, supplier and vendor engagement and Papa John's culture." As is clear from the Board resolution that established it, however, the Special Committee had no authorization to conduct such an investigation.

23. Then, further confirming that the Special Committee had pre-judged the matter and was refusing to properly inform itself before acting, one Company employee with knowledge *directly relevant* to events central to the Special Committee's investigation was not interviewed; rather, she was summarily terminated. And this would not be the last of the Company's harsh and retaliatory actions.

24. But given the termination of the agreements only hours after the formation of the Special Committee, the public statement incorrectly describing the Special Committee's charge, and the abrupt termination of a key witness, Mr. Schnatter grew concerned that the Special Committee was acting without authority and without fulfilling its fiduciary duties. On July 18, 2018,

Mr. Schnatter made a demand on the Company pursuant to 8 *Del. C.* § 220(d) to inspect certain of the Company's books and records (the "Demand") to determine whether the other members of the Board had breached their fiduciary duties.

25. From this inauspicious start, the Special Committee's conduct then became more indefensible and harmful.

26. Among its next steps, on July 26, the members of the Special Committee, acting as the Board, amended and expanded the scope of their own Special Committee to give themselves exclusive authority over almost all aspects of the Company's activities.

27. Among that expanded authority was the authority to conduct an "investigation" of the Company's "diversity and inclusion . . . and Papa John's culture." Accordingly, investigation of allegations of a toxic culture that is promoted and condoned by the Company's senior leadership became the obligation of the Special Committee.

28. The Special Committee made a mockery of that obligation. Since making his Demand, numerous individuals have come forward and provided evidence to Mr. Schnatter, in his capacity as a director, of serious and ongoing wrongdoing by the Company's CEO, Mr. Steve Ritchie, many members of his

senior leadership team, and the Company's general counsel, Ms. Caroline Oyler, and allegations that also relate to members of the Special Committee.

29. Mr. Schnatter promptly reported this information to the Company's Human Resources department, in a letter dated August 17, 2018, to the-then Senior Vice President of Global Human Resources (the "HR Letter" attached as Exhibit A).[1] Mr. Schnatter also provided a copy of that letter to Mr. Shapiro (at his request) and to Ms. Kirtley, the Chair of the Board.

30. The Company's response to the HR Letter, as authorized by the Special Committee, was shocking. Instead of addressing soberly and seriously the issues raised in the HR Letter, the Special Committee issued a statement in full-throated support of Mr. Ritchie and his management team without properly investigating a single piece of evidence provided to them.

31. Further, rather than empower and support the women who reported numerous instances of sexual and other inappropriate misconduct, the Company retaliated against them. Among other things, one whistleblower suffered immediate retaliation and bullying by Ms. Victoria Russell, the Company's newly-appointed head of Diversity & Inclusion. Ms. Russell's conduct ranged from overt intimidation to thinly-veiled threats and reprisals, including that the employee would be terminated. Ms. Russell also began to spread false rumors that this

[1] Perhaps notably, within days of receiving this letter, the Company announced that this individual was "retiring" from the Company.

employee was a "mole" who had supplied certain information to the media – information to which this employee had no access. Of course, that this employee would suffer retaliation from the Company's head of "Inclusion" is an irony that should be lost on no one.

32. Equally outrageous, shortly after receipt of the HR Letter sent on August 17, the Special Committee issued a statement on August 21. In that statement, the Special Committee emphasized that "the independent directors support Steve [Ritchie and his] leadership team." Indeed, each member of the Special Committee specifically signed their names to that statement.

33. In other words, once again, the Special Committee – before conducting any proper investigation into those allegations – immediately announced that it had pre-judged the matter and confirmed to the public that Mr. Ritchie and his whole leadership team has the "support" of each member of the Special Committee.[2]

34. Moreover, among the "exclusive" authority the Board delegated to the Special Committee was the "exclusive power and authority" to "issue news releases [and] public statements" related to Mr. Schnatter.

