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7 **STATE OF WASHINGTON**  
8 **KING COUNTY SUPERIOR COURT**

9 IN RE: FRANCHISE NO POACHING  
10 PROVISIONS

11 (G & S FRUGALS, INC.)

NO. 19-2-24816-5

G & S FRUGALS, INC.  
ASSURANCE OF  
DISCONTINUANCE

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

15 **I. PARTIES**

16 1.1. In August 2019, the Attorney General initiated an investigation into G & S  
17 FRUGALS, INC. relating to its hiring practices.

18 1.2. G & S FRUGALS, INC. is a Washington corporation with its principal office or  
19 place of business in the State of Washington. G & S FRUGALS, INC. is in the business of  
20 franchising a system for restaurants serving hamburgers, sandwiches, french fries, milkshakes,  
21 and complementary items and beverages.

22 1.3. For the purposes of this AOD, G & S FRUGALS, INC. includes its directors,  
23 officers, managers, agents acting within the scope of their agency, and employees as well as its  
24 successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and  
25 joint ventures.  
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1 **II. INVESTIGATION**

2 2.1. G & S FRUGALS, INC. has three restaurants in Washington. All of these  
3 restaurants are owned and operated by franchisees, but a principal officer of G & S FRUGALS,  
4 INC. owns or controls all outstanding shares in the entities that own each of these franchises.  
5 None of the restaurants are owned and operated by G & S FRUGALS, INC.

6 2.2. For years, G & S FRUGALS, INC. has included language in its franchise  
7 agreements that restricted a franchisee’s ability to solicit or hire workers from another G & S  
8 FRUGALS, INC. (no-poaching provision). Specifically, the standard G & S FRUGALS, INC.  
9 franchise agreement stated the following:

10 “16.02.01 Franchisee covenants and agrees that, for a period of thirty-six (36) months  
11 (or if the duration of this covenant is found to be legally unenforceable by a court or  
12 arbitrator, then twenty-four (24) months) following the effective date of any  
13 termination, expiration or non-renewal ("the Termination Date"), Franchisee will not,  
14 individually or together with another, directly or indirectly, on its own behalf or on  
15 behalf of or through any other person, sole proprietorship, or Entity, do any of the  
16 following: . . .

17 c. Solicit or attempt to hire any person who was an employee of Franchisor or  
18 of any other franchisee of Franchisor during the one (1) year period ending on the  
19 Termination date, or attempt to influence any such person to terminate his  
20 employment with Franchisor or Franchisor's Franchisee(s).”

21 “16.02.03 franchisee covenants and agrees that, for a period of thirty-six (36) months  
22 (or if the duration of this covenant is found to be legally unenforceable by a court or  
23 arbitrator, then twenty-four (24) months) from the Termination Date, Franchisee will  
24 not, individually or together with another, directly or indirectly, through others or on  
25 its own behalf, hold any ownership or have a financial or other interest in, be  
26 employed by, or otherwise have any ownership or management relationship with, any  
person or Entity, either as principal, broker, member, agent, stockholder of any class,  
or as a partner, officer, director, trustee, franchisee, franchisor, employee, consultant,  
lender, guarantor, member of a board of directors or board of trustees, or in any other  
capacity, which does any of the following: . . . c. Solicits or attempts to hire any  
person who was an employee of Franchisor or of any other franchisee of Franchisor  
during the two (2) year period ending on the Termination Date, or attempts to  
influence any such person to terminate his employment with Franchisor or any  
franchisee of Franchisor.”

23 A no-poaching provision restricted franchisees from hiring both employees from a competing  
24 franchisee and from G & S FRUGALS, INC.’s corporate-owned restaurants.



1 consideration to induce them to accept the proposed amendment of the franchise, and it shall be  
2 under no obligation to take any coercive action against a franchisee that may refuse or decline  
3 to agree to any amendment of its franchise agreement. If any franchise owner is unwilling to  
4 consent to the change to its franchise agreement, prior to the 60-day deadline, G & S FRUGALS,  
5 INC. shall provide the name and address of the resisting franchisee and the name and address of  
6 the franchisee's registered agent to the Office of the Attorney General.

7 3.3. As they come up for either renewal or renegotiation during the ordinary course  
8 of business, G & S FRUGALS, INC. will amend all of its existing franchise agreements on a  
9 nationwide basis to remove any no-poach provision.

10 3.4. Within 30 days of the conclusion of the time periods referenced in this section  
11 III, G & S FRUGALS, INC. will submit a declaration to the Attorney General's Office signed  
12 under penalty of perjury stating that all provisions of this agreement have been satisfied.

#### 13 IV. ADDITIONAL PROVISIONS

14 4.1. This AOD is binding on, and applies to G & S FRUGALS, INC., including each  
15 of its respective directors, officers, managers, agents acting within the scope of their agency, and  
16 employees, as well as their respective successors and assigns, controlled subsidiaries, divisions,  
17 groups, affiliates, partnerships, and joint ventures, or other entities through which G & S  
18 FRUGALS, INC. may now or hereafter act with respect to the conduct alleged in this AOD.

19 4.2. This is a voluntary agreement and it shall not be construed as an admission of  
20 law, fact, liability, misconduct, or wrongdoing on the part of G & S FRUGALS, INC. By  
21 entering into this AOD, G & S FRUGALS, INC. neither agrees nor concedes that the claims,  
22 allegations and/or causes of action which have or could have been asserted by the Attorney  
23 General have merit and G & S FRUGALS, INC. expressly denies any such claims, allegations,  
24 and/or causes of action. However, proof of failure to comply with this AOD shall be *prima facie*  
25 evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of  
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1 defending against imposition by the Court of injunctions, restitution, costs and reasonable  
2 attorney's fees, and appropriate civil penalties under the Consumer Protection Act.

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

8 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust  
9 Division of the Attorney General's Office under the Consumer Protection Act and any other  
10 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have  
11 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject  
12 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's  
13 Office shall not file suit or take any further investigative or enforcement action with respect to  
14 the acts set forth above that occurred before the date of entry of this AOD.

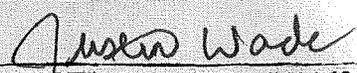
15 APPROVED ON this \_\_\_\_ day of \_\_\_\_\_, 2019.

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JUDGE/COURT COMMISSIONER  
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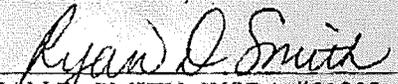
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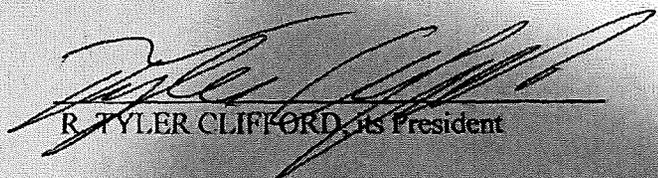
*Attorneys for State of Washington*

Agreed to and approved for entry by:  
G & S FRUGALS, INC.



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