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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

(GOSH ENTERPRISES, INC.)

NO. 19-2-24762-2

GOSH ENTERPRISES, INC.
ASSURANCE OF
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (AOD) under RCW 19.86.100.

I. PARTIES

1.1 In January 2019, the Attorney General initiated an investigation into Gosh Enterprises, Inc. (Gosh) relating to certain provisions in its franchise agreement.

1.2 Gosh is an Ohio corporation with its principal office or place of business in Columbus, Ohio. Gosh is a franchisor, and its corporate and franchisee operated restaurants are in the business of offering cheesesteak and other grilled submarine sandwiches, among other food products, for sale to consumers under the brand CHARLEYS.

1.3 For the purposes of this AOD, Gosh includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries and affiliates, and predecessor franchisor entities.

1 **II. INVESTIGATION**

2 2.1 There are eight (8) CHARLEYS restaurants located in the State of Washington
3 as of the date hereof. Six (6) of these restaurants are owned and operated by franchisees and two
4 (2) are owned and operated by Gosh.

5 2.2 For years, some franchise agreements entered into between Gosh and its
6 franchisees have provided that franchisees subject to such agreements may not solicit employees
7 of Gosh or other CHARLEYS franchisees (the No-Solicitation Provision) or hire employees of
8 Gosh or other CHARLEYS franchisees without permission (the No-Hire Provision).

9 2.3 The Attorney General asserts that the foregoing conduct of Gosh and its
10 franchisees constitutes a contract, combination, or conspiracy in restraint of trade in violation of
11 the Consumer Protection Act, RCW 19.86.030.

12 2.4 Gosh and its current and former franchisees expressly deny the conduct described
13 above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the
14 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly deny that they have
15 engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade,
16 or violates any other law or regulation. Gosh enters into this AOD to avoid protracted and
17 expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be
18 construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Gosh
19 or any of its current or former franchisees.

20 **III. ASSURANCE OF DISCONTINUANCE**

21 3.1 Subject to paragraph 2.4 above, Gosh agrees:

22 3.1.1. It will no longer include the No-Solicitation Provision or the No-Hire
23 Provision in any of its future franchise agreements in the United States after the date of this
24 AOD;

25 3.1.2. It will not enforce the No-Solicitation Provision or the No-Hire Provision
26 in any of its existing franchise agreements in the United States, and will not seek to intervene or

1 defend in any action brought by the Attorney General's Office against a current franchisee in
2 Washington to defend an existing No-Solicitation Provision or No-Hire Provision, provided such
3 action is brought in accordance with, and consistent with, the provisions of this AOD;

4 3.1.3. It will notify all of its current franchisees in the United States with
5 franchise agreements that include the No-Solicitation Provision or the No-Hire Provision of the
6 entry of this AOD and make a copy available to them;

7 3.1.4. If, after the twenty-one (21) day period set forth in Paragraph 3.2 below,
8 Gosh becomes aware of a CHARLEYS franchisee with a restaurant located in the State of
9 Washington attempting to enforce the No-Solicitation Provision or No-Hire Provision, and Gosh
10 is unable to persuade such franchisee to desist from enforcing or attempting to enforce such
11 provision, Gosh will notify the Attorney General's Office.

12 3.2 Within twenty-on (21) days of entry of this AOD, Gosh will send a letter to all of
13 its current franchisees with CHARLEYS restaurant locations in the State of Washington that
14 operate under franchise agreements that include the No-Solicitation Provision or the No-Hire
15 Provision (Affected Washington Franchisees). The letter will state that the Attorney General has
16 requested that the existing No-Solicitation Provision and No-Hire Provision be removed from
17 existing franchise agreements. The letter Gosh will send to its Affected Washington Franchisees
18 will be substantially in the form of the letter attached hereto as Exhibit A. That letter will enclose
19 the proposed amendment that Gosh is requesting that its Affected Washington Franchisees agree
20 to, which amendment will remove the No-Solicitation Provision and the No-Hire Provision. The
21 proposed amendment that Gosh will include with each letter will be substantially in the form of
22 the amendment attached hereto as Exhibit B.

23 3.3 In addition to sending the letter to Affected Washington Franchisees pursuant to
24 Paragraph 3.2 above, Gosh will respond promptly to any inquiries from such franchisees
25 regarding the request to amend the terms of the franchise agreement and will encourage its
26 Affected Washington Franchisees to sign the proposed amendment. However, for the avoidance

1 4.2 This is a voluntary agreement and it shall not be construed as an admission of
2 law, fact, liability, misconduct, or wrongdoing on the part of Gosh or any of its current or former
3 franchisees. Gosh and its current and former franchisees neither agree nor concede that the
4 claims, allegations and/or causes of action which have or could have been asserted by the
5 Attorney General have merit and Gosh and its current and former franchisees expressly deny
6 any such claims, allegations, and/or causes of action. However, proof of failure to comply with
7 this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon
8 the violator the burden of defending against imposition by the Court of injunctions, restitution,
9 costs and reasonable attorney's fees, and appropriate civil penalties under the Consumer
10 Protection Act.

11 4.3 Gosh will not, nor will it authorize any of its officers, employees, representatives,
12 or agents to state or otherwise contend that the State of Washington or the Attorney General has
13 approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to
14 the No-Solicitation Provision or the No-Hire Provision in Gosh's franchise agreement.

15 4.4 This AOD need not be disclosed in any franchise disclosure document issued by
16 Gosh in the state of Washington after the date of this AOD. Gosh shall be responsible for
17 complying with its registration obligations in all other jurisdictions.