[2] Again, perhaps notably, within days of this statement, one member of Mr. Ritchie's leadership team who was accused of wrongdoing left the Company.

35. In other words, the Company no longer had the authority to issue any public statement related to Mr. Schnatter without prior approval from the Special Committee.

36. Nonetheless, on August 21, the Company issued a statement that "We continue to encourage Mr. Schnatter to move on from the company." Either that statement did not reflect prior approval from the Special Committee – in which case the Company was putting out unauthorized and therefore misleading statements to the public and the shareholders; or the required prior approval did occur – in which case the statement reflected the view of the Special Committee. And if so, it again confirmed that the Special Committee had pre-judged the situation and was acting without completing a proper investigation. Such conduct is flatly inconsistent with Delaware law and the fiduciary duties that each member of the Special Committee owes to the Company, including the duty to inform themselves before acting.

37. In the midst of this, the Special Committee has attempted to cover-up all of this misconduct and retaliation by also purporting to investigate itself.

38. Specifically, among the allegations documented in the HR Letter are ones that relate to members of the Board, *i.e.*, individuals who now comprise the Special Committee. While proper corporate governance would suggest that the Special Committee cannot investigate itself, this Special Committee appears to be

doing just that. As recently as August 27, Akin Gump (counsel for the Special Committee) confirmed that it is proceeding with its "ongoing audit and investigation" despite that its own members are now the source of, or a target of, inappropriate conduct.

Mr. Ritchie's Conduct Violates His Duty of Loyalty

39. The Special Committee is not alone in acting outside of its appropriate and duly-authorized legal authority. The Company's CEO, Mr. Ritchie, has issued a number of public statements regarding Mr. Schnatter even though Mr. Ritchie's legal authority to issue such statements has been explicitly removed.

40. Among the most egregious was a public statement released by Mr. Ritchie on August 28, 2018. In that statement, Mr. Ritchie accused Mr. Schnatter of "making up lies" and that in particular at "no time has the Board asked John Schnatter to become Executive Chairman."

41. This statement was egregious for two reasons. First, neither the Company nor Mr. Ritchie currently possess *any* authority to issue *any* statement related to Mr. Schnatter without prior approval from the Special Committee. This is because in the Resolutions and Charters adopted by the Board that established the Special Committee, both initially on July 15 and as amended on July 26, the authority for the Company (or the Board itself) to issue any statement "involving John Schnatter" was delegated "exclusively" to the Special Committee.

42. And specifically, *only* the Special Committee – and *not* the Board, the Company or Mr. Ritchie – has "exclusive power and authority" to "issue news releases [and] public statements" that relate to Mr. Schnatter. By issuing a public statement related to Mr. Schnatter – and calling him a liar – Mr. Ritchie exceeded his legal authority.

43. Second, the statement was further egregious because it was false.

44. In any event, Mr. Ritchie has reached this point of making false and legally unauthorized statements because his plan to denigrate Mr. Schnatter and force him from the Company has failed.

