United States Court of Appeals
For the Eighth Circuit

No. 24-1072

West Series of Lockton Companies, LLC; Lockton Investment Advisors, LLC; Lockton Investment Securities, LLC, formerly known as Lockton Financial Advisors, LLC

Plaintiffs - *Appellees*

v.

Eric D. Kaufman

Defendant - *Appellant*

No. 24-1074

West Series of Lockton Companies, LLC; Lockton Investment Advisors, LLC; Lockton Investment Securities, LLC, formerly known as Lockton Financial Advisors, LLC; Lockton Partners, LLC

Plaintiffs - *Appellees*

v.

Sallie F. Giblin

Defendant – *Appellant*

No. 24-3528

West Series of Lockton Companies, LLC; Lockton Investment Advisors, LLC; Lockton Investment Securities, LLC, formerly known as Lockton Financial Advisors, LLC; Lockton Partners, LLC

Plaintiffs - Appellees

v.

Sallie F. Giblin

Defendant - Appellant

Bill Hardwick

Amicus on Behalf of Appellee(s)

No. 25-1019

West Series of Lockton Companies, LLC; Lockton Investment Advisors, LLC; Lockton Investment Securities, LLC, formerly known as Lockton Financial Advisors, LLC; Lockton Partners, LLC

Plaintiffs - Appellants

v.

Sallie F. Giblin

Defendant - Appellee

Bill Hardwick

Amicus on Behalf of Appellant(s)

No. 25-1278

West Series of Lockton Companies, LLC; Lockton Investment Advisors, LLC; Lockton Investment Securities, LLC, formerly known as Lockton Financial Advisors, LLC

Plaintiffs - Appellees

v.

Eric D. Kaufman

Defendant - Appellant

Bill Hardwick

Amicus on Behalf of Appellee(s)

No. 25-1369

West Series of Lockton Companies, LLC; Lockton Investment Advisors, LLC; Lockton Investment Securities, LLC, formerly known as Lockton Financial Advisors, LLC

Plaintiffs - Appellants

v.

Eric D. Kaufman

Defendant - Appellee

Bill Hardwick

Amicus on Behalf of Appellant(s)

Appeals from United States District Court
for the Western District of Missouri - Kansas City

Submitted: January 13, 2026
Filed: August 26, 2026

Before SHEPHERD, ARNOLD, and ERICKSON, Circuit Judges.

SHEPHERD, Circuit Judge.

Eric Kaufman and Sallie Giblin (collectively, Members) are former members of various Missouri limited liability companies (collectively, Lockton). Lockton is a commercial-insurance brokerage and consulting organization. The Members entered into membership agreements when they acquired their Lockton interests. The operative versions of these agreements contain Missouri forum-selection and choice-of-law clauses. They also include covenants purporting to prohibit the Members from soliciting Lockton customers. And these contracts require the Members to follow Lockton's operating agreements, which provide that Lockton members may terminate their interests on 30 days' notice. But the Members left Lockton, purporting to terminate their Lockton interests "effective immediately," and went to work for Lockton competitor Alliant. Lockton sued the Members in federal district court in Missouri, seeking to clarify and assert their contractual entitlements (the Federal Actions). The Members sued Lockton in California state court, seeking to avoid their agreements (the California Actions).

The district court presiding over the Federal Actions granted summary judgment in Lockton's favor on several of its claims. It concluded that the Missouri forum-selection and choice-of-law clauses were enforceable and that the Members had breached the forum-selection clauses by suing Lockton in California. The district court also held that the customer-nonsolicitation covenants were enforceable—at least to the limited extent Lockton sought to enforce them.

On other issues, the district court held for the Members. It granted them summary judgment on Lockton's claims that they breached the notice provision in Lockton's operating agreements; it also granted them summary judgment on related breach-of-fiduciary-duty claims. As to the Members individually, it granted Kaufman summary judgment on Lockton's claim that he had breached contract provisions preventing him from soliciting Lockton members and employees post-departure. And it granted Giblin summary judgment on Lockton's claims that she had breached her non-solicitation commitments and tortiously interfered with Lockton's customer relationships.

The district court awarded Lockton the attorneys' fees it had incurred in prosecuting the Federal Actions. But it declined to award Lockton the attorneys' fees it had incurred in defending the California Actions (either as attorneys' fees recoverable under the parties' contracts or as damages for breaches of the forum-selection clauses). Instead, it awarded Lockton only nominal damages for the Members' forum-selection-clause breaches. The district court also denied the Members' requests for fees. The Members appeal and Lockton cross appeals. This Court has jurisdiction to hear the parties' appeals and cross appeals under 28 U.S.C. § 1291.

We affirm the district court's decisions as to the enforceability of the choice-of-law provisions, the enforceability and breaches of the forum-selection clauses, and the enforceability of the customer-nonsolicitation covenants. We reverse the district court's judgments as to the Members' breaches of the operating agreements' 30-day notice provision and the Members' breaches of fiduciary duties and direct that the district court enter judgment in Lockton's favor on these claims. We vacate the nominal damages awards, and direct that on remand the district court determine Lockton's actual damages attributable to the Members' breaches of the forum-selection clauses. And we affirm the district court's awards of fees and costs to Lockton.

I.

Lockton is headquartered in Missouri. And its constituent LLCs that are parties to these cases are all organized under Missouri law. Lockton provides its services to customers through producer members—who hold profit-sharing interests in its LLCs—and associates—who are Lockton employees. Lockton has over 100 offices worldwide. Each of its United States offices is linked to a particular "series." Lockton tasks the producers in each series with managing and developing client relationships.

The Members became Lockton producer members in 2007, when they entered into member agreements with Lockton's Pacific Series.[1] The Members also executed member agreements with two other Lockton LLCs—Lockton Investment Advisors and Lockton Investment Securities (formerly known as Lockton Financial Advisors). In 2017, Giblin became a producer partner, signing a further agreement with a fourth Lockton LLC—Lockton Partners, which afforded her additional profit-sharing opportunities.

[1]At the time, Lockton's Pacific Series was known as the Southern California Series of Lockton Companies, LLC. The Pacific Series was originally a party to these cases. We granted a motion to substitute, so West Series of Lockton Companies, LLC, now stands in the Pacific Series' place.

Before 2016, Lockton's Pacific Series was domiciled in Illinois, and its member agreement included Illinois choice-of-law and forum-selection provisions. But in 2016, Lockton reorganized, and the Pacific Series redomiciled, becoming a Missouri LLC. This reorganization came after Lockton lobbied Missouri's legislature for changes in Missouri's LLC statutes in order to, as one member of the President's Advisory Group responsible for negotiating the Agreements put it, make Lockton's restrictive "covenant and other important provisions more friendly and enforceable." Following the reorganization, the Members executed amended member agreements with the Pacific Series. The current versions of the Members' agreements with the Pacific Series, Lockton Investment Advisors, and Lockton Investment Securities (collectively with Giblin's Lockton Partners agreement, the Agreements), all include combined Missouri choice-of-law and forum-selection clauses.

The combined forum-selection and choice-of-law provision in the Members' Pacific Series Agreement reads:

> Member and the Series agree that this Agreement shall be deemed to have been made in the State of Missouri. This Agreement and all disputes, claims or issues that in any way pertain to the interpretation, validity or enforceability of, or otherwise arise out of or relate to this Agreement, the Operating Agreement and/or Member's membership in the Series, including, without limitation, any disputes, claims or issues arising out of the rights and interests of the Other Series, Affiliates and Lockton Entities as set forth herein, shall be subject to, governed by, and construed in accordance with the laws of the State of Missouri without reference to choice of laws, irrespective of the fact that one or both of the parties now is or may become a resident of a different state. Any action involving any disputes, claims or issues that in any way pertain to the interpretation, validity or enforceability of, or otherwise arise out of or relate to this Agreement, the Operating Agreement and/or Member's membership in the Series, including, without limitation, any disputes, claims or issues arising out of or relating to the rights and interests of the Other Series, Affiliates and Lockton Entities as set forth herein, shall be brought exclusively in any Federal Court in Kansas City, Missouri or in the Circuit Court of Jackson County, Missouri;

> *provided, however*, the Series shall pay promptly, upon demand from time-to-time by Member, reasonable out-of-pocket costs of travel to attend proceedings in such forum. Such courts shall have exclusive jurisdiction over these matters, and Member hereby agrees to be subject to the personal jurisdiction of such courts. The parties hereto agree that the provisions set forth in this Section . . . are fair and reasonable.

The other Agreements contain substantially similar provisions.

The Agreements also contain restrictive covenants purporting to prohibit the Members from soliciting Lockton's customers. The customer-nonsolicitation covenant in the Members' Pacific Series Agreements reads:

> While Member is a Producer Member of the Series and for a period of two (2) years following the sale of Member's Producer Unit (which occurs on the Buy-Sell Purchase Date):
>
>> (a) Member shall not, directly or indirectly, for himself or on behalf of any other Person, solicit, induce, persuade or encourage, or attempt to solicit, induce, persuade or encourage, any of the Customer Accounts described below, if any such Customer Account qualified as a Customer Account within the six (6) month period immediately preceding the sale of Member's Producer Unit, to reduce, terminate or transfer to a competitor any products or services that are the same or substantially similar to, or directly competitive with, the products or services provided by the Series, the Other Series or any Affiliate. Member shall not, directly or indirectly, for himself or on behalf of any other Person, (i) accept, service, or work on, or attempt or threaten to accept, service or work on, any such competitive business from any of the Customer Accounts that Member may not solicit, or (ii) in any way do business with any of the Customer Accounts that Member may not solicit to the extent such business is the same or substantially similar to that provided by the Series, the Other Series or any Affiliate. The Customer Accounts to which this restriction applies are:

> (1) any of the Customer Accounts of the Series (A) produced by Member, (B) solicited by Member (in the case of prospective Customer Accounts), (C) serviced by Member, (D) for or about which Member acquired or had access to Confidential Information, or (E) with which Member has or had business contact; and,
>
> (2) any of the other Customer Accounts of the Series; and,
>
> (3) any of the Customer Accounts of the Other Series (A) produced by Member, (B) solicited by Member (in the case of prospective Customer Accounts), (C) serviced by Member, (D) for or about which Member acquired or had access to Confidential Information, or (E) with which Member has or had business contact; and,
>
> (4) any of the other Customer Accounts of the Other Series; and,
>
> (5) any of the Customer Accounts of any Affiliate (A) produced by Member, (B) solicited by Member (in the case of prospective Customer Accounts), (C) serviced by Member, (D) for or about which Member acquired or had access to Confidential Information, or (E) with which Member has or had business contact.

The remaining Agreements contain or incorporate similar covenants. Kaufman agreed that these covenants would bind him for two years after leaving Lockton. When Giblin acquired her Lockton Partners interest and became a producer partner, she agreed she would be bound for four years.

Moreover, the Agreements required the Members to comply with the Lockton entities' operating agreements. The operating agreements generally set forth procedures by which members' Lockton interests "may" be terminated.[2] They

[2]The Lockton Partners operating agreement does not include such termination language.

provide that producer members "may be terminated" as members "by such" members "on thirty (30) days' written notice." They also list several mechanisms through which Lockton may terminate members' membership interests.

Further, the Agreements entitle the "prevailing party" in disputes between Lockton and the Members relating to their Lockton memberships to recover awards of attorneys' fees. The fees provision in the Pacific Series Agreement states in relevant part that:

> If any Lockton Entity or Member engages counsel in connection with any action involving or seeking to resolve any dispute, claim or issue that in any way pertains to the interpretation, validity or enforceability of, or otherwise arises out of, or relates to, this Agreement, the Operating Agreement and/or Member's membership in the Series, including, without limitation, any action involving or seeking to resolve any dispute, claim or issue arising out of the rights and interests of the Other Series, Affiliates and Lockton Entities as set forth herein, the prevailing party in any such action shall be entitled, in addition to any other remedies set forth in this Agreement or otherwise available at law or equity, to recover any and all reasonable costs and expenses incurred in connection with such action, through all appeals, including reasonable attorneys' fees . . . .

Again, the other Agreements are similar. The Agreements also generally provide that Lockton is entitled to money damages if the Members breach them.

The Members—apparently both very successful producers—earned millions of dollars under their contracts with Lockton. Over their 15 years as Lockton producers, Giblin and Kaufman received approximately $15.7 million and $14.3 million in profit distributions, respectively. They also received significant compensation when Lockton Investment Advisors sold assets in 2021—Giblin earned roughly $600,000, and Kaufman roughly $2 million, from that sale. And when the Members left Lockton in 2022, Lockton repurchased their interests. Giblin will receive over $2 million and Kaufman will receive over $700,000 in compensation from these transactions (though these amounts are apparently subject to potential offsets).

The Members lived in California during their tenures with Lockton. They also primarily serviced California-based clients. But at times they worked with Missouri-based teams and support staff, and incurred Missouri tax obligations (which Lockton paid on their behalf).

