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KING COUNTY WASHINGTON

SEP 09 2019

DEPARTMENT OF
JUDICIAL ADMINISTRATION

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(FIGARO'S ITALIAN PIZZA, INC.)

NO. 19-2-23498-9SEA

FIGARO'S ITALIAN PIZZA, INC.
ASSURANCE OF
DISCONTINUANCE

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

I. PARTIES

1.1 In August 2019, the Attorney General initiated an investigation into Figaro's Italian Pizza, Inc. (Figaro's) relating to its hiring practices.

1.2 Figaro's is an Oregon corporation with its principal office or place of business in Oregon. Figaro's is in the business of franchising stores that offer a limited menu of pizza, calzones, and other food and beverage products.

1.3 For the purposes of this AOD, Figaro'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.

II. INVESTIGATION

2.1 Figaro's has three stores in Washington. Three of these stores are owned and operated by franchisees and none are owned and operated by Figaro's.

1 For years, Figaro's has included language in its franchise agreements that restricted a franchisee's
2 ability to solicit or hire workers from another Figaro's stores ("no-poaching provision").

3 Specifically, the standard Figaro's franchise agreement stated that:

4 "You [the franchisee] will assure that you and your owners, directors, officers,
5 partners, shareholders, members, employees, consultants, and agents, during the
6 term of this Agreement and for a period of two years after expiration or termination
7 of this Agreement do not:

- 8 A. divert or directly or indirectly attempt to divert any of our
9 business or any of our customers to any competing
10 establishment;
- 11 B. employ or seek to employ any person we employ or any
12 other person who is at that time operating or employed by
13 or at any of our franchises or otherwise directly or indirectly
14 induce these persons to leave their employment; nor
- 15 C. do or perform, directly or indirectly, any other act injurious
16 or prejudicial to our goodwill associated with the Marks and
17 System.

18 If, for any reason, any provision set forth in Sections 17.2 or 17.3 is determined to
19 exceed any lawful scope or limit as to duration, geographic coverage, or otherwise,
20 it is agreed that the provision will nevertheless be binding to the full scope or limit
21 allowed by law or by a court of law. The duration, geographic coverage and scope
22 allowable by law or court of law will apply to this Agreement.

23 A no-poaching provision restricted franchisees from hiring both employees from a competing
24 franchisee and from Figaro's corporate-owned stores.

25 2.2 The Attorney General asserts that the foregoing conduct constitutes a contract,
26 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW
19.86.030.

27 2.3 Figaro's expressly denies the conduct described above constitutes a contract,
28 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW
29 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes a
30 contract, combination, or conspiracy in restraint of trade. Figaro's enters into this AOD to avoid
31 protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms

1 shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part
2 of Figaro's.

3 III. ASSURANCE OF DISCONTINUANCE

4 3.1 Subject to paragraph 2.4 above, Figaro's agrees:

5 3.1.1. It will no longer include no-poach provisions in any of its future franchise
6 agreements;

7 3.1.2. It will no longer enforce no-poaching provisions in any of its existing
8 franchise agreements, and will not seek to intervene or defend in any way the legality of any no-
9 poach provision in any litigation in which a franchisee may claim third-party beneficiary status
10 rights to enforce an existing no-poach provision;

11 3.1.3. It will notify all of its franchisees of the entry of this AOD and provide
12 them a copy;

13 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
14 franchisee in Washington to enforce any existing no-poach provision.

15 3.2 Within 60 days of entry of this AOD, Figaro's will have amended all existing
16 franchise agreements with entities in Washington to remove any no-poaching provisions in its
17 existing franchise agreements. If any franchise owner is unwilling to consent to the change to its
18 franchise agreement, prior to the 60-day deadline, Figaro's shall provide the name and address of
19 the resisting franchisee and the name and address of the franchisee's registered agent to the Office
20 of the Attorney General.

21 3.3 As they come up for either renewal or renegotiation during the ordinary course of
22 business, Figaro's will amend all of its existing franchise agreements on a nationwide basis to
23 remove any no-poach provision.

24 3.4 Within 30 days of the conclusion of the time periods referenced in this section III,
25 Figaro's will submit a declaration to the Attorney General's Office signed under penalty of
26 perjury stating that all provisions of this agreement have been satisfied.

1 **IV. ADDITIONAL PROVISIONS**

2 4.1 This AOD is binding on, and applies to Figaro's, including each of its respective
3 directors, officers, managers, agents acting within the scope of their agency, and employees, as
4 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,
5 affiliates, partnerships, and joint ventures, or other entities through which Figaro's may now or
6 hereafter act with respect to the conduct alleged in this AOD.

7 4.2 This is a voluntary agreement and it shall not be construed as an admission of law,
8 fact, liability, misconduct, or wrongdoing on the part of Figaro's. By entering into this AOD,
9 Figaro's neither agrees nor concedes that the claims, allegations and/or causes of action which
10 have or could have been asserted by the Attorney General have merit and Figaro's expressly
11 denies any such claims, allegations, and/or causes of action. However, proof of failure to comply
12 with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing
13 upon the violator the burden of defending against imposition by the Court of injunctions,
14 restitution, costs and reasonable attorney's fees, and appropriate civil penalties under the
15 Consumer Protection Act.

16 4.3 Figaro's will not, nor will it authorize any of its officers, employees, representatives,
17 or agents to state or otherwise contend that the State of Washington or the Attorney General has
18 approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to the
19 No-Poach Provision in Figaro's franchise agreement.

20 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
21 Division of the Attorney General's Office under the Consumer Protection Act and any other related
22 statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred before
23 the date of entry of this AOD and concludes the investigation thereof. Subject to paragraph 4.2, the
24 State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or
25 take any further investigative or enforcement action with respect to the acts set forth above that
26 occurred before the date of entry of this AOD.

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APPROVED ON this _____ day of September, 2019.

JUDGE/COURT COMMISSIONER

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