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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO
POACHING PROVISIONS

(GENERAL NUTRITION CORP.
d/b/a GNC)

NO. **18-2-57774-8 SEA**

GENERAL NUTRITION CORP.
d/b/a/ GNC
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”) pursuant to RCW 19.86.100.

I. PARTIES

1.1 In September 2018, the Attorney General issued a civil investigative demand to General Nutrition Corp. d/b/a GNC (“GNC”) relating to certain provisions in its franchise agreements.

1.2 GNC is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. GNC is a global specialty retailer of health, wellness and performance products, including protein, performance supplements, weight management supplements, vitamins, herbs and greens, wellness supplements, health and beauty, food and drink, and other general merchandise.

1.3 Any reference herein to GNC includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its assigns, controlled

1 subsidiaries, sister companies, and predecessor franchisor entities. The definition of GNC for
2 purposes of this AOD does not include GNC franchisees.

3 II. INVESTIGATION

4 2.1 GNC currently has 75 stores in Washington. Fifteen of these stores are owned
5 and operated by GNC franchisees and 60 are owned and operated by GNC.

6 2.2 For years, the franchise agreements entered between GNC and its franchisees
7 have contained a non-solicitation provision that provides:

8 Franchisee shall not, directly or indirectly, for itself, or through, on behalf of, or
9 in conjunction with any other person or Entity: ... (iii) employ or seek to employ
10 any person who is at that time employed by Franchisor, an Affiliate of Franchisor,
or any other franchisee of Franchisor, or otherwise directly or indirectly induce
such person to leave his or her employment

11 (The "Non-Solicitation Provision.")

12 2.3 To the best of GNC's knowledge and belief, the aforementioned provision has
13 not been enforced, at least within the past five years, if ever.

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 GNC expressly denies the conduct described above constitutes a contract,
18 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
19 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that
20 constitutes a contract, combination, or conspiracy in restraint of trade because, among other
21 reasons, it has not routinely enforced the Non-Solicitation Provision in the State of
22 Washington.

23 2.6 GNC enters into this AOD to formalize its practice of non-enforcement of the
24 Non-Solicitation Provision, to memorialize the understanding of the parties, and because GNC
25 has determined that the Non-Solicitation Provision is not beneficial to the franchise
26 relationship or to GNC at this time.

1 monetary or otherwise – to induce them to sign the proposed amendment, or take any adverse
2 action against such franchisees if they refuse to do so. A decision by a franchisee not to amend
3 its franchise agreement, or not to do so within 120 days of this AOD, shall not constitute a
4 breach by GNC of its obligations under this AOD or a failure by GNC to comply with this
5 AOD.

6 3.3 As they come up for either renewal or renegotiation during the ordinary course
7 of business, GNC will amend all of its existing franchise agreements on a nationwide basis to
8 remove the Non-Solicitation Provision, unless expressly prohibited by law.

9 3.4 Within 30 days of the conclusion of the time periods referenced in this section
10 III, GNC will submit a declaration to the Attorney General's Office signed under penalty of
11 perjury stating that all the provisions of this agreement have been satisfied, or, if circumstances
12 beyond GNC's control prevent satisfaction of any paragraph within the specified time frame,
13 GNC will describe its efforts to satisfy the requirements of the AOD and relevant extenuating
14 circumstances.

15 IV. ADDITIONAL PROVISIONS

16 4.1 This AOD is binding on and applies to GNC.

17 4.2 No provision in this AOD shall restrain GNC from any additional communications
18 with its franchisees regarding the AOD.

19 4.3 This is a voluntary agreement and it shall not be construed as an admission of law,
20 fact, liability, misconduct, or wrongdoing on the part of GNC, and may not be used for any of
21 those purposes by the parties to this AOD. By entering into this AOD, GNC does not agree or
22 concede that the claims, allegations and/or causes of action which could have been asserted by
23 the Attorney General have merit, and GNC expressly denies any such claims, allegations,
24 and/or causes of action. However, proof of failure to comply with this AOD shall be *prima*
25 *facie* evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden
26 of defending against imposition by the Court of injunctions, restitution, costs and reasonable
attorney's fees, and civil penalties of up to \$2,000.00 per violation.

1 4.4 GNC will not, nor will it authorize any of its officers, employees, representatives,
2 or agents to state or otherwise contend that the State of Washington or the Attorney General has
3 approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to
4 the Non-Solicitation Provision in GNC's franchise agreement.

5 4.5 This AOD resolves all issues raised by the State of Washington and the Antitrust
6 Division of the Attorney General's Office under the Consumer Protection Act and any other
7 related statutes pertaining to the acts set forth in Paragraphs 2.1 – 2.3 above that may have
8 occurred before the date of entry of this AOD.

9 4.6 Subject to Paragraph 4.3, the State of Washington and the Antitrust Division of the
10 Attorney General's Office shall not file suit or take any further investigative or enforcement
11 action with respect to the acts set forth above that occurred before the date of entry of this AOD,
12 or that occurs between the date of the entry of this AOD and the conclusion of the 120-day period
13 identified in Paragraph 3.2 above, against GNC or any of its current franchisees in the state of
14 Washington that sign the proposed amendment described in Section III, any of its former
15 franchisees in the state of Washington, or any of its current or former franchisees located outside
16 the state of Washington.

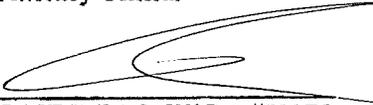
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APPROVED ON this ____ day of _____, 2018.

JUDGE/COURT COMMISSIONER

1 Presented by:

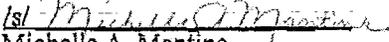
2 ROBERT W. FERGUSON
3 Attorney General

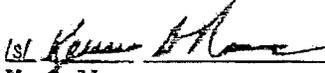
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