On July 18, 2022, Kaufman informed Lockton via email that he was resigning "effective immediately." Kaufman chose to leave Lockton after it sold a significant portion of his book of business as part of its 2021 asset sales. He began working for Alliant on or around July 20, 2022. Alliant competes with Lockton in the market for insurance brokerage and consulting services.

On November 29, 2022, Giblin also notified Lockton that she was resigning "[e]ffective immediately." She began working for Alliant the same day. Giblin alleges that she left Lockton after she was harassed and retaliated against because she raised concerns about Lockton's workplace culture and staffing procedures.

Kaufman sued Lockton in California state court on July 20, 2022. His California suit seeks a declaration that the restrictive covenants—along with the forum-selection and choice-of-law provisions—in the Agreements are unenforceable. Lockton filed its federal suit against Kaufman in Missouri the same day. Lockton's complaint against Kaufman asserts five counts for relief. Count I is a claim for breach of contract (alleging breaches of the Agreements and operating agreements). Count II is a claim for tortious interference with Lockton's prospective economic advantage and prospective business relationships. Count III is a claim for breach of fiduciary duty and/or the duty of loyalty. Count IV is a claim for misappropriation of trade secrets, in violation of the Missouri Uniform Trade Secrets Act (MUTSA) and the Defend Trade Secrets Act (DTSA). Count V is a claim for declaratory relief (seeking declarations that the Agreements' choice-of-law, forum-selection, and non-solicitation provisions are enforceable).

Lockton sued Giblin in federal district court in Missouri on November 30, 2022, asserting the same five claims it asserted against Kaufman. And Giblin sued Lockton in California state court on December 22, 2022. Giblin's California suit seeks declarations that the restrictive covenants, forum-selection clauses, and choice-of-law clauses in her Agreements are unenforceable. Giblin also asserts claims for discrimination and retaliation.

Alliant is paying Members' attorneys' fees in the Federal Actions. It is also funding the California Actions.

In the Federal Actions, the Members filed motions to dismiss contending that Lockton's DTSA and MUTSA claims did not pass muster under Federal Rule of Civil Procedure 12(b)(6). The district court denied these motions. And in the California Actions, Lockton filed motions to dismiss invoking the Agreements' forum-selection clauses. The courts adjudicating the California Actions, applying California procedural law, denied Lockton's motions. They reasoned that the Members' claims—which challenged covenants not to compete—implicated unwaivable California statutory rights, and that Lockton thus had to show that requiring the Members to litigate their claims in Missouri would not diminish in any way the substantive rights afforded under California law. The California courts concluded that Lockton had not carried this burden because it had not shown the Members' rights were the same or greater under Missouri law than under California law.

After receiving an adverse ruling in California on its motion to dismiss Giblin's suit, Lockton moved for partial summary judgment in the Federal Actions on its claims for declarations that the Agreements' forum-selection clauses were enforceable. Lockton also moved the district court to certify any judgment it secured on these claims as final under Federal Rule of Civil Procedure 54(b) and to enjoin the California Actions.

The district court, applying federal procedural law, concluded that the forum-selection clauses were enforceable and granted Lockton partial summary judgment on its claims for declarations that the clauses were enforceable. It also certified its orders on these claims as final judgments. But it denied Lockton's requests to enjoin the California Actions.

The Members appealed the district court's partial summary judgment orders on the enforceability of the forum-selection clauses. They argued that the district court improperly certified these orders as final judgments and that the district court erred in determining that the forum-selection clauses were enforceable. We consolidated the Members' appeals and heard argument on November 19, 2024.

While the Members pursued their appeals on the forum-selection clauses' enforceability, the Federal Actions proceeded apace, reaching their conclusion before we issued an opinion in the interlocutory appeals. The district court ultimately resolved several claims via summary judgment rulings. It held that Lockton was entitled to summary judgment on its claims that the Agreements' choice-of-law and customer-nonsolicitation covenants were enforceable—though, in its summary judgment papers, Lockton requested only that the district court hold its covenants were enforceable to a specific subset of Lockton customers with whom the Members had personally dealt, and the district court only held that the customer-nonsolicitation covenants were enforceable as so narrowed. It also held that Lockton was entitled to summary judgment on its claims that the Members had breached the Agreements' forum-selection clauses. But it concluded that Lockton was entitled only to nominal damages—not damages compensating Lockton for its litigation expenses—for these breaches. It reasoned that the Agreements' fee-shifting provisions governed, and that Lockton could seek its attorneys' fees in a follow-on fees motion after its suits had concluded.

The district court granted summary judgment in the Members' favor on Lockton's claims that they had breached the operating agreements by failing to give 30 days' notice of their departure and breached their fiduciary duties by going to work for Alliant before effectively terminating their Lockton membership interests. The district court also granted Kaufman summary judgment on Lockton's claims that he breached contract provisions preventing him from soliciting Lockton members and employees post-departure.[3] And it granted Giblin summary judgment on Lockton's claims for tortious interference and for breach of the Agreements' customer-nonsolicitation provisions. But the district court declined to do so for Kaufman, concluding that genuine disputes of material fact precluded summary judgment on these claims.

After the district court issued its summary judgment rulings, Lockton voluntarily dismissed the balance of its claims (including its DTSA claims, on which neither side had sought summary judgment).

Both parties then moved for attorneys' fees. The district court held that Lockton was the "prevailing party" in the Federal Actions for purposes of the Agreements' fee-shifting provisions. Because the district so concluded, it declined to award the Members fees under the Agreements. Lockton hired three major law firms to represent it in the Federal Actions: Gibson Dunn, Quinn Emanuel, and Bryan Cave. Consequently, Lockton racked up sizable bills for legal services: \$4,923,855.93 in its suit against Giblin and \$4,264,674.77 in its suit against Kaufman. But Lockton paid up. The district court determined that Lockton was entitled to receive reimbursement for all of the fees it had incurred and requested in the Federal Actions. It reasoned that Lockton's attorneys had obtained a large degree of success in these high-stakes cases and that Lockton was justified in retaining out-of-market counsel charging rates significantly higher than the median rates for Missouri litigation attorneys.

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[3]The district court also granted summary judgment on Lockton's parallel claims against Giblin (though Lockton informed the district court before it issued its summary judgment order in Giblin's case that it was no longer pursuing these claims).

While the district court awarded Lockton the fees it had incurred in prosecuting the Federal Actions, it declined to award Lockton the fees it had incurred in the California Actions, reasoning that, under the Agreements, Lockton had to win those suits first before recovering fees. The district court also rejected the Members' alternative requests for fees under the DTSA. Further appeals and cross-appeals, which we consolidated with the Members' still-pending interlocutory appeals, followed.

II.

"[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.'" Alumax Mill Prods., Inc. v. Cong. Fin. Corp., 912 F.2d 996, 1002 (8th Cir. 1990) (citation omitted). We begin by addressing that obligation, which is easily discharged here. Contra post at 51-53.

Under 28 U.S.C. § 1331, federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." "Most directly, a case arises under federal law when federal law creates the cause of action asserted." Gunn v. Minton, 568 U.S. 251, 257 (2013). Federal law created Lockton's DTSA cause of action. See 18 U.S.C. § 1836(b). The district court thus had original jurisdiction over Lockton's DTSA claim.

The district court had supplemental jurisdiction over the balance of Lockton's claims under 28 U.S.C. § 1367(a). That statute provides that federal district courts have, "in any civil action of which the district courts have original jurisdiction, . . . supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." State-law claims are adequately related for supplemental jurisdiction purposes where "the federal-law claims and state-law claims in the case 'derive from a common nucleus of operative fact' and are 'such that [the defendants] would ordinarily be expected to try them all in one judicial proceeding.'" S. Council of Indus. Workers v. Ford, 83 F.3d 966, 969 (8th Cir. 1996) (citation omitted). Lockton's state-law claims—which, like Lockton's DTSA claim, deal with the circumstances of the Members' departures from Lockton—satisfy that test. Nobody could seriously argue otherwise.

In sum, the district court had subject matter jurisdiction over all of Lockton's claims. Yet the dissent contends that the district court's judgments should be vacated and these cases dismissed for want of subject matter jurisdiction. See post at 56. The dissent's primary concern is that Lockton asserted its DTSA claim to serve as a jurisdictional hook. See post at 56 (characterizing Lockton's DTSA claim as "a ruse to get into federal court" and "circumvent" California state court rulings that had not yet occurred). But Lockton was permitted to do just that, so long as its DTSA claim was colorable.[4] See Arbaugh v. Y & H Corp., 546 U.S. 500, 513 (2006) ("A plaintiff properly invokes § 1331 jurisdiction when she pleads a colorable claim 'arising under' the Constitution or laws of the United States."). Lockton's DTSA claim patently was: it even survived motions to dismiss in both Federal Actions.

Rather than contend that Lockton's DTSA claim was not "colorable" in a jurisdictional sense, the dissent faults Lockton for not litigating that claim as vigorously as it litigated its state-law claims. See post at 53-55. But there is no relative-vigor exception to federal subject matter jurisdiction. Lockton did not need to, say, move for a preliminary injunction or for summary judgment on its DTSA claim for the district court to have jurisdiction over Lockton's suits. And ironically, the Members fault Lockton for litigating its DTSA claim *too* vigorously: they

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[4]The dissent criticizes Lockton's choice to sue the Members in federal district court in Missouri as strategic. Post at 57. But Lockton did not forum shop any more than the Members did. The Members sued Lockton in California for a reason. And that reason was not that they viewed litigating in California courts as unfavorable to their interests. The only difference between what the Members did and what Lockton did is that they breached their contractual commitments when they sued Lockton in their preferred forum.

contend that it was unreasonable for Lockton's counsel to spend literally "thousands of hours" litigating the exact claim the dissent contends Lockton did not litigate.

The dissent blurs supplemental jurisdiction over state law claims, which the district court exercised here, with original jurisdiction over state law claims. Because Lockton asserted a colorable federal statutory claim, the dissent's substantiality analysis is misplaced. The dissent contends that Lockton's state-law claims do not satisfy the substantiality test set forth in Gunn, a case involving original jurisdiction over state law claims. Post at 55-56. That test has no application in this case. It governs whether federal courts have *original* jurisdiction over state-law claims implicating federal issues. See Gunn, 568 U.S. at 258. But whether the district court had original jurisdiction over Lockton's state-law claims is not and never has been an issue in these cases. Lockton never invoked the district court's original jurisdiction by pointing to its state-law claims. And the district court did not need original jurisdiction over those claims: it had supplemental jurisdiction over them, because they are adequately related to the DTSA claim over which it did have original jurisdiction. See 13 U.S.C. § 1367(a). Nothing more was required.[5]

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[5]The dissent also suggests that, if the district court had jurisdiction, we should nevertheless vacate its judgments and remand with instructions to abstain from exercising jurisdiction under the Colorado River doctrine. That proposed approach—disposing of these cases on a non-jurisdictional ground the parties have not raised before us—runs afoul of basic principles of party presentation and fairness. See Hunter v. Page Cnty., 102 F.4th 853, 874 n.12 (8th Cir. 2024) ("The federal abstention doctrines are not jurisdictional."). The dissent's approach also fails to grapple with the doctrine's exacting requirements, which are not met here. For instance, the dissent does not examine whether the California and Federal Actions are actually parallel within the meaning of Colorado River. And that is for good reason: they are not. They involve different claims, applying different law, and seeking different relief. See Fru-Con Const. Corp. v. Controlled Air, Inc., 574 F.3d 527, 535 (8th Cir. 2009) ("The prevailing view is that state and federal proceedings are parallel for purposes of Colorado River abstention when substantially similar parties are litigating substantially similar issues in *both* state and federal court. This circuit requires more precision. . . . . [A] substantial similarity must exist between the state and federal proceedings, which similarity occurs when there is a substantial likelihood that the state proceeding will fully

III.

The Members appeal many of the district court's summary judgment rulings. In particular, the Members contend that the district court erred in declaring that the Agreements' Missouri choice-of-law elections are enforceable, that the Agreements' customer-nonsolicitation covenants are at least partially enforceable as to the specific subset of customers Lockton identified, and that the Agreements' Missouri forum-selection clauses are enforceable. "We review the district court's summary judgment order[s] and its interpretation of state law *de novo*, applying the same standards applied by the district court." Bannister v. Bemis Co., 556 F.3d 882, 884 (8th Cir. 2009). "[W]e will affirm [a] grant of summary judgment 'if the record indicates that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Jackson v. Riebold, 815 F.3d 1114, 1119 (8th Cir. 2016) (citation omitted).

A.

The Members first argue that the district court erred in declaring that the Agreements' Missouri choice-of-law clauses were enforceable. A federal court exercising supplemental jurisdiction over state-law claims—as the district court was here—must "apply the law of the forum state, including its choice of law rules."