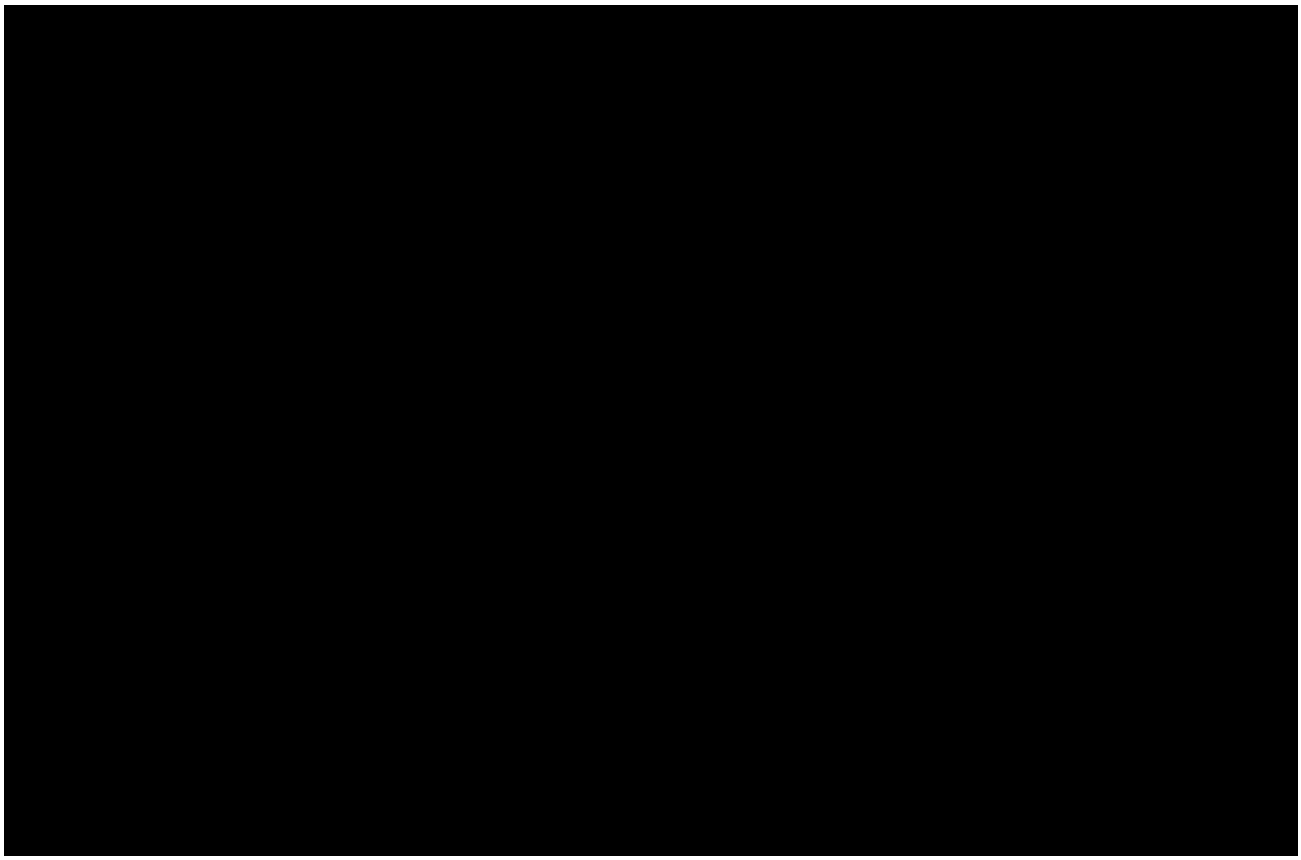
45. Indeed, Mr. Ritchie has admitted privately that he launched a false and defamatory campaign against Mr. Schnatter, falsely accusing him of racism, for the sad and simple reason that Mr. Ritchie learned that he was going to lose his job.

46. In other words, Mr. Ritchie placed his own self-interest and desire to salvage his own employment over the best interests of the Company. Mr. Ritchie has caused deep and perhaps lasting damage to the Company, its employees, customers, franchisees and shareholders, all in an effort to save his own job. It is hard to imagine a more clear a violation of the duty of loyalty than what Mr. Ritchie has done.

The Company's Financials Are In Free Fall

47. As a direct result of this dysfunctional and improper conduct by the Special Committee and the Company's CEO and leadership team, the Company's financials are plummeting.

48. Mr. Schnatter, however, no longer receives the "Daily Operating Report" containing virtually real-time financial updates that the Company had been routinely providing to him. Concurrent with the formation of the Special Committee, the Company cut-off Mr. Schnatter from this critical information – even though he remains on the Board and needs this information to perform in this capacity.



50. [redacted] Without immediate intervention by the Court, the harm will be irreparable.

