THE HONORABLE MARSHALL L. FERGUSON
Department 31

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

CHELSEA RUTTER and MAGDALENA CHAVEZ, individually and behalf of all others similarly situated, Plaintiffs, v. BRIGHT HORIZONS FAMILY SOLUTIONS, INC. d/b/a Bright Horizons Children's Centers, Inc., Defendant.	NO. 22-2-19810-9 SEA **AMENDED CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiffs Chelsea Rutter and Magdalena Chavez, individually and on behalf of all others similarly situated, by and through undersigned counsel, bring these causes of action pursuant to RCW 49.62 and RCW 19.86 against Defendant Bright Horizons Family Solutions, which conducts business as Bright Horizons Children's Centers ("Bright Horizons"). Plaintiffs state the following:

I. INTRODUCTION

1. Plaintiffs bring this class action to remedy Bright Horizons' widespread violations of Washington's protections against the use of noncompetition covenants, which keep Bright

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Horizons childcare workers trapped in their jobs, depress their wages, and rob them of an important source of bargaining power.

2. Plaintiffs and the proposed class are childcare workers at Bright Horizons who provide childcare services to families in Washington. It has become increasingly difficult to find high-quality and affordable early childhood care in Washington. Yet wages for Bright Horizons' childcare workers have not kept pace with the increased demand for high-quality childcare. Most Bright Horizons childcare workers earn around or just above minimum wage.

3. To retain its workforce without having to pay them more or treat them better, Bright Horizons relies on an unenforceable noncompetition covenant in the form of a requirement that its families pay Bright Horizons $5,000 if they hire one of Bright Horizons' childcare workers as an employee, for example as a full-time nanny. This covenant, which is a term and condition of employment, prevents Plaintiffs and other similarly situated workers from seeking out and securing employment opportunities with those families, who serve as one of the most serious competitors to Bright Horizons in the employment of its childcare workers.

4. Without this unlawful restraint, Bright Horizons would have to pay its workers more or treat them better to keep them working for Bright Horizons as opposed to seeking employment with a family. The threat that workers would find employment with a family should be especially serious for workers who have developed years of experience and relationships with families who use Bright Horizons centers. If Bright Horizons was not violating Washington law, those workers could be hired by families who would pay less for childcare than their fees to Bright Horizons but who could still reward those caregivers with higher wages. In other words, Bright Horizons' families could cut out the middleman.

5. But Bright Horizons uses the noncompetition covenant to keep its workers trapped in their jobs while restricting competition for their services. This means that Bright Horizons workers are trapped working for Bright Horizons even if their skills and experience working with children are worth substantially more to the family than Bright Horizons pays.

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6. In March 2020, at the beginning of the COVID-19 pandemic when some Bright Horizons centers were closed, Bright Horizons used its noncompetition covenant to impede workers from seeking full-time and permanent employment with families desperate for childcare. The result was that Bright Horizons staff could not find permanent employment with the potential employers most interested in seeking their services, and families could not obtain childcare services outside of Bright Horizons from their most trusted childcare providers without paying an exorbitant penalty. Both childcare workers and families were held captive to Bright Horizons to the detriment of workers and families.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under RCW 4.28.185 because Bright Horizons transacts business in the state of Washington and is registered to do business in Washington.

8. Venue is proper under RCW 4.12.020(3) because Plaintiffs were employed by Bright Horizons in King County, Washington and Plaintiffs' causes of action arose in King County.

III. PARTIES

9. Plaintiff Chelsea Rutter is a resident of Washington who was employed by Bright Horizons in Washington as a teacher from approximately April 2019 to May 2021.

10. Plaintiff Magdalena Chavez is a resident of Washington who was employed by Bright Horizons in Washington as a teacher from approximately March 2023 to September 2024.

11. Bright Horizons is a limited liability company organized under the laws of the State of Delaware, having its principal place of business in Massachusetts. Bright Horizons provides private childcare, backup care, and early childhood education for children at various locations throughout the country, including operating approximately thirty childcare centers in Washington.

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IV. FACTS

A. Background and Business Model of Bright Horizons

12. Bright Horizons employs more than 16,000 workers in the United States through its network of more than 650 early education and childcare centers, with the capacity to serve approximately 114,000 children and their families.

13. As of December 31, 2021, Bright Horizons had more than 1,350 client relationships with employers across a diverse array of industries, including more than 200 Fortune 500 companies.