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dispose of the claims presented in the federal court."). Moreover, the dissent ignores the factors that generally govern whether "exceptional circumstances" are present for Colorado River purposes. See Federated Rural Elec. Ins. Corp. v. Ark. Elec. Coops., Inc., 48 F.3d 294, 297 (8th Cir. 1995) (recognizing that determining the presence of "'exceptional circumstances' requires evaluation of several factors," and listing those factors). And those factors point toward exercising jurisdiction, not away from it. Nothing about the dissent's analysis suggests that this is one of those rare circumstances where the presumption in favor of exercising jurisdiction is overcome. See Fru-Con, 574 F.3d at 540 (noting federal courts' "virtually unflagging obligation" to exercise jurisdiction where it exists and observing that jurisdiction may only be surrendered based on "the clearest of justifications" (citation omitted)).

Menuskin v. Williams, 145 F.3d 755, 761 (6th Cir. 1998); see also Cuellar-Aguilar v. Deggeller Attractions, Inc., 812 F.3d 614, 618 (8th Cir. 2015) (noting federal courts' obligation to look to state law for claims over which they exercise supplemental jurisdiction). "[W]e review the district court's application of the state's choice of law rules de novo." Baxter Int'l, Inc. v. Morris, 976 F.2d 1189, 1195 (8th Cir. 1992).

"Missouri courts generally enforce contractual choice-of-law provisions." Surgical Synergies, Inc. v. Genesee Assocs., Inc., 432 F.3d 870, 874 (8th Cir. 2005) (citation omitted). But not always. See Sturgeon v. Allied Pros. Ins. Co., 344 S.W.3d 205, 210 (Mo. Ct. App. 2011) (declining to honor California choice-of-law clause).

Here, the parties seem to agree that Missouri courts would follow the approach laid out in Restatement (Second) of Conflict of Laws § 187 (A.L.I. 1971) in determining whether to enforce a choice-of-law clause. That position enjoys some support. See Morris, 976 F.2d at 1195-96; see also Armstrong Bus. Servs., Inc. v. H & R Block, 96 S.W.3d 867, 871-73 (Mo. Ct. App. 2002) (determining that contracts' Missouri choice-of-law election was enforceable under § 187). However, Missouri courts do not always apply § 187—indeed, in the 34 years following our Morris decision, Missouri courts have frequently indicated that the enforceability of a forum-selection clause is exclusively a matter of Missouri public policy that may be decided without reference to § 187. See, e.g., Kagan v. Master Home Prods. Ltd., 193 S.W.3d 401, 407 (Mo. Ct. App. 2006) ("We recognize that generally parties may choose the state whose law will govern the interpretation of their contractual rights and duties. So long as the application of this law is not contrary to a fundamental policy of Missouri, we will honor the parties' choice of law provision." (citation omitted)); Sturgeon, 344 S.W.3d at 210 (stating that Missouri courts will honor choice-of-law provisions not contrary to fundamental Missouri policies); Keeling v. Preferred Poultry Supply, LLC, 621 S.W.3d 672, 678 (Mo. Ct. App. 2021) (same). And we have framed Missouri's choice-of-law clause enforceability test the same way: "Under Missouri law, a choice-of-law clause in a contract generally is enforceable unless application of the agreed-to law is 'contrary to a fundamental policy of Missouri.'" H & R Block Tax Servs. LLC v. Franklin, 691 F.3d 941, 943 (8th Cir. 2012) (citation omitted).

Ultimately, it does not matter whether our inquiry focuses only on whether the choice-of-law clauses at issue here contravene fundamental Missouri policy or whether § 187 governs. Obviously, choice-of-law provisions selecting *Missouri* law do not conflict with *Missouri* policy. See id. at 943-44. And if § 187 applies, the Members have not made the showings it requires.

Here, to set aside their contractual choice of law under the relevant parts of §187, the Members would have to show, among other things, that some other state has a "materially greater interest" in the parties' dispute than does Missouri, the state whose law the parties selected. See Restatement (Second) of Conflict of Laws § 187(2)(b) (A.L.I. 1971). The Members argue that California fits the bill because of the volume of contacts California has to the parties' dispute and because California has a strong interest in protecting California residents from what it views as unfair restraints on trade.

We do not doubt that California has a strong interest in the parties' dispute. But California's interest in protecting its residents from what it views as unfair restrictions on trade is not "materially greater" than Missouri's mirror-image interest in protecting Missouri businesses from what it views as unfair competition. See Emerson Elec. Co. v. Rogers, 418 F.3d 841, 842-43, 847 (8th Cir. 2005) (concluding that a Missouri choice-of-law provision was enforceable in a restrictive covenant dispute between a salesman and his former employer, notwithstanding the salesman's extensive Georgia contacts, because both Missouri and Georgia "ha[d] a substantial interest in the validity of the covenant" and there was "no indication" that "Georgia's interest in the dispute [was] materially greater than that of Missouri"); Stone Surgical, LLC v. Stryker Corp., 858 F.3d 383, 391 (6th Cir. 2017) ("On balance, Louisiana's interest in protecting its employee from unfair non-compete clauses is not *materially* greater than Michigan's interest in protecting its businesses from unfair competition."); Down-Lite Int'l, Inc. v. Altbaier, 821 F. App'x 553, 556 (6th Cir. 2020) ("California has a meaningful interest in protecting its resident from Down-Lite's desire to restrict competitive conduct. But that interest is not materially greater than Ohio's interest in protecting one of its closely held businesses operating in the global economy."). Because California's interest in the parties' dispute is not materially greater than Missouri's, the district court properly held the Members to the choice-of-law elections they made in their Agreements.

The Members cite several cases that they say compel a contrary result. None of their authorities is persuasive. Their strongest case is our decision in DCS Sanitation Management, Inc. v. Castillo, 435 F.3d 892 (8th Cir. 2006). In Castillo, a noncompete dispute between former employees working in Nebraska and their former employer, a company organized under Delaware law and headquartered in Ohio, we held that the district court correctly applied Nebraska law notwithstanding an Ohio choice-of-law clause in the parties' contracts. Id. at 894-97. We reasoned that:

> Nebraska clearly possesses a direct and substantial interest in the employment of its citizens. The only relationship between Ohio and the parties is the location of DCS's corporate headquarters and principal place of business in Ohio. The Agreements were not negotiated, entered into, or performed in Ohio. Under these circumstances, the district court properly concluded Ohio has no substantial relationship to the parties or the transaction, and Nebraska has a greater material interest in the Agreements.

Id. at 896.

But Castillo's facts are distinguishable from the facts present here. Lockton is not simply headquartered in Missouri—its constituent companies are organized under Missouri law. Moreover, the Members were not mere Lockton employees—they collectively earned tens of millions of dollars from Lockton by virtue of their *profit-sharing ownership interests* in these Missouri entities.[6] That fact gives the parties' dispute a different dimension than run-of-the-mill noncompete cases between employees and former employers—the Members are owners,[7] not employees, and California does not take such a strong position against agreements not to compete in those circumstances.[8] In any event, we think that a mechanical focus on the dispute's contacts with California, as the Members apparently read Castillo to require, is inappropriate here because it would give short shrift to the very real interests of Missouri in protecting Missouri businesses that operate on a nationwide or global scale. See, e.g., Rogers, 418 F.3d at 843, 847 (concluding that

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[6]The Members' other cases are distinguishable for the same reason. See Application Grp., Inc. v. Hunter Grp., Inc., 61 Cal. App. 4th 881, 887 (1998); Ascension Ins. Holdings, LLC v. Underwood, C.A. No. 9897-VCG, 2015 WL 356002, at *3, *5 (Del. Ch. Jan. 28, 2015); LKQ Corp. v. Fengler, No. 12-CV-2741, 2012 WL 1405774, at *1 (N.D. Ill. Apr. 23, 2012). Even if the Members' ownership interests are legal fictions, as the Members have taken great pains to suggest throughout this litigation, that does not mean that they are legal fictions without consequence.

[7]The dissent makes much of the fact that Kaufman purportedly had negative capital account balances when he left Lockton. See post at 59. That Lockton charged Kaufman a share of the company's business expenses does not mean that Kaufman was a mere employee, as the dissent suggests.

[8]Under California law, covenants not to compete are generally void. See Cal. Bus. & Prof. Code § 16600(a) ("Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."). But California permits covenants not to compete in connection with sales of business interests. Id. § 16601 ("[A]ny owner of a business entity selling or otherwise disposing of all of his or her ownership interest in the business entity . . . may agree with the buyer to refrain from carrying on a similar business within a specified geographic area in which the business so sold . . . carries on a like business therein."). The takeaway is that California's interest in applying its laws is weaker in cases involving owners than in cases involving employees, because covenants in the first sort of case are generally consistent with California public policy.

there was "no indication" that Georgia had a greater interest in a noncompete dispute between a company and its former employee despite the former employee's Georgia contacts); Stone Surgical, LLC, 858 F.3d at 390-91 (holding that Louisiana's interest in protecting employees from unfair noncompete agreements was not materially greater than Michigan's interest in protecting its businesses from unfair competition, even though Louisiana had the "most significant relationship" to the parties' agreements based on those agreements' Louisiana contacts).

For these reasons, we hold that the district court did not err in determining that the parties' agreements to apply Missouri law to their disputes are enforceable.

B.

Next, the Members argue that the district court erred in holding that the customer-nonsolicitation provisions in their Agreements are enforceable as to the subset of customers Lockton specifically identified. Because the Agreements' Missouri choice-of-law selections are enforceable, this is a question of Missouri law. "[W]e review th[is] question[] of Missouri law de novo." Mayer Hoffman McCann, P.C. v. Barton, 614 F.3d 893, 902 (8th Cir. 2010).

"Missouri courts [will] generally enforce a non-compete agreement if it is demonstratively reasonable." Whelan Sec. Co. v. Kennebrew, 379 S.W.3d 835, 841 (Mo. 2012). "A non-compete agreement is reasonable if it is no more restrictive than is necessary to protect the legitimate interests of the employer." Id. (citation omitted). Moreover, such an agreement "must be narrowly tailored temporally and geographically." Id. at 841-42. But even "if the provisions of a non-compete clause impose a restraint that is unreasonably broad," a court may still "give effect to its purpose by refusing to give effect to the unreasonable terms or modifying the terms of the contract to be reasonable." Id. at 844.

The district court indicated that the Agreements' customer-nonsolicitation covenants,[9] as written, were broader than necessary to protect Lockton's legitimate interests because they facially applied to every single Lockton customer. But Lockton did not seek to enforce the covenants as written—instead, it sought to enforce the covenants only as to specific customers: 79 for Kaufman, and 49 for Giblin. Lockton explained that it identified these customers "by gathering the complete list[s] of Customer Accounts" that the Members were "credited [with] as . . . producer[s] or joint venture partner[s] during [their] tenure[s] at Lockton" and then "narrow[ing]" these lists "to the Customer Accounts that" the Members "personally had produced, serviced, acquired or had access to Confidential Information about, had business contact with, or (in the case of prospective Customer Accounts) solicited within the six months preceding the termination of [their] membership interest[s] in each of the Lockton plaintiffs and the sale[s] of [their] Producer Unit[s]." The Members do not contend that Lockton's lists identify customers they never actually dealt with.

Consistent with the Missouri Supreme Court's recognition that a court may modify a restrictive covenant to make it reasonable, see Whelan, 379 S.W.3d at 844, the district court decided to enforce the restrictive covenants along the limited lines Lockton requested. The Members argue that this was improper for two reasons. Neither has merit.

First, the Members contend that the restrictive covenants are extremely overbroad as drafted and that the district court thus exceeded its discretion when it chose to modify the covenants instead of rejecting them out of hand. It is probably true that the covenants as originally drafted do not comport with Missouri law, as they purport to preclude the Members from soliciting all of Lockton's and its affiliates' customers. See id. at 843 (concluding that customer-nonsolicitation

[9]Missouri courts treat agreements not to solicit customers as a form of covenant not to compete. See Whelan, 379 S.W.3d at 842 (applying enforceability standards for noncompetes to covenants not to solicit customers).

clauses purporting to prohibit the defendants from contacting all clients of "a large, national corporation with 38 branches in 23 states" were overbroad).

None of this means that it was improper for the district court to modify the Agreements. In attempting to argue otherwise, the Members point to Whelan's statement that "[t]he ability of courts to modify unreasonable non-compete agreements does not prevent courts from refusing to enforce non-compete agreements that are wholly unreasonable." Id. at 844 n.6. But the Members identify no appellate case holding that a trial court applying Missouri law erred in making the discretionary choice to modify an overbroad noncompete agreement.

