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EXP07

FILED
KING COUNTY, WASHINGTON
AUG 20 2018
SUPERIOR COURT CLERK

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

18-2-20766-5

APPLEBEE'S RESTAURANTS LLC
ASSURANCE OF
DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Eric S. Newman, Assistant Attorney General, files this Assurance of Discontinuance (AOD) pursuant RCW 19.86.100.

I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into Applebee's Restaurants LLC ("Applebee's") relating to its franchise agreement provision that placed restrictions on the hiring of certain franchisor and franchisee employees.

1.2 Applebee's is a Delaware corporation with its principal office or place of business in Glendale, California. Applebee's enters into franchise agreements with franchisees who operate independently owned and managed restaurants under the Applebee's brand name.

1.3 Applebee's includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.

1 **II. INVESTIGATION**

2 2.1 Applebee's does not currently operate any restaurants in Washington.
3 Independent franchise operators own and operate 42 branded Applebee's restaurants.

4 2.2 Applebee's previously included language in its franchise agreements that
5 restricted a franchisee's ability to solicit or hire certain franchisor or franchisee employees
6 ("no-poaching provision"). Specifically, the standard franchise agreement for Applebee's
7 stated that "neither Franchisor nor Franchisee shall employ or seek to employ in a managerial
8 position (i.e., in a position at a pay grade at or above that of Assistant Restaurant Manager or
9 Kitchen Manager), directly or indirectly, any person who is at the time or was at any time
10 during the prior six (6) months employed by the other party or any of its subsidiaries or
11 affiliates, or by any franchisee in the System."

12 2.3 A no-poaching provision restricted franchisees from hiring both employees
13 from a competing franchisee and from Applebee's corporate-owned stores as well.

14 2.4 The Attorney General asserts that the foregoing conduct constitutes a contract,
15 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
16 RCW 19.86.030.

17 2.5 Applebee's expressly denies the conduct described in the above constitutes a
18 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
19 Protection Act, RCW 19.86.030, or any other law, and expressly deny they have engaged in
20 conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Applebee's
21 enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100,
22 neither this AOD nor its terms shall be construed as an admission of law, fact, liability,
23 misconduct, or wrongdoing on the part of Applebee's.

24 **III. ASSURANCE OF DISCONTINUANCE**

25 3.1 Subject to paragraph 2.5 above, Applebee's agrees:
26

1 3.1.1. It will no longer include no-poach provisions in any of its future
2 franchise agreements nationwide;

3 3.1.2. It will no longer enforce no-poaching provisions in any of its existing
4 franchise agreements nationwide, and will not seek to intervene or defend in any way the
5 legality of any no-poach provision in any litigation in which a franchisee may claim third-party
6 beneficiary status rights to enforce an existing no-poach provision;

7 3.1.3. It will notify all of its franchise operators in Washington of the entry of
8 this AOD and provide them a copy;

9 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
10 franchise operator in Washington to enforce any existing no-poach provision.

11 3.2 Within 120 days of entry of this AOD, Applebee's will endeavor to amend all
12 existing franchise agreements with Applebee's franchise operators in Washington to remove
13 any no-poaching provisions in these operators' existing franchise agreements. . If any
14 franchise operator is unwilling to consent to the change to its franchise agreement, prior to the
15 120-day deadline, Applebee's shall provide the name and address of the resisting franchisee
16 and the name and address of the franchisee's registered agent to the Office of the Attorney
17 General. This provision shall be deemed satisfied with regard to each Washington franchise
18 operator by either the amendment of such franchise operator's franchise agreement(s) to
19 remove no-poaching provisions or by Applebee's provision of the name and address of such
20 franchise operator and such franchise operator's registered agent to the Office of the Attorney
21 General.

22
23 3.3 As they come up for either renewal or renegotiation during the ordinary course
24 of business, Applebee's will amend all of its existing franchise agreements on a nationwide
25 basis to remove any no-poach provision.
26

1 3.4 Within 30 days of the conclusion of the time periods referenced in this section
2 III, Applebee's will submit a declaration to the Attorney General's Office signed under
3 penalty of perjury stating that paragraphs 3.1 and 3.2 of this agreement have been satisfied, or,
4 if circumstances beyond Applebee's control prevent satisfaction of any paragraph within the
5 specified time frame, Applebee's will describe its efforts to satisfy the paragraph's
6 requirements and the relevant extenuating circumstances.

7 **IV. ADDITIONAL PROVISIONS**

8 4.1 This AOD is binding on, and applies to Applebee's, including each of its
9 respective directors, officers, managers, agents acting within the scope of their agency, and
10 employees, as well as their respective successors and assigns, controlled subsidiaries,
11 divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which
12 Applebee's may now or hereafter act with respect to the conduct alleged in this AOD.
13

14 4.2 This is a voluntary agreement and it shall not be construed as an admission of
15 law, fact, liability, misconduct, or wrongdoing on the part of Applebee's or any of its
16 respective directors, officers, managers, agents acting within the scope of their agency, and
17 employees, as well as their respective successors and assigns, controlled subsidiaries,
18 divisions, groups, affiliates, partnerships, and joint ventures, or other entities. By entering into
19 this AOD, Applebee's neither agrees nor concedes that the claims, allegations and/or causes of
20 action which have or could have been asserted by the Attorney General have merit and
21 Applebee's expressly denies any such claims, allegations, and/or causes of action. However,
22 proof of failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW
23 19.86.030, thereby placing upon the violator the burden of defending against imposition by the
24 Court of injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up
25 to \$2,000.00 per violation.
26

1 4.3 Applebee's will not, nor will it authorize any of its officers, employees,
2 representatives, or agents to, state or otherwise contend that the State of Washington or the
3 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
4 Paragraph 2.2 with respect to the No-Poach Provision in Applebee's franchise agreement..

5 4.4 This AOD may not be used by any third party in any other proceeding and is not
6 intended, and should not be construed, as an admission of liability by Applebee's.


7 4.5 This AOD resolves all issues raised by the State of Washington and the Antitrust
8 Division of the Attorney General's Office under the Consumer Protection Act and any other
9 related statutes pertaining to the acts set forth in paragraph 2.1 - 2.3 above that may have occurred
10 before the date of entry of this AOD and concludes the investigation thereof. Subject to
11 paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
12 Office shall not file suit or take any further investigative or enforcement action with respect to the
13 acts set forth above that occurred before the date of entry of this AOD.

14
15 APPROVED ON this _____ day of 8/20, 2018.

16 HENRY H. JUDSON

17 AUG 20 2018

18 COURT COMMISSIONER

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20 JUDGE/COURT COMMISSIONER

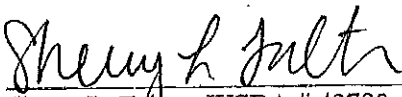
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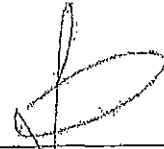
2 ROBERT W. FERGUSON
3 Attorney General

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6 Chief Litigation Counsel
7 Antitrust Division
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