18 4.5 This AOD resolves all issues raised by the State of Washington and the Antitrust
19 Division of the Attorney General's Office under the Consumer Protection Act and any other related
20 statutes pertaining to the acts of Gosh and its current and former franchisees as set forth in Paragraph
21 2.1 – 2.3 above that may have occurred before the date of entry of this AOD, or that may occur
22 between the date of entry of this AOD and the conclusion of the one hundred and twenty (120) day
23 period identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to
24 Paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office
25 shall not file suit or take any further investigative or enforcement action with respect to the acts set
26 forth above that occurred before the date of entry of this AOD, or that occurs between the date of

1 entry of this AOD and the conclusion of the one hundred and twenty (120) day period identified in
2 Paragraph 3.3 above, against Gosh or any of its Affected Washington Franchisees that sign the
3 proposed amendment described in Section III, any of Gosh's other current or former franchisees in
4 the State of Washington, or any of Gosh's current or former franchisees located outside the State of
5 Washington. The Attorney General reserves the right to take further investigative or enforcement
6 action against any current franchisee in the State of Washington identified pursuant to Paragraph
7 3.1.4 or any Affected Washington Franchisee that does not sign the proposed amendment described
8 in Section III.

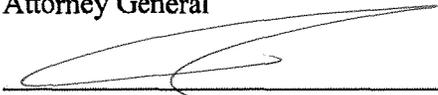
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APPROVED ON this _____ day of _____, 2019.

JUDGE/COURT COMMISSIONER

1 Presented by:

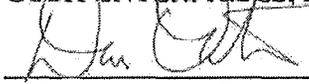
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3 Attorney General



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7 Office of the Attorney General
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9 Seattle, WA 98104
10 (206) 442-4499
11 Rahul.Rao@atg.wa.gov

12 *Attorneys for State of Washington*

13 Agreed to and approved for entry by:
14 GOSH ENTERPRISES, INC.

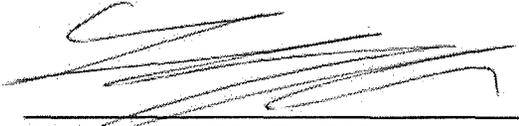


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Attorneys for Gosh Enterprises, Inc.



GOSH ENTERPRISES, INC.

By: Charley M. Shrn

Its: CEO

EXHIBIT A

[insert Charley's Letterhead]

Franchisee Name, Address, City, State, Zip Code

Re: Washington AG No-Poaching Provisions Investigation

The Attorney General for the State of Washington (the "Washington AG") has undertaken an investigation into certain clauses in franchise agreements that restrict hiring or solicitation of employees, sometimes referred to as a "no-poaching" provisions. Earlier this year, as part of that investigation, the Washington AG sent a Civil Investigative Demand to us, as it had to a number of other franchisors who sell franchises in the State of Washington.

As you may know, under Section 9.06 of your franchise agreements, you agreed that you would not "recruit or hire any person who is an employee of [us] or of any Charley's Restaurant operated by us, our Affiliates or another franchisee of ours without obtaining the employer's consent." We do not agree that this provision, or its enforcement, is unlawful in any way. However, to resolve the matter with the Washington AG and avoid costly and protracted litigation, we have agreed to not enforce this provision in existing franchise agreements with any Charley's franchisee on a nationwide basis, and to not include the clause in any new Charley's franchise agreements that are signed after the date of our agreement with the Washington AG.

The Washington AG has also required that we suggest that you enter into the attached amendment to your franchise agreements to formally remove the relevant language from Section 9.06. The Washington AG has agreed that, to the extent you sign the amendment, it will not assert any claims against you for conduct relating to the relevant language in Section 9.06 of the franchise agreement that occurred up to and including the date you sign the amendment. Accordingly, we strongly encourage that you sign each of the enclosed copies and return them to us. We will return one fully executed amendment to your attention.

Feel free to call me at _____ if you have any questions or would like to discuss.

Sincerely,

[signatory]

EXHIBIT B

**AMENDMENT TO
GOSH ENTERPRISES, INC. FRANCHISE AGREEMENT(S)**

The Franchise Agreement(s) for the Charley's franchised restaurant(s) in the State of Washington between Gosh Enterprises, Inc. ("Gosh") and the undersigned franchisee ("Franchisee") shall be amended in accordance with the following terms.

1. Background. Gosh and Franchisee are parties to the Franchise Agreement(s) listed on Exhibit A hereto and incorporated herein by reference (as hereby amended, the "Franchise Agreements"), and Franchisee operates a franchised restaurant in the State of Washington under each Franchise Agreement. Gosh has determined that it is in the best interests of the franchise system to not enforce the last sentence of Section 9.06 of the Franchise Agreement(s). The purpose of this Amendment to the Franchise Agreement(s) is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Franchise Agreement(s).

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, Franchisee and Gosh agree that the last sentence of Section 9.06 is hereby deleted from the Franchise Agreement(s) and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Franchise Agreement(s) shall remain in full force and effect. This document is an amendment to, and forms a part of, the Franchise Agreement(s). If there is an inconsistency between this Amendment and the Franchise Agreement(s), the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this Amendment. This Amendment inures to the benefit of the parties hereto and their respective successors and assigns and will be binding upon the parties hereto and each of their respective successors and assigns. This Amendment may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement effective as _____, 2019 (the "Effective Date").

GOSH ENTERPRISES, INC.	[FRANCHISEE'S NAME]
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____