Instead, the Members rely principally on R. E. Harrington, Inc. v. Frick, 428 S.W.2d 945, 951 (Mo. Ct. App. 1968),[10] in which the Missouri Court of Appeals stated that Missouri "courts have always refused to enforce totally unreasonable contracts . . . for reasons of equity and common sense . . . ." We are not persuaded that this principle has any bearing on the covenants at issue here, given that the Missouri Supreme Court did not apply it in Whelan. Whelan involved restrictive covenants similar in scope to the ones the Members challenge.[11] Just like the Agreements' customer-nonsolicitation covenants, the covenants in Whelan purported to proscribe former employees of a large business from soliciting *all* the business's customers. 379 S.W.3d at 843. But the Missouri Supreme Court did not

[10]The Members also direct the Court to Leggett & Platt, Inc. v. Hollywood Bed & Spring Mfg. Co., No. 20-05010-CV-S-BP, 2020 WL 13580657 (W.D. Mo. May 15, 2020). In that case, the district court exercised its discretion not to modify a noncompete agreement it viewed as unreasonable. Id. at *10. But a case standing for the point that a court *need not* modify a restrictive covenant tells us very little about when a court *must not* modify a restrictive covenant.

[11]The Members point out that the customer-nonsolicitation covenants here also purport to prohibit them from accepting and servicing covered client accounts. We are not persuaded that these additional restrictions make the covenants at issue here materially broader than those at issue in Whelan.

refuse to enforce the covenants outright. Rather, it modified them to apply to customers with whom the former employees had actually dealt—the exact approach the district court took here. Id. at 844-45. If the Whelan covenants were not so "totally unreasonable" that a court *could not* enforce them, the same is true of the covenants here.

Nevertheless, the Members argue that "'reasons of equity and common-sense' warranted outright rejection" of the covenants because "judicial modification of extremely overbroad covenants is bad public policy because it unfairly favors employers." According to the Members, this is so because judicial modification encourages employers to take a swing-for-the-fences approach when drafting restrictive covenants. But the Members' concerns seemingly apply to judicial modification generally, and the Missouri Supreme Court has blessed judicial modification as striking the appropriate balance between employee and employer rights. See id. at 844 (explaining that judicial modification serves the general purpose of noncompete agreements—that is, "protect[ing] an employer from unfair competition without imposing an unreasonable restraint on the former employee"). The Members' policy-grounded arguments are not responsive to Whelan, which we must follow here. See Olmsted Med. Ctr. v. Cont'l Cas. Co., 65 F.4th 1005, 1008 (8th Cir. 2023) ("When applying the substantive law of the forum state, we must follow decisions of the state's supreme court interpreting the forum's law.").

Second, the Members contend that Lockton's covenants do not protect its legitimate interests. As an initial matter, Lockton *does* have a legitimate interest Missouri law entitles it to protect: its interest in its customer relationships and goodwill. See Rogers, 418 F.3d at 845 ("Under Missouri law, covenants not to compete may be enforced, for 'an employer has a proprietary right in his stock of customers and their good will.'" (citation omitted)); Whelan, 379 S.W.3d at 842 ("An employer has a legitimate interest in customer contacts to the extent it seeks to protect against 'the influence an employee acquires over his employer's customers through personal contact.'" (citation omitted)). Nevertheless, the Members argue that the Agreements' covenants are not necessary to protect this interest.

They first assert that contact information for Lockton's clients is publicly available and, to the extent that Lockton has an interest in the secrecy of its client contact information, that interest is already protected by statutes such as the DTSA and MUTSA. This argument attacks a straw man. Lockton's protectable interest here is not the *secrecy* of its customers' contact information—rather, it is Lockton's customer relationships *themselves*. See, e.g., Whelan, 379 S.W.3d at 844 n.5 ("The extent of Whelan's legitimate interest in customer contacts is distinguishable from the legitimate interest an employer may have in customer lists, which are protectable as a trade secret and can include information about prospective customers."); Healthcare Servs. of the Ozarks, Inc. v. Copeland, 198 S.W.3d 604, 610 (Mo. 2006) (recognizing that employers may impose restrictions on competition "to the extent that the restrictions protect the employer's trade secrets *or* customer contacts" (emphasis added)); Mills v. Murray, 472 S.W.2d 6, 12 (Mo. Ct. App. 1971) (describing an employer's "proprietary right in his stock of customers and their good will" with no reference to secrecy).

The Members next argue that Lockton does not subject its associates, who have more day-to-day contact with its customers than do its producer members, to the same restrictive covenants as it did the Members. But this difference in treatment speaks to Lockton's efforts to apply its restrictive covenants judiciously. Differential treatment is obviously justified here: Lockton understandably expects that its producer members, who own profit-sharing interests in Lockton, have significantly more pull on its customers' decision-making than do associates. (The same is true in other industries, including the legal industry—partners in a law firm are obviously differently situated from associates when it comes to building and maintaining client relationships.) That Lockton evidently gives thought to *whom* needs restricting does not make Lockton's restrictions unreasonable.

Moreover, as Lockton points out, "[t]aken to its logical conclusion," the Members' argument that Lockton's covenants should not be enforced because they are not applied to Lockton's associates "would mean that a business could not have restrictive covenants with *any* client-facing personnel unless it had covenants with *all* of them." No Missouri authority supports the proposition that an employer must impose restrictive covenants on an all-or-nothing basis. To the contrary, Missouri courts describe the "*quality*, frequency, and duration of an employee's exposure to an employer's customers" as "crucial in determining [a] covenant's reasonableness." Whelan, 379 S.W.3d at 842 (emphasis added) (citation omitted). The upshot is that employers can, and indeed *must*, make reasoned distinctions among employees (and/or owners) when deciding to impose restrictive covenants. Lockton did so here because the quality of producer members' contacts with its clients is different from the quality of its associates' contacts.

The Members' next assert that Lockton's producer members bear the primary burden of developing and maintaining client relationships, such that Lockton's customers' goodwill belongs to Lockton's producer members, not Lockton itself. Yes, Lockton tasks its producer members with developing and building customer relationships. But that does not mean that Lockton lacks any legitimate interest in those relationships.[12] Instead, Lockton's reliance on its producer members to perform this work is precisely *why* restrictive covenants are justified here. See id. at 842 (stressing the relevance of employees' client contacts to the reasonableness of restrictive covenants); Kessler-Heasley Artificial Limb Co. v. Kenney, 90 S.W.3d 181, 186 (Mo. Ct. App. 2002) (explaining that restrictive covenants to protect "customer contacts" are warranted in the sales industry because "a customer's goodwill toward a company is often attached to the employer's individual sales representative" (citation omitted)). The Members' argument does not square with Missouri law. If it were true that employers have no legitimate interest in customer relationships that it asked its employees to build, no business would ever have a

[12]The Members cite only a single case (applying Massachusetts law) for the proposition that a client-facing employee primarily owns a company client's goodwill. See Getman v. USI Holdings Corp., No. 05-3286-BLS2, 2005 WL 2183159, at *3 (Mass. Super. Sept. 1, 2005). The Members also do not address the fact that they agreed in their contracts that Lockton's customers' goodwill is a Lockton asset. Even assuming Lockton would not own its client's goodwill by default, as the Members suggest, it is not clear why Lockton could not bargain for that goodwill by paying its producer members millions of dollars, as it did here.

protectable interest in its customer relationships. Missouri law says otherwise. See Whelan, 379 S.W.3d at 842 (recognizing that employers are entitled to "protect against the 'influence an employee acquires over his employer's customers through personal contact'" (citation omitted)); Kessler-Heasley, 90 S.W.3d at 186 ("Stock in customers, also referred to as customer contacts, are a legitimate protectable interest.").

Finally, the Members complain that the customer-nonsolicitation covenants go beyond preventing solicitation—they also purport to prohibit the Members from accepting or servicing implicated client accounts. And the Members say that Lockton has no legitimate interest in dictating who accepts or services accounts of its former clients after they decide to switch brokerages. But Lockton is justified in taking its former producer members out of its customers' calculus when they are deciding whether to make that switch. Again, Missouri law permits Lockton to do precisely just that. See Kessler-Heasley, 90 S.W.3d at 184-87 (concluding that a covenant that generally prohibited competition, not just solicitation, was enforceable because it served an employer's legitimate interest in protecting its customer base). Unsurprisingly, the Members cite no case suggesting that a customer's right to work with individual former employees or owners of a company overrides that company's right to negotiate post-departure restrictions that protect its goodwill. If that were really the law, no covenant to compete (including covenants not to solicit) would ever be enforceable, and cases like Whelan and Kessler-Heasley would have come out the other way. See generally Whelan, 379 S.W.3d 835 (holding that modified nonsolicitation provisions were enforceable against employees who started business competing against their former employer); Kessler-Heasley, 90 S.W.3d at 187 ("Employee violated the terms of the non-compete clause of his employment agreement because he had already affected Employer's customer base by treating Employer's former patients, the very thing Employer had sought to protect against with the non-compete clause."). For these reasons, we hold that the district court did not err in holding the Agreements' restrictive covenants enforceable as modified.

C.

The Members next argue that the district court erred in declaring that the Agreements' forum-selection clauses are enforceable and in concluding that Appellants breached those clauses. According to the Members, the district court erroneously applied federal procedural law, rather than California law, in concluding that the forum-selection clauses were enforceable. The Members alternatively contend that, even if the district court correctly concluded that federal procedural law governs, it misapplied the federal standard. Per the Members, this standard required the district court to consider California public policy. And if the district court had done so (instead of looking exclusively to Missouri public policy), it would have determined that the forum-selection clauses were *un*enforceable. Finally, the Members assert that—whatever the governing standard is—genuine disputes of material fact preclude summary judgment.

As an initial matter, the Members waived their argument that California law governs the forum-selection clauses' enforceability. In their responses to Lockton's motions for summary judgment on this issue, the Members relied on cases applying federal procedural law. And they conceded that Lockton was asking the district court to apply the correct body of law: both Members' summary judgment papers stated that "[a]s Lockton acknowledges, a federal court should not enforce a forum-selection clause if it would be 'unjust or unreasonable to do so.'" In other words, both Members expressly invoked—and asked the district court to apply—the *federal* test for forum-selection clause enforceability. <u>See</u> <u>M/S Bremen v. Zapata Off-Shore Co.</u>, 407 U.S. 1, 15 (1972) (expressing federal forum-selection clause enforceability standard). Moreover, in arguing that the district court should not enjoin the California Actions based on the forum-selection clauses, the Members contended that "[b]ecause California and federal law differ with respect to the [forum-selection clause] enforceability issue, a ruling by this Court that the clause is enforceable cannot have a preclusive effect" on the California Actions. The Members' clear understanding was that the district court would be applying the federal test. The Members cannot now contend that it is California law—and not federal law—that dictates whether the forum-selection clauses are enforceable.[13] See Hiland Partners GP Holdings, LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, 847 F.3d 594, 598 (8th Cir. 2017) ("We will not ordinarily 'consider arguments raised for the first time on appeal.'" (citation omitted)).

Because the Members did not challenge the applicability of federal law in the district court proceedings, we decline to hold that the district court erred "in applying federal law to determine the enforceability of the forum selection clause[s], and we likewise apply federal law in reviewing the enforceability of the forum selection clause[s] in this case." Union Elec. Co. v. Energy Ins. Mut. Ltd., 689 F.3d 968, 971 (8th Cir. 2012).

Federal law favors the enforcement of forum-selection clauses. Indeed, "[f]orum selection clauses are prima facie valid and are enforced unless they are unjust or unreasonable or invalid for reasons such as fraud or overreaching." M.B. Rests., Inc. v. CKE Rests., Inc., 183 F.3d 750, 752 (8th Cir. 1999). Forum-selection clauses are also unenforceable "if enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision." Bremen, 407 U.S. at 15; see also Union Elec. Co., 689 F.3d at 974 ("While Bremen provides the proper analysis for determining the enforceability

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[13]Waiver aside, California law would not apply, even under the Members' own reasoning. The Members reason that California law applies because (1) the Agreements "dictated that" Lockton's declaratory-judgment claims "should be resolved according to the Missouri choice-of-law clause[s]," (2) the enforceability of those clauses must be analyzed under Restatement (Second) Conflict of Laws § 187(2)(b), and (3) "that analysis compels the conclusion that California law governs the agreements—including the Missouri [forum-selection clauses]." As we previously held, the Missouri choice-of-law provisions *are* enforceable and Missouri law thus *does* govern the Agreements. See supra Section III.A. So if the Members are right that the choice-of-law clauses drive the forum-selection-clause enforceability analysis, Missouri law would govern. And the federal and Missouri forum-selection-clause enforceability standards are the same. See High Life Sales Co. v. Brown-Forman Corp., 823 S.W.2d 493, 496-97 (Mo. 1992) (adopting the Bremen standard).

of a forum selection clause, in this circuit, consideration of the public policy of the forum state must be part of that analysis."). A party challenging a forum-selection clause must make a "strong showing that it should be set aside," and "bear[s] a heavy burden of proof." Bremen, 407 U.S. at 15, 17. Forum-selection clauses are found unenforceable only "in unusual cases." Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex., 571 U.S. 49, 64 (2013).