The Rights Plan

51. The Court's urgent assistance is needed because the usual mechanisms for shareholders to intervene in such a situation – including by Mr. Schnatter who owns a considerable 30% share of the Company – have been shut down.

52. The members of the Special Committee have adopted an ill-advised poison pill (the "Rights Plan"). Before the Company's response to the Demand was due, the Company also took this action without adequate information. On July 21, 2018, Mr. Schnatter received notice of a meeting of the Board to be held at 9:00 a.m. (eastern) on July 22 (the "July 22 Meeting"). The agenda for the meeting included consideration of the Rights Plan.

53. At the time, there was no credible threat to the Company. The Board received a presentation from Bank of America and the Company's counsel, Hogan Lovells, on the adoption of the Rights Plan. [redacted]

[redacted]

54. [redacted] the Special Committee members authorized adoption of the Rights Plan, with Mr. Schnatter abstaining. The Rights Plan also contains a significant provision *never before approved by a Delaware court*.

55. Specifically, like most rights plans, this plan is "triggered" when a stockholder becomes an "Acquiring Person." In this case, an Acquiring Person is a stockholder who beneficially owns greater than 15% of the shares of the Company's common stock outstanding. Mr. Schnatter, who owns approximately 30%, is "grandfathered" in, and would become an acquiring person if he beneficially owns greater than 31% of the Company's common stock outstanding.

56. The concept of "beneficial ownership" of stock also is similar to other rights plans, adopting the definition of beneficial ownership from the Exchange Act Regulations, but exempting from the definition any agreement arising from a revocable proxy given in response to a public proxy or consent solicitation – with one major exception.

57. Where this Rights Plan differs from all others approved by Delaware courts is that it considers a Person to beneficially own shares owned by someone with whom the Person is "Acting in Concert." And the definition of that term is exceptionally large. In the Rights Plan, one is deemed to be Acting in Concert if:

> such Person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) at any time after the first public announcement of the adoption of [the Rights Plan], in concert or in parallel with such other Person, or towards a common goal with such other Person, relating to changing or influencing the control of the Company or in connection with or as a participant in any transaction having that purpose or effect, where (i) each Person is conscious of the other Person's conduct and this awareness is an element in their respective decision-making processes and (ii) at least one additional factor supports a determination by the Board of the Company that such Persons intended to act in concert or in parallel, which additional factors may include, without limitation, exchanging information, attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel.

Exempt from this definition are actions "solely as a result of" a public proxy or consent solicitation.

58. In other words, under this definition, if two 10% stockholders have a meeting to discuss solicitation of proxies or opposition to board proposals, *do not reach agreement on a plan of action* but each knows the other intends to vote in the same way, they could trigger the Rights Plan. Even if one stockholder actually runs a public proxy contest, because the two 10% stockholders simply

met previously, the non-soliciting stockholder's vote would not be "solely" because of the solicitation, and therefore court trigger the Rights Plan.

59. The use of the word "could" is intentional because ultimately the Board has the exclusive ability to determine whether shareholders are acting in concert. And given that the Board can act immediately, there is no chance for a stockholder to obtain injunctive or other equitable relief to stop the Board from issuing the rights associated with the Rights Plan. In other words, the Board has the ability, on its own and unreviewable in real-time, to determine that the Rights Plan is triggered, and the Board can then issue the rights before a complaining stockholder would even know it.

60. Moreover, this provision also appears to preclude the holders of 60% of the Company's outstanding stock from jointly asking the Company to hold a special meeting of stockholders, which they are otherwise entitled to do under Article V of the Company's certificate of incorporation.

61. Taken together, these provisions, the broad definition of Acting in Concert, and the Board's seemingly unlimited ability to wield the power of the Rights Plan without any check work together to immediately and effectively chill any stockholder from engaging in the typical types of activities normally associated with proxy contests.