14. Bright Horizons also provides back-up childcare and elder care and provides educational advisory services.

15. Bright Horizons has six times more employer-sponsored centers in the United States than its closest competitor.

B. Bright Horizons' Noncompetition Covenant

16. To restrict competition for its childcare workers' services, Bright Horizons uses noncompetition covenants in its contracts with the families who use its childcare.

17. Specifically, Bright Horizons' form contract with families provides that "if a staff member leaves Bright Horizons' employment to work for [a client family] within six (6) months of his or her departure; [the client family] agree[s] to pay a placement fee of $5000."

18. Bright Horizons does not disclose the existence of the noncompetition covenant to childcare workers before their employment with Bright Horizons. But Bright Horizons does communicate the noncompetition covenant as a term and condition of employment once those workers begin working for Bright Horizons.

19. The restriction is particularly problematic because the childcare workers providing care for families' children are especially attractive potential employees to those families.

20. The longer a Bright Horizons childcare worker works with children at Bright Horizon childcare centers, the more valuable they become to the families of those children. This

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experience and expertise should give workers more bargaining power. Even if a worker never explicitly considers going to work directly for a family, the threat that a family could hire a worker directly would force Bright Horizons to pay workers more and treat them better.

21. Instead, Bright Horizons limits competition for its workers by keeping both its workers and family clients captive through noncompetition covenants. For families, the covenant makes it substantially more expensive to hire potential nanny employees who are the most qualified to perform the work. For Bright Horizons childcare workers, the covenant substantially undermines their competitiveness with the employers that are likely to place the greatest value on their services.

22. The noncompetition covenant thus allows Bright Horizons to pay its childcare workers less and charge its client families more than it would be able to absent the covenant.

23. The noncompetition covenant is not designed to protect Bright Horizons' investment in training its childcare workers. In fact, Bright Horizons merely requires childcare workers to sit through self-guided, standardized training modules. New workers also receive on-the-job supervision by more senior childcare workers, who do not receive additional pay for their supervision duties. As a result, Bright Horizons invests substantially less than $5,000 per childcare worker in training. And what investment it does make in training, Bright Horizons recoups over time, but the penalty amount in its noncompetition agreement does not decrease, no matter how many months the childcare worker has been on the job.

24. Moreover, the value to families of Bright Horizons childcare workers' experience caring for their children derives principally from those workers' on-the-job experience, and the skills they develop through their work for Bright Horizons, not through any specialized training provided by Bright Horizons.

C. Ms. Rutter's Employment at Bright Horizons

25. Plaintiff Chelsea Rutter worked for Bright Horizons as a childcare worker at Seattle-area centers for around two years.

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26. In April 2019, she was hired as one of the first teachers at Bright Horizons at Interbay, a Bright Horizons childcare center in Seattle.

27. Bright Horizons did not disclose the noncompetition covenant to Ms. Rutter before she accepted employment with Bright Horizons.

28. Instead, Bright Horizons staff disclosed the noncompetition covenant to Ms. Rutter and a room full of other new hires during an orientation to the opening of a new center location. During the orientation, Bright Horizons staff explained a variety of company policies and rules, including the facility's attendance policy, dress code, and rules about how staff is to interact with the children under their care. Staff also gave the new hires a physical copy of the family contract and verbally went through the entire contract, including the noncompetition covenant, which Bright Horizons presented as a term and condition of employment.

29. In March 2020, during the beginning of the COVID-19 pandemic, Bright Horizons temporarily closed many of its childcare centers, including the Interbay center, and provided reduced childcare services for the children of first responders.

30. During this period, Ms. Rutter provided some babysitting for families of children for whom she had provided childcare at Bright Horizons' Interbay location.

31. In an effort to prevent her from continuing to provide such services and to ensure that both she and those families returned to Bright Horizons, Bright Horizons required Rutter to report to a position at a different Bright Horizons center that was less convenient for her. While the Interbay center was within walking distance from her home, the new center required a thirty-minute commute by car and was near a university, which made parking expensive, especially for someone making barely above minimum wage. The assignment also involved teaching a different age group than she had taught before.

32. Bright Horizons informed Ms. Rutter that if she did not report to work at this different center, she would be deemed to have voluntarily resigned from her position, which would affect her ability to access unemployment insurance.

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33. Ms. Rutter also knew that the families for whom she was providing care would likely not be able to hire her for permanent positions because of the noncompetition covenant and the $5,000 penalty.

34. Ms. Rutter's employment with Bright Horizons ended in 2021, after a prolonged period during which Bright Horizons mistreated Ms. Rutter, including by failing to protect her from a co-worker who had engaged in domestic violence against her.