The Members assert that the district court erred by reading Bremen's reference to the "public policy of the forum in which suit is brought" too literally. Here, because Lockton brought the Federal Actions in Missouri, the district court determined that Missouri was the "forum in which suit is brought" and thus considered whether the Agreements' forum-selection clauses violated *Missouri* public policy.

The Members point out, however, that the Federal Actions teed up the forum-selection clauses' enforceability in an atypical way. In those cases, Lockton sued the Members in Missouri—the state designated in the forum-selection clauses—and sought declarations that the Agreements' forum-selection clauses were enforceable. But it is far more common for courts to evaluate a forum-selection clause's enforceability in a different posture: where a suit is filed in some forum other than the one the forum-selection clause designates, and where the defendant files a motion to dismiss, transfer, or stay invoking the forum-selection clause *in that undesignated forum*. And indeed, that's what happened in Bremen. See 407 U.S. at 6 (reviewing ruling on motion to stay lodged in the undesignated forum). According to the Members, the takeaway is that when Bremen instructs courts to consider the "public policy of the forum in which suit is brought," what it really means is that courts are to consider the public policy of the *undesignated forum* in which suit is brought in apparent violation of the forum-selection clause. Here, that would be California.

But the Members did not make this argument before the district court. In their summary judgment briefs, they asserted not that California supplies the relevant public policy for the Bremen analysis, but rather that the forum-selection clauses violate *Missouri's* strong public policy. Specifically, they argued:

> As the Supreme Court stated in Bremen, "A contractual choice-of-forum clause should be held unenforceable if enforcement would contravene a strong public policy of the forum in which suit is brought . . . ." In this case, enforcing the Missouri [forum-selection clauses] would contravene Missouri's public policy against enforcing illegal contracts.

We thus consider the Members' argument that the district court considered the wrong state's public policy waived. See Hiland Partners, 847 F.3d at 598.

Even if we did not, the Members' interpretation of Bremen does not persuade us. First, the Members do not engage with the logic underpinning the Supreme Court's public policy discussion in Bremen. At least arguably, the only principle that Bremen suggests is that courts owe some level of deference to the public policy of the fora in which they sit, such that an American court may not act in a way that is contrary to American public policy. Bremen does not clearly suggest that courts ought to concern themselves with the public policies of *other* fora in which they do not sit. Second, we are concerned that the Members' proposed test—which would require a court evaluating the enforceability of a forum-selection clause in the context of a declaratory judgment action brought in the contractually designated forum to consider the public policy of some undesignated forum—is not administrable. In such a case, it would not necessarily be clear what the relevant undesignated forum might be—a declaratory judgment action could be brought before any suit was improperly brought in an undesignated forum (just as Lockton brought suit against Giblin weeks before she sued it in California). Would the court adjudicating the declaratory judgment action have to guess where a suit breaching the forum-selection clause might be filed and consider the public policies of any states in which such litigation could conceivably occur? That unwieldy approach would make little sense.

The Members also argue that they raised genuine disputes of material fact that precluded summary judgment on Lockton's claims that the forum-selection clauses are enforceable. Specifically, they contend that their summary judgment evidence would permit a trier of fact to find that enforcing the forum-selection clauses would be "unfair, unlawful, unjust and/or unreasonable" such that, no matter whether federal, Missouri, or California law governs the enforceability question, they were entitled to a trial on the issue. They say their evidence shows that (1) Lockton deliberately included Missouri forum-selection clauses in the Agreements to evade California law and its limitations on restrictive covenants; (2) there was a significant disparity in bargaining power between the Members and Lockton; (3) Lockton presented the Agreements on a take-it-or-leave-it basis; (4) nobody represented the Members' interests when Lockton drafted the Agreements; (5) the Missouri forum-selection clauses were part of standard contracts and did not figure centrally in the parties' negotiations; (6) Lockton has itself challenged forum-selection clauses in other litigation; and (7) Lockton moved for summary judgment seeking to enforce the forum-selection clauses only after the courts in the California Actions denied Lockton's motions to dismiss based on the forum-selection clauses.

But none of the purported factual disputes to which the Members point is material. The Members' facts—even accepted as true—are insufficient as a matter of law for the Members to have carried their burden of showing the forum-selection clauses are unenforceable under the Bremen standard. They do not permit the conclusion that the forum-selection clauses are unjust or unreasonable or invalid within the meaning of Bremen. See Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 593-95 (1991) (holding that a forum-selection clause was enforceable even though the clause was not subject to negotiation, appeared in a form contract, and was agreed upon by parties of obviously unequal bargaining power); M.B. Rests., 183 F.3d at 753 (affirming the district court's decision that a Utah forum-selection clause was enforceable, notwithstanding the plaintiffs' arguments that enforcing the clause would diminish their rights under South Dakota law, where the plaintiffs failed to allege "that the Utah court [was] biased or incompetent or unwilling to apply South Dakota law if applicable"); Dominium Austin Partners, L.L.C. v.

Emerson, 248 F.3d 720, 726 (8th Cir. 2001) (recognizing that an offer's mere take-it-or-leave-it status does not suffice as a matter of law to establish an unlawful contract of adhesion). The district court did not err in deciding that the Missouri forum-selection clauses are enforceable as a matter of law.

The Members' facts even when considered collectively do not meet their "heavy burden of proof." See Bremen, 407 U.S. at 17. Bremen has teeth, and forum-selection clauses are found unenforceable only in "unusual cases." Atl. Marine, 571 U.S. at 64. It would be unusual indeed if we concluded that the forum-selection clauses were unenforceable here, where the Members made millions under the Agreements containing them. The thousand-foot view is that the forum-selection clauses here are transparently fairer than others courts have validated. See, e.g., Carnival Cruise Lines, 499 U.S. at 593-95 (concluding that a forum-selection provision in a non-negotiated contract imposed in the consumer context was enforceable). It does not matter if the Agreements were presented on a take-it-or-leave-it basis, that the Members played no part in their drafting, *and* Lockton sought to adjudicate its disputes with its members nationwide in a single forum it viewed as favorable to its interests. Those facts, even in combination, do not clear Bremen's high hurdle.

We affirm the district court's judgments as to the enforceability of the forum-selection clauses. And because the parties do not dispute that, if the forum-selection clauses are enforceable, the Members breached them, we likewise affirm the district court's judgments as to the Members' breaches of the forum-selection clauses.

IV.

Next, Lockton argues that the district court erred in granting the Members summary judgment on its claims that the Members breached the 30-day notice provisions in its operating agreements (and their fiduciary duties) when they purported to resign from Lockton "effective immediately" and immediately began working for Alliant. These claims turn on whether this notice provision is permissive, as the district court held, or whether it is mandatory. "We review de novo . . . the district court's interpretation of a contract." Jessep v. Jacobson Transp. Co., 350 F.3d 739, 741-42 (8th Cir. 2003).

Section 5.10 of Lockton's operating agreements specifies seven ways in which a producer member's membership interest "may" be terminated. It provides:[14]

> Any Producer Member may be terminated as a Member:
>
> (a) by such Series Member on thirty (30) days' written notice to the Series;
>
> (b) by the Series (upon approval of the Series Manager and the Executive Committee of the Series in which such Series Member is a Member) without Cause on thirty (30) days' written notice to the Series Member;
>
> (c) by the Series as of the end of the month during which the death or dissolution of the Series Member occurs;
>
> (d) by the Series in the event the Series of which such Series Member is a Member closes all its offices or the Series discontinues its business; provided, however, the effective date of termination under this subsection (d) shall be the last day of the month during which the Series so closes its offices or discontinues business;
>
> (e) by the series as of the end of the month during which a Series Member is deemed to be permanently and totally disabled. For purposes of this **Section 5.10**, a Member shall be deemed to be "permanently and totally disabled" if, because if [sic] ill health, physical or mental disability or other causes beyond such

[14]We draw this language from the operating agreement governing Lockton's Pacific Series. The other operating agreements, with the exception of the Lockton Partners operating agreement, contain substantially similar language.

> Member's control, the Member shall have been unable or unwilling or shall have failed to substantially perform such Member's essential duties as a Producer Member for a period of one hundred eighty (180) consecutive days in any Fiscal Year;
>
> (f) by the Series or the Series Member upon the end of the month during which such Series Member attains the age of sixty-five (65); and
>
> (g) by the Series (upon approval of the Series Manager and the Executive Committee of the Series in which such Series Member is a Member) for Cause.

The district court read the term "may" in the first sentence of this section as permissive, in the sense that the list of termination mechanisms is non-exclusive. In other words, on the district court's reading, producer members may terminate their interests by giving 30 days' notice. Or, producer members may terminate their interests in some other, unspecified way—including by resigning "effective immediately" as the Members claimed to do here.

We respectfully disagree with the district court's reading. As used in the operating agreements, "may" is permissive in the sense that a producer member or Lockton need not terminate the producer member's interest at all. But the list specifies the only conditions under which termination can occur. If it were otherwise, the list of termination mechanisms in § 5.10 would serve no purpose. The operating agreements should not be read that way. <u>See</u> <u>Jacobson Warehouse Co. v. Schnuck Markets, Inc.</u>, 13 F.4th 659, 670 (8th Cir. 2021) ("Under Missouri contract law, 'people are presumed not to intend nullities,' and a contract's 'preferred construction is one that provides a reasonable meaning to *each* phrase and clause, not one that leaves some of the provisions without function or sense.'" (citation omitted)); <u>see also</u> <u>Gen. Am. Life Ins. Co. v. Barrett</u>, 847 S.W.2d 125, 133 (Mo. Ct. App. 1993) (applying the expressio unius canon—i.e., the principle "that 'the expression of one thing is the exclusion of another' or 'the mention of one thing implies exclusion of another.'" (citation omitted)). And it is hard to imagine that the Members would really want "may" to mean what they say it does. If it were true that they did not have to give Lockton notice of their intent to depart, that would arguably imply that Lockton likewise would not be bound by its limitations on its ability to terminate members and could terminate members for any reason at any time.

The district court's reading is also contrary to how courts typically read these sorts of notice provisions. See, e.g., In re Popkin & Stern, 340 F.3d 709, 711, 714 (8th Cir. 2003) (construing partnership agreement providing that "[a]ny partner may withdraw or retire from the Partnership at the end of any calendar month, after giving the Partnership at least sixty (60) days' notice in writing" to preclude instantaneously effective resignation). And it is contrary to ordinary English usage. As Lockton puts it, "[I]f a parent tells a child begging for a snack that he 'may have a piece of fruit, a granola bar, or a yogurt,' the child would make himself an ice cream sundae at his own peril." Section 5.10 is unambiguous. It permits producer members to terminate their interests in only one way: "on thirty . . . days' written notice."

Nevertheless, the Members make two arguments against holding them to this requirement. First, they assert that "[r]equiring LLC members to remain members for 30 days after they wish to leave is 'involuntary servitude,' which is outlawed by the 13th Amendment." Second and relatedly, they argue that this notice provision, if given effect, would "make Section 5.10(a) an unbargained-for, worldwide noncompete covenant." These concerns are unfounded.

The Members' suggestion that requiring LLC members to provide notice of their intent to terminate membership interests that have earned them millions of dollars is what the Thirteenth Amendment's framers had in mind when they spoke of involuntary servitude is without merit. See U.S. Const. amend. XIII ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."); United States v. Kozminski, 487 U.S. 931, 942 (1988) ("[T]he phrase 'involuntary servitude' was intended to extend 'to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results.'" (citation omitted)).

The Thirteenth Amendment might present a problem if Lockton sought to compel the Members to continue on as Lockton members through specific performance. See, e.g., Dan Smith Softball v. Cayton, No. 5:20-cv-01661-EJD, 2020 WL 4349848, at *2 (N.D. Cal. July 29, 2020) (recognizing that in view of the Thirteenth Amendment it was "not possible" for the court to compel the defendant to play for his original softball team, but that other remedies, including preventing the defendant from playing for other teams, might be available). But Lockton seeks no such relief.

We find the Members' argument that the notice requirement operates as an unlawful covenant not to compete similarly unpersuasive. Such notice requirements are routine. Indeed, Missouri's LLC statute prescribes a 90-day notice requirement in default of any treatment of the issue within an entity's operating agreement. Mo. Rev. Stat. § 347.121(1). And the Members cite no case applying Missouri law to hold that a notice provision in an LLC's operating agreement functioned as an unlawful noncompete agreement.

When it comes to Lockton's claims that the Members breached the notice provision and breached their fiduciary duties by going to work for a Lockton competitor before effectively terminating their interests, the mandatory or permissive nature of § 5.10(a)'s notice requirement is the entire ball game. The Members do not dispute that, if § 5.10(a) required them to give 30 days' notice before departing Lockton, they did not do so. They also do not dispute that, if they went to work for a Lockton competitor before the 30 days elapsed—as they indisputably did—they breached the fiduciary duties they owed Lockton as Lockton members.