62. Further, while the Company takes steps to tie the hands of others, on or around August 23, 2018, news articles began reporting that the Company (*i.e.*, the Special Committee) had hired financial advisors to "assess its options."

63. Given that Mr. Schnatter owns 30% of the outstanding shares of the Company, as a practical matter, Mr. Schnatter's views on any potential business combination will go a long way in determining the viability of such a transaction. The relief sought in this complaint will permit Mr. Schnatter to meaningfully participate in these efforts without, in effect, retaliatory efforts by the Special Committee to dilute him.

Derivative and Demand Futility Allegations

64. Plaintiff brings Counts I - IV of this action derivatively in the right, and for the benefit, of the Company and its stockholders to redress injuries suffered and to be suffered by the Company as a result of the Special Committee's and Mr. Ritchie's breaches of the fiduciary duty of loyalty.

65. A pre-suit demand upon the Board is and would have been futile as to Counts II-IV because, as the Special Committee is comprised of all the directors on the Board except the Plaintiff, the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, and because the wrongful conduct alleged herein is not subject to protection under the business judgment rule.

66. Counts II, III, and IV allege breaches of fiduciary duties by the Special Committee, as more fully detailed herein, making futile a pre-suit demand on the Board (entirely comprised of the Special Committee directors and Plaintiff).

67. The facts alleged in the preceding paragraphs also show that, at a minimum, reasonable doubt exists whether the Board has exercised valid business judgment in continuing to support Mr. Ritchie's employment as CEO. Despite being on notice of Mr. Ritchie's self-interested and damaging conduct, the Board has on two recent occasions publicly supported its CEO in the face of mounting shareholder, and public, unrest, and without any investigation despite receiving detailed allegations of misconduct by Mr. Ritchie.

68. The Board's affirmative support of Mr. Ritchie in light of the known self-interested conduct is not a valid exercise of business judgment and raises a reasonable doubt that the Board could or would consider properly a demand by Plaintiff to take the action against Mr. Ritchie set forth in Count I. Demand as to Count I is therefore excused.

69. Plaintiff has owned shares of the Company continuously since founding Papa John's International, Inc. and, at present, owns approximately 30% of the Company's shares.

70. Plaintiff will adequately and fairly represent the interests of the Company in enforcing and prosecuting its rights and has retained competent counsel experienced in corporate derivative litigation.

71. For the reasons stated in this Verified Complaint, Plaintiff is excused from making a demand on the current Board regarding Counts I – IV prior to instituting this action.

COUNT I
(Breach of Fiduciary Duty of Loyalty Against Mr. Ritchie)

72. Plaintiff repeats and realleges the allegations from the preceding paragraphs as if fully set forth here.

73. Officers of a Delaware corporation owe a duty of loyalty, and it requires them to act in the best interests of the stockholders, and not put their interests ahead of the Company or its stockholders.

74. In violation of his duty of loyalty, Mr. Ritchie has admitted privately that he launched a false and defamatory campaign against Mr. Schnatter, falsely accusing him of racism, after Mr. Ritchie learned that he was going to lose his job.

75. In other words, Mr. Ritchie placed his own self-interest and desire to salvage his own employment over the best interests of the Company. Mr. Ritchie has caused deep and perhaps lasting damage to the Company, its employees, customers, franchisees and shareholders, all in an effort to save his own job.

76. Plaintiff is without an adequate remedy at law.

COUNT II
(Breach of Fiduciary Duty of Care
Against the Special Committee)

77. Plaintiff repeats and realleges the allegations from the preceding paragraphs as if fully set forth here.

78. Directors of Delaware corporations have a fiduciary obligation to obtain all information reasonably available before acting on behalf of the Company.

79. In violation of this duty of care, the Special Committee acted within less than three hours of its formation to terminate two Schnatter-related agreements. The Board could not have possibly met its obligation to consider all information reasonably available before invalidly terminating those agreements. Nor has the Board cured this flaw in its decision-making process.