35. When Ms. Rutter first began working for Bright Horizons, she earned around $18.00 per hour. By the time she left her employment in 2021, she was earning approximately $20.00 per hour. Ms. Rutter earned substantially less than $100,000 per year during her employment with Bright Horizons.

D. Ms. Chavez's Employment at Bright Horizons

36. Plaintiff Magdalena Chavez worked at Bright Horizons as a childcare worker at its Mercer Island center for approximately a year and a half.

37. In March 2023, Bright Horizon hired Ms. Chavez as a pre-kindergarten teacher at its Mercer Island childcare center.

38. Bright Horizons did not disclose the noncompetition covenant to Ms. Chavez before she accepted employment with Bright Horizons, or at any time thereafter. Ms. Chavez later learned about the noncompetition covenant in summer 2024, more than a year after she began working at Bright Horizons.

39. Bright Horizons did inform Ms. Chavez, however, that babysitting for families of children for whom she had provided childcare was discouraged. Bright Horizons also explained a variety of other company policies and rules, including the facility's attendance policy and how staff is to interact with the children under their care.

40. Within a few months of working for Bright Horizons, Ms. Chavez realized Bright Horizons management did not treat its teachers well and refused to provide them with the

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support they needed to effectively run their classrooms. For that reason, she decided to seek new employment.

41. After Ms. Chavez decided to seek new employment, she considered working for a Bright Horizons family. If such family would have offered her employment, Ms. Chavez would have accepted the offer, especially if a family of one of the children in her class made the offer because she had already built a rapport with several children who had behavioral challenges and their families.

42. Since leaving her employment, Ms. Chavez has considered approaching families of the children in her former class for full-time employment.

43. Ms. Chavez believes it would be difficult for Bright Horizons families to afford the $5,000 noncompetition penalty because many families were already struggling with the cost of childcare without the penalty.

44. Ms. Chavez focused her job search in a different field in part because she sought higher wages, which were stagnant in the childcare labor market. She now works at a pharmacy.

45. When Ms. Chavez began working for Bright Horizons, she earned $23.25 per hour. When she left her employment in 2024, she was earning $23.67 per hour, which was the result of a cost-of-living increase. Ms. Chavez earned substantially less than $100,000 per year during her employment with Bright Horizons.

V. CLASS ACTION ALLEGATIONS

46. Plaintiffs bring this case on behalf of themselves and the following proposed class under CR 23:

> All staff members who are or were employed by Bright Horizons in Washington at any time on or after June 30, 2019.

47. **Numerosity:** The proposed class includes more than 100 members. There are approximately thirty Bright Horizons childcare centers in Washington and each center employs between 15 and 30 staff members who are covered by the noncompetition covenant.

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48. **Commonality and Predominance**: The claims of the proposed class raise several common questions, including

a. Whether the penalty that Bright Horizons includes in contracts with client families and expresses as a term and condition of employment to childcare workers is a noncompetition covenant under Washington law;

b. Whether maintaining a noncompetition covenant is an unfair or deceptive act or practice under Washington's Consumer Protection Act;

c. Whether Bright Horizons' noncompetition covenants and enforcement of those covenants occur in trade or commerce;

d. Whether Bright Horizons' noncompetition covenants affect the public interest;

e. Whether Plaintiffs and proposed class members have been injured by Bright Horizons' noncompetition covenant.

These common questions predominate over any individual questions.

49. **Typicality:** Plaintiffs were employed by Bright Horizons during the class period and were subject to the noncompetition covenant. Their claims under Washington's noncompetition covenant law and Consumer Protection Act are typical of the class's claims.

50. **Adequacy of Representation:** Plaintiffs are appropriate representative parties for the class and will fairly and adequately protect the interests of the class. Plaintiffs understand and are willing to undertake the responsibilities of acting in a representative capacity on behalf of the proposed class. Plaintiffs and their counsel will fairly and adequately protect the interests of the class and have no conflict of interest with other members of the class.

51. **Superiority:** Plaintiffs and class members have suffered harm and damages as a result of Defendant's unlawful and wrongful conduct. Absent a class action, however, most class members likely would find the cost of litigating their claims prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial

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resources, promotes consistency and efficiency of adjudication, provides a forum for workers making small claims, and deters illegal activities. The class members are readily identifiable from Defendant's records, and there will be no significant difficulty in the management of this case as a class action.