We conclude that the district court erred in granting the Members summary judgment on Lockton's claims that the Members breached § 5.10 of the operating agreements and their fiduciary duties. And we direct that, on remand, the district court enter judgment in Lockton's favor on these claims.

V.

Both Lockton and the Members appeal aspects of the district court's awards of attorneys' fees. Lockton contends that the district court erred in declining to award it the attorneys' fees it incurred in the California Actions. For their part, the Members argue that they—and not Lockton—were entitled to fees for the Federal Actions as the "prevailing party" under the parties' contracts, but that, even if Lockton was the prevailing party, the district court's fee awards were unreasonable. They also contend that they are entitled to attorneys' fees they incurred in defending Lockton's voluntarily dismissed DTSA claims.

A.

First, Lockton argues that the district court erred in awarding it only nominal damages for the Members' breaches of the Agreements' forum-selection clauses, rather than a fully compensatory award accounting for the attorneys' fees and costs they had incurred relating to the California Actions because of those breaches. We review de novo questions of law bearing on a damages award. See Jo Ann Howard & Assocs., P.C. v. Nat'l City Bank, 11 F.4th 876, 882 (8th Cir. 2021).

The Missouri Supreme Court does not appear to have addressed whether attorneys' fees and costs are available as damages for breach of a forum-selection provision. We therefore must predict how the Missouri Supreme Court would rule if presented with this issue. See Blankenship v. USA Truck, Inc., 601 F.3d 852, 856 (8th Cir. 2010); see also Leonard v. Dorsey & Whitney LLP, 553 F.3d 609, 612 (8th Cir. 2009) (explaining standards for Erie predictions).

We predict that the Missouri Supreme Court would recognize that attorneys' fees and costs incurred as a direct result of a defendant's breach of a forum-selection clause are available as damages for that breach. Missouri follows the "American Rule" of attorneys' fees, under which "absent statutory authorization or contractual agreement, with few exceptions, each litigant must bear his own . . . fee[s]." Trs. of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 285 (Mo. 2019) (citation omitted). But we think there is a difference between attorneys' fees qua *attorneys' fees*—that is, fees incurred incidentally because a party is prosecuting or defending some claim—and attorneys' fees as *damages*—that is, fees that are not just incidentally incurred, but that are *themselves* the harm a party contracted to avoid. See, e.g., Rice v. Interfood, Inc., No. 4:13CV1171 HEA, 2015 WL 331787, at *2 (E.D. Mo. Jan. 23, 2015) (predicting that Missouri law would permit the recovery of attorneys' fees as damages for a breach of a covenant not to sue because for such a breach "attorneys' fees *are* the damages" and "the philosophical basis for the [American] Rule is not applicable"); Namdar v. Fried, 340 A.3d 1184, 1202 (Del. Ch. 2025) ("[A] distinction exists between the primary relief that a party seeks for breach of contract and the enforcement expenses the party incurs obtaining the primary relief. The American Rule bars a party from recovering enforcement expenses unless an exception applies. It does not bar a party from recovering primary relief."). Permitting recovery of the latter sort of "fees" is entirely consistent with the general principles underlying Missouri damages law.

Under Missouri law, the fundamental purpose of awarding damages for breach of contract is to make the non-breaching party whole. Ameristar Jet Charter, Inc. v. Dodson Int'l Parts, Inc., 155 S.W.3d 50, 54 (Mo. 2005) ("The goal of awarding damages is to compensate a party for a legally recognized loss. A party should be fully compensated for its loss, but not recover a windfall." (citations omitted)); see also Clayton Ctr. Assocs. v. Schindler Haughton Elevator Corp., 731 F.2d 536, 540 (8th Cir. 1984) ("[T]he goal in awarding damages is . . . to place [the injured party] in the position it would have enjoyed had the contract been fully performed."). Thus, a plaintiff asserting a breach-of-contract claim is entitled to recover, among other types of damages, "'[a]ctual damages'"—that is, "'damages [that] are compensatory and are measured by the loss or injury sustained' as a direct result of the [defendant's] wrongful act." Catroppa v. Metal Bldg. Supply, Inc., 267 S.W.3d 812, 818 (Mo. Ct. App. 2008) (citation omitted).

The whole point of a forum-selection clause is that it confers a right not to be sued in a particular place: it is an agreement to avoid a suit. See Namdar, 340 A.3d at 1203-04 (recognizing that a "forum selection clause establishes a contractual right not to be sued in the foreclosed forum"). When a plaintiff brings a suit in violation of a forum-selection clause, that suit is itself the harm the plaintiff's contractual counterparty bargained to avoid. Under these circumstances, litigation costs (including attorneys' fees) are not just incidental—they are the exact harm that the contract sought to prevent and are the "direct result of the [breaching party's] wrongful act." Catroppa, 267 S.W.3d at 818 (citation omitted); see also Namdar, 340 A.3d at 1202 ("The expenses incurred in the foreclosed forum provide the measure of damages the non-breaching party suffered from the breach of the contractual right not to be sued there."). In light of these principles, we predict that the Missouri Supreme Court would allow the recovery of attorneys' fees as damages for a breach of a forum-selection clause.

Our conclusion is bolstered by the fact that Missouri law permits the recovery of attorneys' fees in analogous circumstances, where the fees are incurred in a suit the recovering party had a right to avoid. For instance, Missouri courts permit recovery of attorneys' fees *as damages* for malicious prosecution (the idea apparently being that the harm a malicious prosecution claim addresses is a suit the plaintiff should not have had to face). See Turman v. Schneider Bailey, Inc., 768 S.W.2d 108, 113 (Mo. Ct. App. 1988) ("Attorney fees are a compensable element of damages in a suit for malicious prosecution."). Similarly, Missouri recognizes an exception to the American Rule where a defendant's wrongful conduct has subjected the plaintiff to collateral litigation with third parties. See Beavers v. McGinnis, 277 S.W.3d 308, 310 (Mo. Ct. App. 2009) ("The collateral litigation exception to the American Rule allows a plaintiff to recover attorney fees that he expended in collateral litigation with a third party as a result of the defendant's wrongdoing."); see also Essex Contracting, Inc. v. Jefferson Cnty., 277 S.W.3d 647, 657 (Mo. 2009) (per curiam) ("Where the natural and proximate result of a wrong or breach of duty is to involve the wronged party in collateral litigation, reasonable attorneys' fees necessarily and in good faith incurred in protecting himself from the injurious consequence thereof are proper items of damages." (citation omitted)). We think the rationale for permitting the recovery of attorneys' fees in these circumstances equally supports permitting the recovery of attorneys' fees as damages for the breaches of the forum-selection clauses at issue here.

We do not read the Agreements' fee-shifting provisions to take general breach-of-contract damages off the table. The fee-shifting provisions in the Agreements authorize the "prevailing party" in litigation between Lockton and the Members "aris[ing] out of, or relat[ing] to . . . th[e] Agreement[s] . . . and/or" the Members' Lockton membership to recover "*in addition to any other remedies set forth in th[e] Agreement[s] or otherwise available at law* . . . any and all reasonable costs and expenses . . . including reasonable attorneys' fees." The Agreements also authorize Lockton, "in the event of a breach . . . of th[e] Agreement[s] . . . to recover from [the Members] any money damages that can be determined." Here, that is what the attorneys' fees Lockton incurred as a direct result of the Members' breaches of the forum-selection clauses are.

We vacate the district court's nominal damages awards and instruct the district court to consider, on remand, the proper measure of Lockton's damages for breaches of the forum-selection clauses consistent with the principles expressed in this opinion.

B.

The Members argue that the district court erred in awarding Lockton the attorneys' fees it incurred in the Federal Actions under the Agreements' fee-shifting provisions. As previously noted, the Agreements entitle the "prevailing party" in disputes between Lockton and the Members to recover "reasonable attorneys' fees." As also noted, the Agreements provide that they are to be "construed in accordance with the laws of the State of Missouri." We have already determined that this choice-of-law election is enforceable. See supra Section III.A. Thus, we look to Missouri law in construing the Agreements' fees provisions.

Because the Agreements do not define the term "prevailing party," we rely on the definition that Missouri law supplies. See DocMagic, Inc. v. Mortg. P'ship of Am., L.L.C., 729 F.3d 808, 812 (8th Cir. 2013) (looking to Missouri law for the definition of "prevailing party" where the parties' agreement left that term undefined). Missouri law recognizes two approaches to determine a party's "prevailing party" status. "The first approach—'main-issue analysis'—turns on which party is 'the party prevailing on the main issue in dispute, even though not necessarily to the extent of its original contention.'" Id. at 813. (citation omitted). "The second approach—'net-prevailing-party analysis'—essentially arithmetically calculates which party received 'the most points' and 'at the end of the contest [declares] [it] the winner.'" Id. (alterations in original) (citation omitted). "[W]e review de novo the . . . legal question of which litigant is the prevailing party." Id. at 812. And "[w]e review for an abuse of discretion the district court's actual award of fees and costs." Id.

The district court did not err in concluding that Lockton was the prevailing party. That is the result both the main-issue and net-prevailing-party approaches call for here.

The district court held, and Lockton now argues, that the main issue in the Federal Actions was "the enforceability of Lockton's Agreements . . . including the forum selection clause[s], restrictive covenants, and Missouri choice-of-law provision[s]." The Members contend that the main issue was whether they breached their nonsolicitation and confidentiality obligations under the Agreements—not whether the nonsolicitation provisions (and the other provisions the Members contend are part of Lockton's "scheme" to hold them to those provisions, including the forum-selection and choice-of-law provisions) are enforceable.

The district court did not err in concluding that the main issue here was the enforceability of the parties' contracts, rather than the Members' alleged breaches. Lockton is not simply trying to hold two former producers to their contractual obligations. The record shows that Lockton spent approximately $9 million and hired three large law firms—Gibson Dunn, Quinn Emanuel, and Bryan Cave—to prosecute its claims. Similarly, Alliant hired a major firm, Morgan Lewis, and spent millions of dollars bankrolling the Members' defenses in the Federal Actions and funding the Members' claims in the California Actions (where the Members seek declarations that the same contractual provisions at issue here are *un*enforceable). The way the parties have conducted these suits undercuts the Members' argument that the Federal Actions are primarily about Lockton's allegations that the Members improperly peeled off a handful of Lockton customer accounts.

The Agreements' enforceability (as distinct from the Members' alleged breaches) clearly matters to everyone involved. It is undisputed that the Members filed suits challenging the Agreements' restrictive covenants and related provisions in California state court and that Alliant is funding the Members' suits and defenses. Moreover, as the district court found, a holding that Lockton's covenants are enforceable (even just as to Lockton customers with whom its producers actually worked) sends a message to Lockton's competitors about the likely outcome of future attempts to raid Lockton for its producers. When the Federal Actions are viewed in the full business context in which they were brought, we think it is apparent that the main issue was—as the district court held—enforceability, not breach.

The Members argue that even if enforceability was the main issue, they prevailed on it, because the district court modified the nonsolicitation covenants to restrict their application to a limited subset of Lockton's customers—the customers with whom the Members actually dealt. In support, the Members rely on <u>Paradise v. Midwest Asphalt Coatings, Inc.</u>, 316 S.W.3d 327 (Mo. Ct. App. 2010). In that case, the Missouri Court of Appeals held that, because the trial court modified the underlying noncompete agreement, the defendant "did not prevail on its main issue (i.e. the validity of the original non-compete agreement)," and therefore was "not entitled to attorney fees." Id. at 330. Paradise is distinguishable because, here, the district court held that Lockton's covenants were enforceable *to the exact extent* that Lockton sought to enforce them. Lockton is the prevailing party precisely *because* the district court awarded it the relief it requested. Moreover, the interests underlying Lockton's restrictive covenants are at their strongest when the issue is the ability of the Members' to solicit the customers with whom they actually developed relationships. Cf. Whelan, 379 S.W.3d at 842 (recognizing an employer's legitimate interest in protecting against "the influence an employee acquires over his employer's customers through personal contact" (citation omitted)). So even though the district court did not conclude that Lockton's covenants were enforceable as written, that does not mean that Lockton did not pick up a significant win—Lockton secured a declaration that its covenants were enforceable where they count most. The district court did not err in holding that Lockton prevailed on the main issue.

Lockton is also the prevailing party under a net-prevailing party analysis. Lockton prevailed on its most significant claims. And, in light of our conclusions that the Members breached their notice obligations and fiduciary duties, and that Lockton is entitled to a full compensatory award for the Members' breaches of the forum-selection clauses, see supra Sections IV, V.A, we conclude that it was Lockton that scored "the most points" here. DocMagic, 729 F.3d at 813. Lockton soundly won the Federal Actions. Both the main issue and net-prevailing party analyses point in the same direction, and we thus hold that the district court did not err in determining that Lockton was the prevailing party under the Agreements.

C.

The Members also contend that the district court erred in calculating Lockton's fee awards of $4,923,855.93 in its suit against Giblin and $4,264,674.77 in its suit against Kaufman. They argue both that Lockton's claimed hours and billing rates were unreasonable.

i.