80. The Special Committee also authorized (or failed to authorize) a press release issued by the Company on July 15, 2018, stating that the Special Committee had retained Akin Gump to "oversee an audit and investigation of the company . . . that will examine all of the existing processes, policies and systems related to diversity and inclusion, supplier and vendor engagement and Papa John's culture." As is clear from the resolution that established it, however, the Special Committee had no authorization to conduct such an investigation.

81. Then, further confirming that the Special Committee had pre-judged the matter and was refusing to properly inform itself before acting, one Company employee with knowledge *directly relevant* to events central to the Special Committee's investigation was not interviewed; rather, she was terminated.

82. After expanding the authority of the Special Committee on July 26 to conduct an "investigation" of the Company's "diversity and inclusion . . . and Papa John's culture," the Special Committee received evidence of serious and ongoing wrongdoing by the Company's CEO, Mr. Steve Ritchie, many members of his senior leadership team, and the Company's general counsel, Ms. Caroline Oyler, and allegations that also relate to members of the Board. Rather than investigate those allegations, the Special Committee issued a statement that emphasized that "the independent directors support Steve [Ritchie and his] leadership team." Indeed, each member of the Special Committee specifically signed their names to that statement.

83. In addition, on August 21, the Company issued a statement that "We continue to encourage Mr. Schnatter to move on from the company." Either that statement did not reflect prior approval from the Special Committee – in which case the Company was putting out unauthorized and therefore misleading statements to the public and the shareholders; or the required prior approval did occur – in which case the statement reflected the view of the Special Committee.

And if so, it further confirmed that the Special Committee had pre-judged the situation and was acting without completing a proper investigation.

84. In addition, even though among the allegations documented in the HR Letter are ones that relate to members of the Board, *i.e.*, individuals who now comprise the Special Committee, the Special Committee is apparently proceeding with an investigation that includes investigating itself – despite that its own members are now the source of, or a target of, inappropriate sexual conduct.

85. As a result of these breaches of fiduciary duty by the members of the Special Committee, Plaintiff is entitled to a preliminary and permanent injunction precluding the effectiveness of the termination of the Sublease Agreement and the Founder Agreement.

86. Plaintiff is without an adequate remedy at law.

COUNT III
(Breach of Fiduciary Duty of Loyalty
Against the Special Committee)

87. Plaintiff repeats and realleges the allegations from the preceding paragraphs as if fully set forth here.

88. Directors of a Delaware corporation also owe a duty of loyalty, and it requires them to act in the best interests of the stockholders, and not put their interests ahead of the Company or its stockholders.

89. One of the quintessential disabling conflicts of interest is the possibility that a director or officer will have to investigate his or her own conduct. Here, the HR Letter raises allegations related to members of the Special Committee and other senior officers of the Company. At a minimum, allegations that one Board member has made highly sexual comments about another Board member renders both of them incapable of objectively and dispassionately completing an investigation into those matters. The Special Committee cannot properly investigate itself.

90. For these reasons, any results of the Special Committee's investigation will be inherently flawed and invalid which will cause further harm to the Company. Plaintiff is entitled to preliminary and permanent injunctive relief preventing the Special Committee from further investigation of the allegations raised in the HR Letter.

91. Plaintiff is without an adequate remedy at law.

COUNT IV
(Breach of Fiduciary Duty
Against the Special Committee - Retaliation)

92. Plaintiff repeats and realleges the allegations from the preceding paragraphs as if fully set forth here.

93. The fiduciary duties of directors and officers require them to act in good faith, in the best interests of the Company and not to violate positive law.

94. Rather than support those who have reported numerous instances of misconduct, the Company retaliated against them and the Special Committee has condoned or, at a minimum, allowed this to continue. If not stopped, these threats could lead to substantial liability for the Company.

95. Among other things, one whistleblower suffered immediate retaliation and bullying by Ms. Victoria Russell, the Company's newly-appointed head of Diversity & Inclusion.

