

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

DANIELLE SEAMAN, individually and  
on behalf of all others similarly situated,

*Plaintiff,*

v.

DUKE UNIVERSITY, *et al.*,

*Defendants.*

Civil No. 1:15-cv-462-CCE-JLW

Judge Catherine C. Eagles

**UNITED STATES OF AMERICA’S PLEADING IN INTERVENTION**

The United States of America, pursuant to Rule 24(c) of the Federal Rules of Civil Procedure, submits this pleading in connection with its unopposed motion to intervene in the above-captioned matter for the limited purpose of joining in the proposed settlement and thereby obtaining the right to enforce any injunctive relief ordered by the Court against Defendant Duke University and any related Duke entities (hereafter, the “Duke Defendants”) in resolution of this case. The United States alleges the following:

**I. JURISDICTION**

1. This Court has subject matter jurisdiction under 15 U.S.C. § 4 and 28 U.S.C. §§ 1331 and 1337(a). The Court has personal jurisdiction over the Duke Defendants because all Duke Defendants are residents of North Carolina and reside in this District. The Court has personal jurisdiction over class representative, Dr. Danielle Seaman, because she is a resident of the State of North Carolina and resides in this District.

## **II. CLAIM FOR RELIEF**

2. On March 7, 2019, the United States filed a Statement of Interest in this litigation pursuant to 28 U.S.C. § 517 to assist the Court in adjudicating two issues before it at the summary judgment stage of this litigation. At that time, the United States advised the Court of its “strong interest in the correct application of the federal antitrust laws.” The United States subsequently made oral arguments on these issues at a hearing on March 12, 2019.

3. The United States recently learned that the Plaintiff Class intends to submit a preliminary proposed settlement agreement to the Court on May 14, 2019. The deadline for submission of the proposed settlement agreement was later extended to May 17, 2019. The United States also understands that the preliminary proposed settlement agreement will include provisions pertaining to post-settlement injunctive relief and, if approved and entered by this Court, would include a compliance program, certification and notice requirements, and rights to enforce violations of this Court’s Final Judgment.

4. The United States, through the Antitrust Division of the Department of Justice, is charged with enforcing the federal antitrust laws, including Section 1 of the Sherman Act. 15 U.S.C. § 4.

5. The United States has in the past entered into consent judgments with other parties involving “no-poach” agreements as part of its enforcement of the antitrust laws. Here, the United States seeks permissive intervention pursuant to Fed. R. Civ. P. 24(b)(2)(A) and (B) to protect its interest in enforcing Section 1 of the Sherman Act, which is the basis of the Plaintiff Class’ claim, and to enforce the Duke Defendants’ agreement not to enter into unlawful no-poach agreements.

6. The United States has a significant interest in the proposed injunctive relief because the United States enforces the federal antitrust laws, and it has repeatedly enforced the antitrust laws against anticompetitive no-poach agreements. *See United States v. Knorr-Bremse AG, et al.*, No. 18-cv-747-CKK, Final Judgment, Doc. 19 (D.D.C. July 11, 2018); *United States v. eBay, Inc.*, No. 12-cv-5869, Final Judgment, Doc. 66 (N.D. Cal. Sept. 2, 2014); *United States v. Adobe Sys., Inc.*, No. 1:10-cv-1629, Final Judgment, Doc. 17 (D.D.C. Mar. 18, 2011); *United States v. Lucasfilm Ltd.*, No. 1:10-cv-2220, Final Judgment, Doc. 6-1 (D.D.C. May 9, 2011).

7. The Plaintiff Class and the Duke Defendants do not oppose the United States' motion to intervene for these purposes.

8. The United States understands that the parties are discussing including in their settlement agreement terms similar to those contained in judgments obtained by the United States in other no-poach cases.

9. Allowing the United States to intervene in this matter will further the United States' significant interest in enforcing the antitrust laws, including Section 1 of the Sherman Act, enforcing the Duke Defendants' compliance with the terms of any injunction entered by this Court against them, and preventing anticompetitive no-poach agreements by the Duke Defendants in the future.

10. The United States' intervention is timely. The United States contacted the parties' counsel and expeditiously sought intervention after learning of the Plaintiff Class's impending filing to seek this Court's preliminary approval of its settlement.

11. The United States' intervention will not unduly delay or prejudice the adjudication of the parties' rights. The United States' interest in this matter is limited to the post-settlement injunctive relief that the parties are in the process of negotiating and finalizing.

Because the details of the proposed settlement have not yet been presented to the Court, there is neither prejudice nor undue delay as a result of the United States' request for intervention. Moreover, the parties whose rights are being adjudicated do not oppose the United States' intervention, which strongly demonstrates a lack of prejudice.

### **III. RELIEF SOUGHT**

12. The United States respectfully requests that the Court grant the United States permission to intervene in this case for the limited purpose of joining in the proposed settlement and thereby obtaining the right to enforce any injunctive relief entered by the Court against any of the Duke Defendants.

Respectfully Submitted,

Dated: May 20, 2019

/s/ Barry L. Creech  
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*Specially Appearing Under Local Rule 83.1(d)*

### **CERTIFICATE OF SERVICE**

I, Barry L. Creech, hereby certify that on May 20, 2019, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties by operation of the Court's electronic filing systems.

Dated: May 20, 2019

/s/ Barry L. Creech

Barry L. Creech