If things remained as they stood before the district court, the Members would have a reasonable argument as to reasonable hours. Their argument on this issue boils down to one basic point: the district court should have parsed between the hours Lockton's counsel spent on the issues Lockton did and did not prevail on. Missouri law imposes no obligation to parse between hours spent litigating different claims "if the claims for relief have a common core of facts and are based on related legal theories and much of counsel's time is devoted generally to the litigation as a whole making it difficult to divide the hours expended on a claim-by-claim basis." Williams v. Fin. Plaza, Inc., 78 S.W.3d 175, 185 (Mo. Ct. App. 2002). Here, however, it would not have been "difficult to divide the hours expended on a claim-by-claim basis," at least after the district court entered its summary judgment orders on May 6, 2024. In the proceedings before the district court, Lockton prevailed on none of its claims that remained pending after that point. Those claims were either dismissed by the district court on successive summary judgment motions or voluntarily dismissed by Lockton. Cf. Riviera Distributors, Inc. v. Jones, 517 F.3d 926, 928 (7th Cir. 2008) (holding that the defendant was the prevailing party on voluntarily dismissed copyright claims). Yet, as the Members note, Lockton incurred over $1 million in additional fees prosecuting the Federal Actions after the district court's May 6th orders. A significant portion of these fees were clearly disconnected from the claims on which Lockton actually prevailed before the district court and seemingly would not have been reasonably incurred for purposes of the Agreements' fee-shifting provisions.

But this opinion changes the landscape. Lockton was in fact entitled to summary judgment on several issues on which it lost after May 6, 2024. Such issues include its claims that the Members breached their contractual notice obligations and fiduciary duties, and Lockton's contention that it was entitled to awards of its California fees as damages for the Members' breaches of the forum-selection clauses. Lockton won on those issues before us. We thus cannot say it was unreasonable for Lockton to litigate them before the district court. And for that reason, we cannot conclude that the Members' proposed May 6th cutoff date for fees holds water. The Members suggest no alternative cutoff date after May 6th, nor do they offer the Court any other suggestion as to how it can go about the task of identifying the hours Lockton unreasonably claimed. We also note that, at least in the Giblin Federal Action, the Members did not even attempt to give the district court the tools necessary to undertake what they now say is the required parsing analysis: Giblin argued only that Lockton's claimed hours were excessive because of staffing inefficiencies, not that Lockton wasted time litigating particular claims. We thus consider Giblin's argument that the district court improperly awarded fees related to claims on which Lockton did not prevail waived. See Hiland Partners, 847 F.3d at 598. For these reasons, we decline to hold that the district court abused its discretion in concluding that Lockton's claimed hours were reasonably incurred.

ii.

The Members also contend that Lockton's attorneys' rates are unreasonable because they significantly exceed the median rates charged in the Kansas City, Missouri, market. According to the Members, Lockton was not entitled to recover fees at the rates charged by its "big city lawyers."[15] We find no error in the district court's rates analyses. The district court was entitled to "consider[] the prevailing rate in the market from which attorneys have traveled where the attorneys were 'leaders in the field' with 'extensive experience,' [and] 'able to handle the case in a shorter length of time than a local lawyer, without comparable experience, would have needed.'" Miller v. Dugan, 764 F.3d 826, 831 (8th Cir. 2014) (citation omitted). The district court reasonably determined that these matters demanded exceptionally skilled and qualified counsel from larger markets. Both sides hired extremely skilled and competent counsel because that is what these bet-the-business cases demanded. Moreover, the fact that Lockton received the business-critical results it did here supports the reasonableness of the district court's award, see

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[15]We note that Morgan Lewis attorneys based in San Francisco and Los Angeles represent the Members.

Bowolak v. Mercy E. Comtys., 452 S.W.3d 688, 701 (Mo. Ct. App. 2014) (listing factors informing the reasonableness of fee awards), as does the fact that Lockton paid the rates its lawyers charged, see Moysis v. DTG Datanet, 278 F.3d 819, 828 (8th Cir. 2002) (recognizing that, while not dispositive, an attorney's customary rate may be evidence of reasonableness); First State Bank of St. Charles v. Frankel, 86 S.W.3d 161, 176 (Mo. Ct. App. 2002) (observing that the fact a client has paid his attorney's fees "indicat[es] reasonableness"), overruled on other grounds by Badahman v. Catering St. Louis, 395 S.W.3d 29 (Mo. 2013). The district court did not abuse its discretion in conducting its rates analyses.

We hold that the district court did not abuse its discretion when evaluating the reasonableness of Lockton's claimed hours or rates. We affirm the district court's awards of fees and costs to Lockton.

D.

Finally, the Members argue that the district court erred in failing to award them fees under the DTSA. Under the DTSA, "if a claim of the misappropriation [of a trade secret] is made in bad faith, which may be established by circumstantial evidence," a court may "award reasonable attorney's fees to the prevailing party." 18 U.S.C. § 1836(b)(3)(D). A fee award under this statute is discretionary. See LQD Bus. Fin., LLC v. AKF, Inc., 2025 WL 830444, at *4 (7th Cir. Mar. 17, 2025).

We have not yet weighed in on what the term "bad faith" means in the context of § 1836(b)(3)(D). Here, the district court applied the test set forth in Farmers Edge Inc. v. Farmobile, LLC, No. 8:16CV191, 2018 WL 2869005, at *12 (D. Neb. May 3, 2018). Under that test, "[w]hether a plaintiff asserted a trade secret [misappropriation claim] in bad faith is determined by considering the: '(1) objective speciousness of the plaintiff's claim, and (2) [the] plaintiff's subjective misconduct in bringing or maintaining [the] claim . . . .'" Id. (second alteration in original). Neither party challenges the district court's decision to use this test or suggests that "bad faith" requires anything else. We thus assume without deciding that the test as described in Farmers Edge controls.

The district court did not abuse its discretion in declining to award the Members fees under the DTSA—at a minimum because it could have reasonably concluded from the records in these cases that Lockton did not engage in subjective misconduct in bringing and maintaining its DTSA claims. See id. (recognizing that bad faith requires subjective intent). The Members essentially argue that Lockton's DTSA claims were so weak that Lockton knew or must have known that it was engaged in misconduct by prosecuting them. Even assuming that objective speciousness conclusively shows subjective misconduct,[16] this argument does not persuade us. Lockton's DTSA claims were at least plausible—they survived motions to dismiss. Moreover, the Members never sought sanctions against Lockton for pursuing the DTSA claims below (at least not prior to asserting its DTSA fee requests post-judgment). And if Lockton's claims were really so weak that Lockton must have been aware they were meritless, the Members could have put Lockton to its summary judgment burden. Yet they never did so—the Members' DTSA fees request was the first time they asked the district court to look at the merits of the DTSA claims. The Members contend that the district court should not have attached any weight to their decision not to pursue summary judgment on claims they now contend rose to the level of misconduct. But they cite no authority for that point, and this argument does not persuade us that the district court erred in its discretionary choice not to award fees under the DTSA.

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[16]The Members' subjective-bad-faith theory would be a non-starter in at least one of the circuits that has considered the meaning of "bad faith" in the DTSA's fee-shifting provision: the Sixth Circuit has held that "a district court must find that a party's claim was meritless, that the party knew at a certain point that it was meritless and nonetheless maintained it, *and that the party brought or maintained the claim for some improper purpose*." Shepard & Assocs., Inc. v. Lokring Tech., LLC, No. 24-3348, 2025 WL 1420931, at *4 (6th Cir. May 16, 2025) (emphasis added). At most, the Members argue simply that Lockton must have been aware of the weakness of its DTSA claims.

VI.

The Members requested that we take judicial notice of various California judicial records. We took that request with the case. We did not find it necessary to consider these records in our analysis here. We thus deny the Members' request as moot.

VII.

Based on the foregoing, we affirm the district court's judgments as to the enforceability of the Agreements' choice-of-law provisions, the enforceability and breaches of the forum-selection clauses, and the enforceability of the customer-nonsolicitation covenants. We reverse the district court's judgments as to the Members' breaches of the operating agreement's 30-day notice provision and the Members' breaches of fiduciary duties, and direct that the district court enter judgment in Lockton's favor on these claims. We vacate the nominal damages awards, and direct that on remand the district court determine Lockton's actual damages attributable to the Members' breaches of the forum-selection clauses. We affirm the district court's awards of fees and costs. These cases are remanded for further proceedings consistent with this opinion.

ERICKSON, Circuit Judge, dissenting.

Federal courts are courts of limited not general jurisdiction. Parties may not confer subject matter jurisdiction upon a federal court by stipulation or agreement, nor can the lack of jurisdiction be waived by the parties or ignored by the court. Pac. Nat'l Ins. Co. v. Transport Ins. Co., 341 F.2d 514, 516 (8th Cir. 1965). Lockton's asserted jurisdictional basis is federal question. But nowhere in the Court's 51-page decision does the Court (nor did the district court below) identify, analyze, or resolve the merits of a "substantial" question of federal law. See Biscanin v. Merrill Lynch & Co., Inc., 407 F.3d 905, 906 (8th Cir. 2005) (quoting Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983) ("Federal-question jurisdiction exists when 'the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.'")); see also Wullschleger v. Royal Canin U.S.A., Inc., 953 F.3d 519, 522 (8th Cir. 2020) (finding federal jurisdiction is proper when the plaintiffs' "dependence on federal law permeates the allegations such that the [Missouri state law] claims cannot be adjudicated without reliance on and explication of federal law").

In describing the issue of jurisdiction in these cases as "easily discharge[able]," the Court overlooks the fact that at no time did Lockton ask the lower court or this Court to examine a "substantial" question of federal law. Instead, the Court finds sufficient the mere pleading of a federal cause of action, which if correct, will set the groundwork for lawyers to shoehorn cases with no substantial issue of federal law into federal court. Here, as the Court notes, Lockton alleged, among numerous state law claims, a single federal claim under the Defend Trade Secrets Act ("DTSA"). While there is no dispute that Lockton identified a federal cause of action, it is also indisputable that Lockton took no action on its federal claim, nor can the Court point to an issue in these cases that involved a substantial question of federal law. Unlike the Court, I believe jurisdiction premised on federal question requires there be a claim involving a "substantial" question of federal law—not merely the ability to identify a federal cause of action. With no substantial question of federal law present, I believe subject matter jurisdiction is lacking and the exercise of supplemental jurisdiction over Lockton's state law claims was improper.

An examination of the record reveals that Lockton's identification of the "DTSA" was simple gamesmanship to evade application of California law and the adverse rulings that were piling up in the California courts. Any doubt that this was the strategy was eliminated when the only action Lockton took related to its purported federal claim was to file a stipulation for dismissal with prejudice. By exercising jurisdiction over claims with no substantial federal issue, the Court endorses a jurisdictional ruse that I believe is untenable. Because there is no substantial federal question in these cases, the Court's conclusion that subject matter jurisdiction exists is unsustainable.

Moreover, even if federal jurisdiction was properly established, this case is more nuanced and complicated than the mere departure of two people who left Lockton to work for a competing company. In this highly competitive and lucrative industry, the ability to attract, recruit, and retain successful insurance producers is invaluable and has been the subject of extensive litigation—in the California state courts. The Court's opinion paints an incomplete picture by tending to describe Lockton as a victim, leaving the impression that Eric Kaufman's and Sallie Giblin's conduct was legally unjustified and morally deplorable. The Court's factual framing of the cases includes facts favorable to its position and ignores or minimizes the contrary evidence in the record. By taking this approach, the Court fails to fairly address principles of comity, dismisses the materially greater interests California has in the parties' dispute, disregards evidence of forum shopping, and overlooks Lockton's gamesmanship and inconsistent litigation positions. I respectfully dissent.

1. Federal Court Jurisdiction

In its complaints, Lockton alleged the district court had subject matter jurisdiction over a claim arising under the DTSA and supplemental jurisdiction over the other four claims. <u>See</u> 18 U.S.C. § 1836(c); 28 U.S.C. § 1331. While the Court contends that Lockton's DTSA claim is "adequately related" to its state law claims, it fails to explain how. Not only did Lockton not act on its DTSA claim and voluntarily dismiss the claim, but it also voluntarily dismissed all state law claims premised on the same operative allegations as the DTSA claim. Because federal courts are courts of limited jurisdiction, empowered to hear cases only as provided for under Article III of the Constitution or Congressional enactments, the existence of subject matter jurisdiction is a question of law subject to *de novo* review. <u>Great Lakes Gas Transmission Ltd. P'ship v. Essar Steel Minn. LLC</u>, 843 F.3d 325, 328 (8th Cir. 2016). Even if the parties have expended significant time, effort, and expense before the issue of subject matter jurisdiction is raised, this Court has "a duty to determine the existence of subject matter jurisdiction at any time, even on appeal." Id. at 334.