96. Further, shortly after receipt of the HR Letter sent on August 17, the Special Committee issued a statement on August 21 where the Special Committee emphasized that "the independent directors support Steve [Ritchie and his] leadership team." Indeed, each member of the Special Committee specifically signed their names to that statement.

97. Among other things, this sends a clear and emphatic message to all Company employees that allegations of wrongdoing against or about Mr. Ritchie and his leadership team will be ignored or rejected by the Special Committee.

98. Plaintiff is entitled to an injunction precluding the Special Committee and its agents from threatening the employment of any person or otherwise exposing to any sanction those who have reported or may later report claims of sexual harassment or other misconduct in the HR Letter or in any other forum.

99. Plaintiff is without an adequate remedy at law.

COUNT V
(Breach of Fiduciary Duty – Rights Plan)

100. Plaintiff repeats and realleges the allegations from the preceding paragraphs as if fully set forth here.

101. When directors adopt defensive measures, they have an obligation to identify a potential threat to corporate effectiveness and ensure that the response is proportional to that threat, and is not coercive or preclusive.

102. The defendant directors voted to approve the Rights Plan without identifying any real threat to corporate effectiveness. Company counsel and its banker presented the same information the Board had received at a meeting a few months before adoption of the Rights Plan in July 2018. In the absence of an actual threat to corporate effectiveness, the Rights Plan should be declared void *ab initio*.

103. Further, the Rights Plan is not proportional in that it is preclusive. The adoption and continuation of the Rights Plan is causing irreparable injury to Plaintiff and other stockholders of the Company in numerous respects, including:

a. Precluding Plaintiff or any other stockholder from cooperating with or reaching an agreement, arrangement or understanding with other stockholders for the purpose of nominating individuals for election, demanding a special meeting of stockholders or simply discussing matters of common interest among the stockholders; and

b. Allowing the Company to engage with stockholders on these same issues and using Company funds while Plaintiff and other stockholders are precluded from doing so.

104. In the absence of expedited injunctive relief, Plaintiff and the other stockholders of the Company will suffer irreparable harm from the wrongful use of the Rights Plan. Plaintiff cannot even consider a proxy contest because the Acting in Concert provision of the Rights Plan precludes him from even discussing issues of common interest with other stockholders. Moreover, because the Board retains full authority to wield the might of the Rights Plan based on its own conclusions about whether any stockholders are "Acting in Concert," no stockholder will ever know whether its actions violate the Rights Plan until it is too late.

105. Plaintiff is entitled to preliminary and permanent injunctive relief invalidating the Rights Plan or, in the alternative, eliminating the Acting in Concert definition of the Rights Plan and all of the clauses and other definitions dependent on the definition of Acting in Concert.

106. Plaintiff is without an adequate remedy at law.

WHEREFORE, Plaintiff requests that the Court enter its Orders, Judgments and Decrees:

A. Preliminarily and permanently enjoining the Special Committee and the Company from retaliating against employees who reported allegations of misconduct in the HR Letter in any manner now or in the future;

B. Preliminarily and permanently enjoining the Special Committee from investigating allegations of misconduct related to its own members;

C. Preliminarily and permanently enjoining Mr. Steve Ritchie from issuing any public statement that relates to Mr. Schnatter,

in violation of the resolutions passed by the Board on July 15 and July 26;

D. Preliminarily and permanently invalidating the Rights Plan, or, in the alternative, invalidating the Acting in Concert definition and all other provisions of the Rights Plan dependent on such definition;

E. Preliminarily and permanently enjoining the effectiveness of the termination of the Sublease Agreement and the Founder Agreement;

F. Awarding Plaintiff his costs and fees, including reasonable attorneys' fees; and

G. Awarding such other and further relief that the Court finds equitable.

Of Counsel:

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Dated: September 5, 2018

BAYARD, P.A.

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