52. **Injunctive Relief:** Defendant's conduct is uniform to all members of the class. Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or declaratory relief is appropriate with respect to the class as a whole. Plaintiffs are also entitled to obtain injunctive relief under RCW 19.86.090.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION
VIOLATION OF WASHINGTON LAW PROHIBITING UNLAWFUL NONCOMPETION COVENANTS, RCW 49.62.005, *ET SEQ.*
(Plaintiff on behalf of the class)

53. Plaintiffs were "employee[s]" of Bright Horizons under RCW 49.62.010(2).

54. Defendant was an "employer" of Plaintiffs under RCW 49.62.010(3).

55. The $5,000 penalty for families that hire Bright Horizons staff members for employment is a noncompetition covenant under Washington law because it restrains employees from engaging in a lawful profession and is not otherwise excluded from the definition of noncompetition covenant under Washington law. RCW 49.62.010(4).

56. The noncompetition covenant is void and unenforceable because Defendant did not disclose it to Plaintiffs before they accepted employment.

57. It is also unenforceable because Plaintiffs earned less than $100,000 per year. RCW 49.62.020.

58. Plaintiffs were aggrieved by the noncompetition covenant because it deprived them of an important source of bargaining power—the freedom to leave to work for a family with a child at Bright Horizons. It thereby suppressed their wages, causing them to earn less than they would have otherwise and causing substantial emotional distress.

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59. Plaintiffs are parties to the noncompetition covenant because such covenant expressly governed their employment. In addition, Bright Horizons expressly communicated the covenant to Ms. Rutter as a term and condition of her employment.

60. Plaintiffs are thus entitled to actual and compensatory damages in the form, among other things, of the wages they would have earned absent the noncompetition covenant, which suppressed their bargaining power and placed downward pressure on the wages of all employees covered by it, or a statutory penalty of $5,000, whichever is greater.

61. Plaintiffs are also entitled to reasonable attorneys' fees, expenses, and costs incurred in this proceeding, and other relief that the Court may deem just and proper.

SECOND CAUSE OF ACTION
VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT
(Plaintiff on behalf of the class)

62. Plaintiff are "person[s]" within the meaning of the Washington Consumer Protection Act. RCW 19.86.010(1).

63. Bright Horizons' noncompetition covenant was used in "trade or commerce" within the meaning of the Washington Consumer Protection Act. RCW 19.86.010, *et seq.*

64. Defendant's maintenance of an illegal and void noncompetition covenant, which harmed Plaintiffs and the class and the consumers of their services, constitutes an unfair practice under Washington law because such conduct is immoral, unethical, oppressive, or unscrupulous.

65. Defendant's maintenance of an illegal and void noncompetition covenant that it did not disclose to Plaintiffs before they accepted employment is a deceptive practice under Washington law because it has the capacity to deceive and because it is likely to deceive a reasonable worker into believing that they will not be bound by any noncompetition covenant by accepting employment with Defendant and by suggesting that a contractual term that is unenforceable is in fact enforceable, thereby chilling workers from seeking out employment opportunities and undermining their bargaining power.

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66. Defendant's unfair or deceptive acts or practices impact the public interest because they have injured Plaintiffs and other people, including class members and families with children who received childcare from Bright Horizons, and have the capacity to injure hundreds or thousands of other Washington residents, including both workers and consumers of childcare services. Moreover, Defendants' conduct is ongoing and likely to continue to injure the public.

67. As a result of Defendant's conduct, Plaintiffs have suffered injuries in fact and lost money. Plaintiffs were paid less than they would have been for their childcare services in the absence of Bright Horizons' unfair and deceptive practices.

68. Plaintiffs are thus entitled to legal relief against Defendant, including recovery of actual damages, treble damages, attorneys' fees, costs of suit, and such further relief as the Court may deem proper.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. Actual damages;

B. Treble damages under the CPA;

C. Statutory penalties under Washington noncompetition covenant law to the extent actual damages do not exceed $5,000 per person;

D. Injunctive and declaratory relief declaring Defendant's noncompetition covenant void and unenforceable and enjoining Defendant from including such covenant in contracts with families or communicating it to its childcare workers;

E. Attorneys' fees and costs of suit; and

F. Such other relief as the Court deems just and proper.

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RESPECTFULLY SUBMITTED AND DATED this 4th day of November, 2024.

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DECLARATION OF SERVICE

I, Toby J. Marshall, hereby certify that on November 4, 2024, I caused true and correct copies of the foregoing to be served via the means indicated below:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED this 4th day of November, 2024.

By: /s/ Toby J. Marshall, WSBA #32726
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