For purposes of federal question jurisdiction, an action "arises under federal law only when the plaintiff's statement of his own cause of action shows that it is based upon federal law." Vaden v. Discover Bank, 556 U.S. 49, 60 (2009) (cleaned up); see Dakota, Minn. & E. R.R. Corp. v. Schieffer, 711 F.3d 878, 880 (8th Cir. 2013) (explaining that when federal subject matter jurisdiction is based on ERISA but the evidence fails to establish the existence of an ERISA plan, the claim must be dismissed for lack of subject matter jurisdiction). In other words, subject matter jurisdiction is not established merely because a plaintiff can point to a federal statute. "[A] federal question must exist not in mere form but in substance, and not in mere assertion, but in essence and effect." Stanturf v. Sipes, 335 F.2d 224, 229 (8th Cir. 1964). The plaintiff bears the burden of asserting "facts that affirmatively and plausibly suggest that the pleader has the right he claims (here, the right to jurisdiction), rather than facts that are merely consistent with such a right." Stalley v. Catholic Health Initiatives, 509 F.3d 517, 521 (8th Cir. 2007). A complaint asserting state law claims may be characterized as "arising under" federal law "if the law governing the complaint is exclusively federal." Vaden, 556 U.S. at 61; cf. McNeill v. Franke, 171 F.3d 561, 564 (8th Cir. 1999) (quoting Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 808 (1986) (stating "the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction")). Lockton did not litigate a federal claim nor an issue of federal law in these actions.

The last substantive claim Lockton alleged in each of the complaints was its purported DTSA claim. Lockton did not conduct discovery or pursue relief related to its DTSA claim. The record shows that federal law was not the source for the causes of action Lockton sought to have adjudicated in federal court nor did Lockton's right to relief depend on resolution of a substantial question of federal law. After Lockton was unsuccessful in convincing the California courts to dismiss or stay the California actions, it sought a second bite at the apple in federal court.

To effectuate an end run around the adverse rulings in California, Lockton quickly moved for summary judgment in federal court, seeking a declaration that the forum selection clauses were enforceable as well as certification under Federal Rule of Civil Procedure 54(b) in order to obtain a judgment with claim preclusive effect. Lockton went so far as to ask the district court to enjoin the California suits.

Lockton's next move was to obtain a declaration that the choice-of-law provision and the restrictive covenants were valid and enforceable. That same day it filed a separate motion seeking summary judgment on portions of its claims for breach of contract and fiduciary duty. At no time did Lockton pursue relief under federal law or any allegation related to its claim involving improper access, use, or disclosure of a trade secret. Instead, the only action it ever took on the federal claim was to file a stipulation for dismissal with prejudice. (Kaufman Dist. Ct. Dkt. 377; Giblin Dist. Ct. Dkt. 386).

Consistent with the proceedings below, on appeal Lockton identified its "main issue" as "upholding the enforceability of the non-solicitation covenants and the choice-of-law and forum-selection clauses that govern the enforceability of those covenants." Red Br. p. i. Lockton reiterated in its statement of the case that it prevailed "on its most important claims." Id. at p. 17. It identified those "most important claims" as the "three foundational contract rights," consisting of the forum selection clause, the choice-of-law provision, and the customer non-solicitation clauses. Id. at 17-18. Again, in its argument section, Lockton maintained that the district court correctly upheld the parties' "key contractual obligations." Id. at 27. There is no mention of any issue of federal claim, let alone a substantial question of federal law.

The "substantiality inquiry" looks "to the importance of the issue to the federal system as a whole." Gunn v. Minton, 568 U.S. 251, 260 (2013). Federal jurisdiction is proper only if the federal issue surrounding the state law claims is "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." Id. at 258.

None of Lockton's state law claims implicated a disputed and substantial federal issue. See Boyd v. Deadwood Tobacco Co., 178 F.4th 1132, 1146 (8th Cir. 2026) (noting the validity and interpretation of a forum selection clause is a question of state law). The claims Lockton litigated in the district court were purely state law matters. Lockton's DTSA claim was a ruse to get into federal court and circumvent the California court's rulings by having the same claims by the same parties adjudicated in Missouri federal court.

Congress did not intend to provide a federal forum for breach of contract cases. Great Lakes Gas Transmission Ltd. P'ship, 843 F.3d at 334. Yet, that is precisely the nature of these cases. Because none of the claims litigated in these actions involve a substantial federal question and no other basis for federal jurisdiction was asserted, subject matter jurisdiction is lacking. Without subject matter jurisdiction, the district court and this Court lack the authority to decide the parties' state law claims. I would vacate the judgments of the district court and order the dismissal of these cases for lack of jurisdiction.[17]

2. Forum Shopping and Lockton's Inconsistent and Irreconcilable Litigation Positions

For years now, Lockton has endeavored to find a way to hamper the mobility of those who sign an agreement to work for it. Until April 30, 2016, Lockton's member agreements provided that all disputes would be governed by Illinois law and any enforcement action must be brought in federal court in Chicago, Illinois, or

[17]The lack of federal court jurisdiction does not necessarily obviate the contractual choice-of-law or forum selection clause provisions. The agreements set forth two separate forums in Missouri for dispute resolution: federal court in Kansas City, Missouri, or the Circuit Court of Jackson County, Missouri. Rather than attempt to manufacture federal question jurisdiction and to avoid the appearance of forum shopping, consistent with the terms of the agreements, Lockton could have sought to have the very same *state law* claims it wanted adjudicated in these actions adjudicated in Missouri state court.

the circuit court in Cook County, Illinois. At the time, Lockton selected Illinois over Missouri, because it had encountered challenges enforcing its restrictive covenants in the Missouri courts. After Lockton became unsatisfied with application of Illinois law, Lockton launched an effort to change Missouri law in its favor. As acknowledged by the Court, Lockton convinced the Missouri General Assembly to change Missouri law to make restrictive covenants acceptable and enforcement widely available. After successfully changing Missouri law, Lockton revised its member agreements to designate Missouri as the governing law and forum for disputes.

Lockton's efforts to obtain a strategic advantage don't end there. Its litigation conduct demonstrates patent forum shopping. Evidence developed in the record shows that when Lockton hired an employee from a competing insurance brokerage firm, specifically Aon Risk Insurance Services, Lockton commenced suit in California against Aon on behalf of the employee and sought a declaration that Aon's Illinois forum selection and choice-of-law provisions were unenforceable against the California citizen who it hired to work for it. (Giblin Dist. Ct. Dckt. 84-4). Of note, Lockton contended that it ought to be able to "fully compet[e] in the marketplace by hiring former employees from Aon and conducting business with the clients who would otherwise exercise their free will to choose Lockton as their insurance broker." Id. at 25. Even more, Lockton claimed that "[e]mployee mobility is an essential and fundamental California public policy" and attempting to enforce restrictive employee covenants is "unlawful behavior." Id. at 3-4. Lockton asserted Aon's Illinois choice-of-law and forum selection provisions were a "scheme" to improperly "circumvent" California's public policy and court decisions, "make a mockery of California fundamental public policy," trap[] California employees, and amounts to "unethical, oppressive, and unscrupulous" behavior. Id.

Yet, in these two actions involving former Lockton producers, Lockton claims just the opposite. Lockton seeks to evade California law and the California courts. The reason is simple: unlike the Missouri district court, California courts have repeatedly declined to enforce Lockton's Missouri forum selection clause against

California citizens living and working in California. See Request for Judicial Notice (compiling five California cases involving former Lockton employees that found Lockton's forum selection provisions unenforceable but which this Court declined to accept and consider because it "did not find it necessary to consider these records in our analysis here"); see also Giblin Dist. Ct. Dckt. 63-8 (California Superior Court order denying Lockton's motion to dismiss and/or stay the California action and finding Lockton's restrictive covenants "appear to be unenforceable restraints on trade pursuant to California law"); Kaufman Dist. Ct. Dkt 246-14 (California Superior Court order denying Lockton's motion to dismiss, finding Lockton failed to show enforcement of the mandatory forum selection clause will not in any way diminish Kaufman's unwaivable statutory rights and noting "Lockton made no effort to create lawful covenants," as the covenants "extend to anywhere Kaufman could reasonably conduct business with no geographic limitation"). In its decision, the Court entirely ignores evidence in the record demonstrating Lockton's conflicting litigation positions, pertinent decisions in the California proceedings on the very issues before the Court, and Lockton's scheme to litigate in California only when it wants to.

As noted earlier, the state law issues that Lockton sought to have adjudicated in federal court have been and are currently being extensively litigated in California. This is not a situation in which the legal landscape has evolved over time. Each of the referenced actions were filed by Lockton within the same year—Lockton filed suit on January 12, 2022, against Aon in California, which was not in compliance with the employee's contractual Illinois choice-of-law/forum selection provisions. Lockton then turned around and filed the instant action in Missouri federal court against Kaufman on July 20, 2022—after Kaufman had commenced suit in California—and against Giblin on November 30, 2022. Each action pertains to the exercise of jurisdiction over contractual provisions pertaining to California citizens living and working in California who were servicing almost exclusively California clients while working in the company's California offices. Although replete with examples in the record, neither the district court nor the Court pay any attention to principles of federalism or comity.

While failing to consider principles of federalism and comity, to justify application of Missouri law and venue in Missouri federal court, the Court pays great attention to the "millions" Kaufman and Giblin earned while working at Lockton and the purported ownership interests that they obtained through the agreements. Contrary to the district court's portrayal, both Kaufman and Giblin have asserted that the "equity" and "ownership" interests that they received by way of the agreements with Lockton are a sham. The record contains evidence disavowing Lockton's claim that in exchange for signing these agreements, producers obtained valuable ownership interests in the company. For instance, Kaufman submitted a declaration stating he was repeatedly told that the Lockton family "owns" Lockton. Kaufman Dist. Ct. Dkt. 246-3. Lockton disclosed that the Lockton family owns 97.7% of Lockton, Inc. Id. Kaufman also introduced letters from Lockton's associate general counsel informing Kaufman that he had negative capital account balances. Id. Lockton told Kaufman that his final negative account balance was $441,707.623 and after offsets he actually owed Lockton $351,099.61. Id. at Exh. 3. Lockton's associate counsel reiterated in a subsequent letter that Kaufman was indebted to Lockton in the amount of $351,099.61 plus interest accruing as of October 1, 2022. Id. at Exh. 4.

The Court, in discounting the volume of contacts California has to the parties' dispute, finds that California's interests are not materially greater than Missouri's interest in protecting "Missouri businesses" from what it views as unfair competition, although the disputes in these cases center on conduct occurring in brokerage offices operating and transacting business almost exclusively in California. This Court sanctions Lockton's forum shopping strategy of pursuing relief in California when it hires a competitor's employee who is subject to a restrictive covenant but turning around and pursuing relief in Missouri district court advocating for the application of Missouri law when a producer leaves Lockton. Employee mobility as to insurance producers working in California should not depend on whether a person leaves Lockton or goes to work for Lockton.

A unifying feature of the Supreme Court's abstention cases is they balance underlying principles of equity, comity, and federalism. When there are concurrent actions seeking to litigate the same issues, the first-filed rule is "dominant" in determining which federal court should proceed, and a "relevant" factor when considering whether a federal court should defer to a pending state court action. Smart v. Sunshine Potato Flakes, L.L.C., 307 F.3d 684, 687 (8th Cir. 2002). Even if Lockton had properly raised a federal issue, under the doctrine recognized in Colorado River, a federal court, in exceptional circumstances, may defer to a concurrent state court case when parallel state and federal actions exist. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 818 (1976). Here, the concurrent federal and state actions involve the same operative facts and the same parties. The "millions" Kaufman and Giblin earned, which the Court emphasizes, occurred while they were residing in California, transacting business in California, and servicing almost exclusively California-based clients. Kaufman and Giblin asserted they travelled to Missouri no more than a handful of times over the 15 to 16 years they worked at Lockton and undoubtedly interacted with Lockton's Missouri-based executives in California far more often than in Missouri. Further, the vexatious and contrived nature of the purported federal claim strongly favors abstention, as does the need to safeguard the fundamental principles of equity, comity, and federalism.

In short, there are many aspects of these cases that the Court overlooks in its opinion. Exceptional circumstances contemplated by the creation of the Colorado River doctrine have been established in these cases. They include: California's extensive and ongoing involvement in litigation over the same state law issues pertaining to California citizens, like Kaufman and Giblin; Lockton's decision to avail itself of the jurisdiction of the California courts to adjudicate the rights of a former competitor's employee and advocate for exactly the opposite positions it took in these cases; Kaufman's first-filed action in California, and the extensive and materially greater interests California has compared to the limited conduct in Missouri. Under the circumstances, if Lockton had been able to properly establish federal court jurisdiction, I believe the district court and this Court have wrongly disregarded and ignored entirely the concurrent pending California proceedings and the materially greater interests that California has in the parties' disputes.